

151-09

[Zoning – Ordinance Making Tobacco Paraphernalia Establishments a Non-Permitted Use in the Haight Street Neighborhood Commercial District and in the newly created Lower Haight Street Tobacco Paraphernalia Restricted Use District.]

Ordinance amending the Planning Code to amend Section 227(v), to create a special definition for Tobacco Paraphernalia Establishments applicable in the Haight Street Neighborhood Commercial District and in the Lower Haight Street Tobacco Paraphernalia Restricted Use District, as defined; amending Section 790.123 to refer to this special definition; amending Section 719.1 and the Table at Section 719, to make Tobacco Paraphernalia Establishments, as defined, not permitted in the Haight Street Neighborhood Commercial District; adding new Section 786, to create the Lower Haight Street Tobacco Paraphernalia Restricted Use Subdistrict; amending Section 186.1, to change the period of non use for a non conforming Tobacco Paraphernalia Establishment use to be deemed discontinued in the Haight Street Neighborhood Commercial District and in the newly created Lower Haight Street Tobacco Paraphernalia Restricted Use Subdistrict from three years to eighteen months; amending Special Use District Map SU 07 of the Zoning Map of the City and County of San Francisco, to reflect the new Lower Haight Street Tobacco Paraphernalia Restricted Use Subdistrict, and making findings, including findings of consistency with the Priority policies of Planning Code Section 101.1 and environmental findings.

NOTE: Additions are single-underline italics Times New Roman; deletions are ~~strike through italics Times New Roman~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings. The Board of Supervisors of the City and County of San Francisco hereby find and determine that:

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1 (a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
 2 ordinance will serve the public necessity, convenience and welfare, for the reasons set forth in
 3 Planning Commission Resolution No. 17872, and incorporates such reasons by this
 4 reference thereto. A copy of said resolution is on file with the Clerk of the Board of
 5 Supervisors in File No. 090141.

6 (b) Pursuant to Planning Code Section 101.1, the Board of Supervisors finds that the
 7 ordinance is consistent with the Priority Policies of Section 101.1(b) of the Planning Code and
 8 with the General Plan and hereby incorporates a report containing those findings as if fully set
 9 forth herein. A copy of said report is on file with the Clerk of the Board of Supervisors in File
 10 No. 090141.

11 (c) The Planning Department concluded environmental review of this ordinance
 12 pursuant to the California Environmental Quality Act, Public Resources Code Section 2100 et
 13 seq. Documentation of that review is on file with the Clerk of the Board of Supervisors in File
 14 No. 090141.

15
 16 Section 2. The San Francisco Planning Code is hereby amended by amending Section
 17 227, to read as follows:

18 **SEC. 227. OTHER USES.**

C-1	C-2	C-3	C-3	C-3	C-3	C-3	M-1	M-2	
		O	R	G	S				
									SEC. 227. OTHER USES.
P*	P*				P	P	P	P	(a) Greenhouse or plant nursery.
P*	P*					P	P	P	(b) Truck gardening, horticulture.

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	C			C	C	P	P	P	(c) Mortuary establishment, including retail establishments that predominantly sell or offer for sale caskets, tombstones, or other funerary goods.
P	P	P	P	P	P	P	P	P	(d) Public structure or use of a nonindustrial character, when in conformity with the General Plan. Such structure or use shall not include a storage yard, incinerator, machine shop, garage or similar use.
P*	P*	C	C	P	P	P	P	P	(e) Utility installation, excluding Internet Services Exchange (see Section 227(t)); public service facility, excluding service yard; provided that operating requirements necessitate location within the district.
C*	C*	C	C	C	C	C	C	C	(f) Public transportation facility, whether public or privately owned or operated, when in conformity with the General Plan, and which does not require approval of the Board of Supervisors under other provisions of law, and which includes:
									(1) Off-street passenger terminal facilities for mass transportation of a single or combined modes including but not limited to aircraft, ferries, fixed-rail vehicles and buses when such facility is not commonly defined as a boarding platform, bus stop, transit shelter or similar ancillary feature of a transit system; and
									(2) Landing field for aircraft.
C*	C*	C	C	C	C	C	P	P	(g) Public transportation facility, when in conformity with the General Plan, other than as required in (f) of this Section or as in Sections 223 and 226 of this Code.

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P	P	P	P	P	P	P	P	P	(h) Commercial wireless transmitting, receiving or relay facility, including towers, antennae, and related equipment for the transmission, reception, or relay of radio, television, or other electronic signals where:
									(1) No portion of such facility exceeds a height of 25 feet above the roof line of the building on the premises or above the ground if there is no building, or 25 feet above the height limit applicable to the subject site under Article 2.5 of this Code, whichever is the lesser height; and
									(2) Such facility, if closer than 1,000 feet to any R District (except for those R Districts entirely surrounded by a C-3, M or a combination of C-3 and M Districts), does not include a parabolic antenna with a diameter in excess of three meters or a composite diameter or antennae in excess of six meters. (See also Section 204.3.)
C	C	C	C	C	C	C	C	C	(i) Commercial wireless transmitting, receiving or relay facility, as described in Subsection 227(h) above, where:
									(1) Any portion of such facility exceeds a height of 25 feet above the roof line of the building on the premises or above the ground if there is no building, or 25 feet above the height limit applicable to the subject site under Article 2.5 of this Code, whichever is the lesser height; or
									(2) Such facility, if closer than 1,000 feet to any R District (except for those R Districts entirely surrounded by a C-3, M or combination of C-3 and M Districts), includes a parabolic antenna with a diameter in excess of three meters or a composite diameter of antennae in excess of

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									six meters. (See also Section 204.3.)
P*	P*	P	P	P	P	P	P	P	(j) Sale or lease sign, as defined and regulated by Article 6 of this Code.
	P*	P	P	P	P	P	P	P	(k) General advertising sign, as defined and regulated by Article 6 of this Code.
P*	P*	P	P	P	P	P	P	P	(l) Access driveway to property in any C or M District.
C	C					C	C	C	(m) Planned Unit Development, as defined and regulated by Section 304 and other applicable provisions of this Code.
								P	(n) Any use that is permitted as a principal use in any other C or M District without limitation as to enclosure within a building, wall or fence.
SEE SECTIONS 205 THROUGH 205.2									(o) Temporary uses, as specified in and regulated by Sections 205 through 205.2 of this Code. (*See Section 212(a).)
P	P	P	P	P	P	P	P	P	(p) Subject to Section 233(a), live/work units, provided that one or more arts activities as defined in Section 102.2 of this Code are the primary nonresidential use within the unit and that other nonresidential activities are limited to those otherwise permitted in the district or otherwise conditional in the district and specifically approved as a conditional use.
P	P	P	P	P	P	P	P	P	(q) Subject to Section 233(a), live/work units not included above but satisfying the conditions of Section 233(b) of this Code.
P	P	P	P	P	P	P	P	P	(r) Arts activities.

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	P						P	P	(s) Waterborne commerce, navigation, fisheries and recreation, and industrial, commercial and other operations directly related to the conduct of waterborne commerce, navigation, fisheries or recreation on property subject to public trust.
C	C	C	C	C	C	C	C	C	(t) Internet Services Exchange as defined in Section 209.6(c).
P	P	P	P	P	P	P	P	P	(u) Fringe financial services, as defined in Section 249.35, and subject to the restrictions set forth in Section 249.35, including, but not limited to, that no new fringe financial service shall be located within a 1/4 miles of an existing fringe financial service.
C	C	C	C	C	C	C	C	C	(v) Tobacco Paraphernalia Establishments, defined as retail uses where more than 15% of the gross square footage of the establishment is dedicated to the sale, distribution, delivery, furnishing or marketing of Tobacco Paraphernalia from one person to another. <u>For purposes of Sections 719, 719.1 and 786 of this Code, Tobacco Paraphernalia Establishments shall mean retail uses where Tobacco Paraphernalia is sold, distributed, delivered, furnished or marketed from one person to another.</u> "Tobacco Paraphernalia" means paraphernalia, devices, or instruments that are designed or manufactured for the smoking, ingesting, inhaling, or otherwise introducing into the body of tobacco, products prepared from tobacco, or controlled substances as defined in California Health and Safety Code Sections 11054 et seq. "Tobacco

										Paraphernalia" does not include lighters, matches, cigarette holders, any device used to store or preserve tobacco, tobacco, cigarettes, cigarette papers, cigars, or any other preparation of tobacco that is permitted by existing law. Medical Cannabis Dispensaries, as defined in Section 3201(f) of the San Francisco Health Code, are not Tobacco Paraphernalia Establishments.
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Section 3. The San Francisco Planning Code is hereby amended by amending Section 790.123, to read as follows:

SEC. 790.123. TOBACCO PARAPHERNALIA ESTABLISHMENT.

A Tobacco Paraphernalia Establishment shall be, as established in Section 227(v) of this code, a retail use where more than 15% of the gross square footage of the establishment is dedicated to the sale, distribution, delivery, furnishing or marketing of Tobacco Paraphernalia from one person to another. For purposes of Sections 719, 719.1 and 786 of this Code, Tobacco Paraphernalia Establishments shall mean retail uses where Tobacco Paraphernalia is sold, distributed, delivered, furnished or marketed from one person to another. "Tobacco Paraphernalia" means paraphernalia, devices, or instruments that are designed or manufactured for the smoking, ingesting, inhaling, or otherwise introducing into the body of tobacco, products prepared from tobacco, or controlled substances as defined in California Health and Safety Code Sections 11054 et seq. "Tobacco Paraphernalia" does not include lighters, matches, cigarette holders, any device used to store or preserve tobacco, tobacco, cigarettes, cigarette papers, cigars, or any other preparation of tobacco that is permitted by existing law. Medical Cannabis Dispensaries, as defined in Section 3201(f) of the San Francisco Health Code, are not Tobacco Paraphernalia Establishments.

1 Section 4. The San Francisco Planning Code is hereby amended by amending Section
2 719.1, to read as follows:

3 **SEC. 719.1. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

4 Northwest of the City's geographical center, the Haight Street Neighborhood
5 Commercial District is located in the Haight-Ashbury neighborhood, extending along Haight
6 Street between Stanyan and Central Avenue, including a portion of Stanyan Street between
7 Haight and Beulah. The shopping area provides convenience goods and services to local
8 Haight-Ashbury residents, as well as comparison shopping goods and services to a larger
9 market area. The commercial district is also frequented by users of Golden Gate Park on
10 weekends and by City residents for its eating, drinking, and entertainment places. Numerous
11 housing units establish the district's mixed residential-commercial character.

12 The Haight Street District controls are designed to protect the existing building scale
13 and promote new mixed-use development which is in character with adjacent buildings. The
14 building standards regulate large-lot and use development and protect rear yards above the
15 ground story and at residential levels. To promote the prevailing mixed-use character, most
16 commercial uses are directed primarily to the ground story with some upper-story restrictions
17 in new buildings. In order to maintain the balanced mix and variety of neighborhood-serving
18 commercial uses and regulate the more intensive commercial uses which can generate
19 congestion and nuisance problems, special controls prohibit additional eating and drinking
20 uses, restrict expansion and intensification of existing eating and drinking establishments, and
21 limit entertainment and tourist hotels. Prohibitions of most automobile and drive-up uses
22 protect the district's continuous retail frontage.

23 Housing development in new buildings is encouraged above the ground story. Existing
24 residential units are protected by prohibition of upper-story conversions and limitations on
25 demolitions.

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**SEC. 719. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT
ZONING CONTROL TABLE**

			Haight Street
No.	Zoning Category	§ References	Controls
BUILDING STANDARDS			
719.10	Height and Bulk Limit	§§ 102.12, 105, 106, 250– 252, 260, 270, 271	40-X
719.11	Lot Size [Per Development]	§§ 790.56, 121.1	P up to 4,999 sq. ft.; C 5,000 sq. ft. & above § 121.1
719.12	Rear Yard	§§ 130, 134, 136	Required at grade level and above § 134(a) (e)
719.13	Street Frontage		Required § 145.1
719.14	Awning	§ 790.20	P § 136.1(a)
719.15	Canopy	§ 790.26	P § 136.1(b)
719.16	Marquee	§ 790.58	P § 136.1(c)
719.17	Street Trees		Required § 143
COMMERCIAL AND INSTITUTIONAL STANDARDS AND USES			
719.20	Floor Area Ratio	§§ 102.9, 102.11, 123	1.8 to 1 § 124(a) (b)
719.21	Use Size [Non-Residential]	§ 790.130	P up to 2,499 sq. ft.; C 2,500

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			sq. ft. & above § 121.2
719.22	Off-Street Parking, Commercial/Institutional	§§ 150, 153– 157, 159– 160, 204.5	Generally, none required if occupied floor area is less than 5,000 sq. ft. §§ 151, 161(g)
719.23	Off-Street Freight Loading	§§ 150, 153– 155, 204.5	Generally, none required if gross floor area is less than 10,000 sq. ft. §§ 152, 161(b)
719.24	Outdoor Activity Area	§ 790.70	P if located in front; C if located elsewhere § 145.2(a)
719.25	Drive-Up Facility	§ 790.30	
719.26	Walk-Up Facility	§ 790.140	P if recessed 3 ft.; C if not recessed § 145.2(b)
719.27	Hours of Operation	§ 790.48	P 6 a.m.– 2 a.m.; C 2 a.m.– 6 a.m.
719.30	General Advertising Sign	§§ 262, 602– 604, 608, 609	
719.31	Business Sign	§§ 262, 602– 604, 608, 609	P § 607.1(f)2
719.32	Other Signs	§§ 262, 602– 604, 608, 609	P § 607.1(c) (d) (g)

1 No. Zoning
2 Category §
3 References

4 Haight Street

5 Controls by Story

		§ 790.118	1st	2nd	3rd+
719.38	Residential Conversion	§ 790.84	P		
719.39	Residential Demolition	§ 790.86	P	C	C

10 **Retail Sales and Services**

719.40	Other Retail Sales and Services [Not Listed Below]	§ 790.102	P#	C#	#
719.41	Bar	§ 790.22	#	#	#
719.42	Full-Service Restaurant	§ 790.92	#	#	#
719.43	Large Fast Food Restaurant	§ 790.90	#	#	#
719.44	Small Self-Service Restaurant	§ 790.91	#	#	#
719.45	Liquor Store	§ 790.55			
719.46	Movie Theater	§ 790.64	P		
719.47	Adult Entertainment	§ 790.36			
719.48	Other Entertainment	§ 790.38	C		

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719.49	Financial Service	§ 790.110	P		
719.50	Limited Financial Service	§ 790.112	P		
719.51	Medical Service	§ 790.114		C	
719.52	Personal Service	§ 790.116	P	C	
719.53	Business or Professional Service	§ 790.108	P	C	
719.54	Massage Establishment	§ 790.60, § 1900 Health Code	C		
719.55	Tourist Hotel	§ 790.46	C	C	
719.56	Automobile Parking	§§ 790.8, 156, 160	C	C	C
719.57	Automotive Gas Station	§ 790.14			
719.58	Automotive Service Station	§ 790.17			
719.59	Automotive Repair	§ 790.15	C		
719.60	Automotive Wash	§ 790.18			
719.61	Automobile Sale or Rental	§ 790.12			
719.62	Animal Hospital	§ 790.6	C		
719.63	Ambulance Service	§ 790.2			
719.64	Mortuary	§ 790.62			
719.65	Trade Shop	§ 790.124	P		

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719.66	Storage	§ 790.117			
719.67	Video Store	§ 790.135	C	C	
719.68	Fringe Financial Service	§ 790.111	#	#	#
719.69	Tobacco Paraphernalia Establishments	§ 790.123	C#	#	#
719.69A	Self-Service Specialty Food	§ 790.93	#	#	#
Institutions and Non-Retail Sales and Services					
719.70	Administrative Service	§ 790.106			
719.80	Hospital or Medical Center	§ 790.44			
719.81	Other Institutions, Large	§ 790.50	P	C	C
719.82	Other Institutions, Small	§ 790.51	P	P	P
719.83	Public Use	§ 790.80	C	C	C
719.84	Medical Cannabis Dispensary	§ 790.141	P		
RESIDENTIAL STANDARDS AND USES					
719.90	Residential Use	§ 790.88	P	P	P
719.91	Residential Density,	§§ 207, 207.1,	Generally, 1 unit per 600 sq.		

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	Dwelling Units	790.88(a)	ft. lot area – § 207.4		
719.92	Residential Density, Group Housing	§§ 207.1, 790.88(b)	Generally, 1 bedroom per 210 sq. ft. lot area – § 208		
719.93	Usable Open Space [Per Residential Unit]	§§ 135, 136	Generally, either 80 sq. ft. if private, or 100 sq. ft. if common § 135(d)		
719.94	Off-Street Parking, Residential	§§ 150, 153– 157, 159– 160, 204.5	Generally, 1 space for each dwelling unit §§ 151, 161(a) (g)		
719.95	Community Residential Parking	§ 790.10	C	C	C

SPECIFIC PROVISIONS FOR THE HAIGHT STREET DISTRICT

Article 7 Code Section	Other Code Section	Zoning Controls
§ 719.40 § 719.41 § 719.42 § 719.43 § 719.44	§ 781.9	Boundaries: The entire Haight Street Neighborhood Commercial District. Controls: Retail establishments selling off-sale or on-sale alcoholic beverages are not permitted pursuant to Section 781.9.
§ 719.68	§ 249.35	FRINGE FINANCIAL SERVICE RESTRICTED USE DISTRICT (FFSRUD) Boundaries: The FFSRUD includes, but is not limited to,

		the Haight Street Neighborhood Commercial District. Controls: Fringe financial services are NP pursuant to Section 249.35.
<u>§ 719.69</u>	<u>§ 790.123</u> <u>§ 186.1</u>	<u>Tobacco Paraphernalia Establishments – the special definition of "Tobacco Paraphernalia Establishments" applicable to the Haight Street Neighborhood Commercial District shall be repealed three years after its initial effective date, unless the Board of Supervisors, on or before that date, extends or re-enacts it.</u> <u>In the Haight Street Neighborhood Commercial District, the period of non-use for a non-conforming Tobacco Paraphernalia Establishment to be deemed discontinued shall be 18 months.</u>

Section 5. The San Francisco Planning Code is hereby amended by adding new Section 786, to read as follows:

SEC. 786. LOWER HAIGHT STREET TOBACCO PARAPHERNALIA RESTRICTED USE DISTRICT.

(a) Findings.

There are an unusually large number of Tobacco Paraphernalia Establishments, as defined in Section 227(v), in the Neighborhood Commercial Districts located generally along lower Haight Street – specifically, the Small-Scale Neighborhood Commercial District located generally along Haight Street at Divisadero Street; the Neighborhood Commercial Cluster District located generally along Haight Street at Scott Street; the Neighborhood Commercial Cluster District located generally along Haight Street at Pierce Street; and the Small-Scale Neighborhood Commercial District located generally along Haight Street at and between Steiner and Webster Streets. The existence of this inordinate number of Tobacco Paraphernalia Establishments appears to contribute directly to

1 numerous peace, health, safety, and general welfare problems in the area, including drug use, drug
2 sales, drug trafficking, other crimes associated with drug use, loitering, and littering, as well as traffic
3 circulation, parking and noise problems on public streets and neighborhood lots. The existence of such
4 problems creates serious impacts on the health, safety, and welfare of residents of nearby areas,
5 including fear for the safety of children, elderly residents and visitors to the area. These problems also
6 contribute to the deterioration of the neighborhood and concomitant devaluation of property and
7 destruction of community values and quality of life, and discourage more desirable and needed
8 commercial uses in the area.

9 (b) Establishment of the Lower Haight Street Tobacco Paraphernalia Restricted Use District.

10 In order to preserve the residential character and the neighborhood-serving commercial uses of
11 the area, and to alleviate the problems associated with the inordinate number of Tobacco
12 Paraphernalia Establishments in the area, the Lower Haight Street Tobacco Paraphernalia Restricted
13 Use District (Lower Haight Street Tobacco Paraphernalia RUD) is hereby established for the
14 following:

15 (1) Properties in the Small-Scale Neighborhood Commercial District located generally along
16 Haight Street at Divisadero Street;

17 (2) Properties in the Neighborhood Commercial Cluster District located generally along Haight
18 Street at Scott Street;

19 (3) Properties in the Neighborhood Commercial Cluster District located generally along Haight
20 Street at Pierce Street;

21 (4) Properties in the Small-Scale Neighborhood Commercial District located generally along
22 Haight Street at and between Steiner and Webster Streets.

23 The above Neighborhood Commercial Cluster Districts and Small-Scale Neighborhood
24 Commercial Districts are designated on Zoning Use and District Map ZN 07 of the Zoning Map of the
25 City and County of San Francisco. Block and lot numbers for the properties included in these districts

1 are on file with the Clerk of the Board of Supervisors in File No. _____, and are incorporated herein by
2 reference. The Lower Haight Street Tobacco Paraphernalia RUD is designated on Special Use District
3 Map SU 07 of the Zoning Map of the City and County of San Francisco.

4 (c) Controls.

5 (1) No new Tobacco Paraphernalia Establishments shall be permitted in the Lower Haight Street
6 Tobacco Paraphernalia RUD.

7 (2) The prohibition on Tobacco Paraphernalia Establishments shall not be interpreted to
8 prohibit temporary uses, as described in Planning Code Section 205.1 to 205.3.

9 (3) Continuation of Existing Tobacco Paraphernalia Establishments. In the Lower Haight Street
10 Tobacco Paraphernalia RUD, any Tobacco Paraphernalia Establishment in existence as to the
11 effective date of this Ordinance may continue its operations in accordance with Planning Code section
12 180 through 186.2, subject to the following provisions:

13 (A) For purposes of this Section, the period for discontinuance for Tobacco Paraphernalia
14 Establishments shall be eighteen (18) months, as provided in Section 186.1(d).

15 (B) A break in continuous operations shall not be interpreted to include the following: a change
16 in ownership; or to the re-establishment or repair of a Tobacco Paraphernalia Establishment on the
17 same lot after destruction or damage due to fire, riot, insurrection or act of God; provided, however,
18 that there is no expansion or significant change in mode or character of the enterprise which intensifies
19 the area devoted to selling Tobacco Paraphernalia.

20 (d) Definitions: The following definitions shall apply to this Section 786.

21 (1) "Tobacco Paraphernalia" shall mean, in accordance with Sections 277(v) and 790.123 of
22 this Code, paraphernalia, devices, or instruments that are designed or manufactured for the smoking,
23 ingesting, inhaling, or otherwise introducing into the body of tobacco, products prepared from tobacco,
24 or controlled substances as defined in California Health and Safety Code Sections 11054 et seq.
25 "Tobacco Paraphernalia" does not include lighters, matches, cigarette holders, any device used to

1 store or preserve tobacco, tobacco, cigarettes, cigarette papers, cigars, or any other preparation of
2 tobacco that is permitted by existing law. Medical Cannabis Dispensaries, as defined in Section 3201(f)
3 of the San Francisco Health Code, are not Tobacco Paraphernalia Establishments.

4 (2) A "Tobacco Paraphernalia Establishment" shall mean, in accordance with Sections 227(v)
5 and 790.123 of this Code, a retail use where Tobacco Paraphernalia is sold, distributed, delivered,
6 furnished or marketed from one person to another.

7 (d) Sunset Provision. This Section 786 shall be repealed three years after its initial effective
8 date unless the Board of Supervisors, on or before that date, extends or re-enacts it.

9
10 Section 6. The San Francisco Planning Code is hereby amended by amending Section
11 186.1, to read as follows:

12 **SEC. 186.1. EXEMPTION OF NONCONFORMING USES IN NEIGHBORHOOD**
13 **COMMERCIAL DISTRICTS.**

14 The purpose of this Section is to provide for the further continuance in NC Districts of
15 nonconforming uses created by adoption of Ordinance No. 69-87, as herein described, and
16 subsequent ordinances that change the uses allowed in NC Districts, which are beneficial to,
17 or can be accommodated within the neighborhood commercial areas in which they are
18 located.

19 It is hereby found and declared that certain uses which traditionally have been
20 permitted to locate in neighborhood commercial areas can be beneficial to a neighborhood
21 commercial area in small or limited numbers, but which if allowed to proliferate, can disrupt
22 the balanced mix of neighborhood-serving retail stores and services. It is further found and
23 declared that in order to prevent undesirable over concentrations of such uses, the
24 establishment of additional such uses shall be prohibited pursuant to controls governing uses
25 in NC Districts. At the same time, however, it is desirable to provide for the further

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1 continuance, expansion, enlargement, alteration, changes, discontinuance, and relocation of
2 such existing uses, which are nonconforming as a result of zoning controls governing uses in
3 NC Districts.

4 The following provisions shall govern with respect to nonconforming uses and features
5 located in Neighborhood Commercial Districts to the extent that there is a conflict between the
6 provisions of this Section and other Sections contained in this Article 1.7.

7 (a) Expansion. A nonconforming use may expand: (1) in floor area as provided in
8 Subsection (b) below, but may not expand beyond the lot which it occupies, nor may the
9 boundaries of such lot be expanded for purposes of expanding the use; nor may the use
10 expand upward above the story or stories which it lawfully occupies, except as provided in
11 Section 186.2 below.

12 (b) Enlargements or Alteration.

13 (1) A nonconforming use may not be significantly altered; enlarged or intensified,
14 except upon approval of a conditional use application pursuant to the provisions of Article 3 of
15 this Code, provided that the use not have or result in a greater height, bulk or floor area ratio,
16 less required rear yard or open space, or less required off-street parking space or loading
17 space than permissible under the limitations set forth in this Code for the district or districts in
18 which such use is located.

19 (2) A nonconforming use may expand to include public sidewalk space provided that
20 such space is only occupied with tables and chairs as permitted by this Municipal Code.

21 (3) No existing use or structure which fails to meet the requirements of this Code in any
22 manner as described above in this Subsection (b) shall be constructed, reconstructed,
23 enlarged, altered or relocated so as to increase the discrepancy, or to create a new
24 discrepancy, at any level of the structure, between existing conditions on the lot and the
25 required standards for new construction set forth in this Code.

1 (c) Changes in Use. A nonconforming use may be changed to another use or feature
2 as described below.

3 (1) A nonconforming use may be changed to a use listed in Article 7 of this Code as a
4 principal use for the district in which the property is located, and the new use may thereafter
5 be continued as a permitted principal use.

6 (2) A nonconforming use may be changed to a use listed in Article 7 of this Code as a
7 conditional use for the district in which the use is located, only upon approval of a conditional
8 use application pursuant to the provisions of Article 3 of this Code, and the new use may
9 thereafter be continued as a permitted conditional use, subject to the provisions of Section
10 178 of this Code.

11 (3) A nonconforming use may be changed to a use which is not permitted in that
12 Neighborhood Commercial District as described below, only upon approval of a conditional
13 use application, pursuant to the provisions of Article 3 of this Code:

14 (A) Any use described in zoning categories .41, .42, .43 or .44, as defined in Sections
15 790.22, 790.92, 790.90 and 790.91, respectively, may change to another use described in
16 zoning categories .41, .42, or .44, even though such other use is not permitted in that
17 Neighborhood Commercial District, unless such other use is located in an Alcohol Restricted
18 Use Subdistrict and is prohibited by the provisions governing that Alcohol Restricted Use
19 Subdistrict.

20 (B) Any use described in zoning categories .51, .52 or .53, as defined in Sections
21 790.114, 790.116 and 790.108 respectively, may change to another use described in zoning
22 categories .51, .52 or .53, even though such other use is not permitted in that Neighborhood
23 Commercial District.

24 (C) Any use described in zoning categories .57, .58 or .59, as defined in Sections
25 790.14, 790.17 and 790.15 respectively, may be demolished and reconstructed as the same

1 use or may change to another use described in zoning categories .57, .58 or .59, even though
2 such other use is not permitted in that Neighborhood Commercial District.

3 The new use shall still be classified as a nonconforming use.

4 The changes in use described in this Paragraph 3 shall include remodeling activities
5 involving the demolition and replacement of structures which result in a change of use.

6 (4) In the North Beach Neighborhood Commercial District, any use that exceeds the
7 use size provisions of Section 121.2(a) or 121.2(b) may be changed to a new use only upon
8 the approval of a new conditional use application. The Commission's approval of such
9 conditional use application shall explicitly address the use size findings of Section 303(c). In
10 the North Beach Neighborhood Commercial District, a nonconforming use cannot be changed
11 to any use which is not a permitted use under Section 722 (North Beach Controls).

12 (5) In the Castro Street Neighborhood Commercial District, any use in this district that
13 exceeds the maximum use size limit of Section 121.2(b), may be not changed to a new use.
14 The only method for changing a nonconforming use identified in this Subsection is to reduce
15 the nonconforming use:

16 (A) to a conforming use size or

17 (B) to a size specified in Subsection 121.2(a) pursuant to conditional use authorization.

18 Notwithstanding the above, any use in this District that exceeds the maximum use size
19 limit of Section 121.2(b) and is categorized in the Other Retail Sales and Services zoning
20 classification, as defined in Section 790.102, may change to another use category
21 enumerated in Section 790.102 as long as the use size is not increased and the Commission
22 approves a conditional use application for such change. The Commission's approval of such
23 conditional use application shall explicitly address the use size findings of Section 303(c).

24 (d) Discontinuance. A nonconforming use which is discontinued for a period of three
25 years, or otherwise abandoned or changed to another use which is listed in Article 7 of this

1 Code as a principal or conditional use for the district in which the use is located shall not be
2 reestablished. For purposes of this Subsection, the period of nonuse for a nonconforming use
3 to be deemed discontinued in the North Beach and Castro Street Neighborhood Commercial
4 Districts, and in the Haight Street Neighborhood Commercial District and the Lower Haight Street
5 Tobacco Paraphernalia Restricted Use Subdistrict for Tobacco Paraphernalia Establishemnts, as
6 defined in Sections 227(v) and 790.123 of this Code, only, shall be eighteen (18) months, except in
7 the North Beach Neighborhood Commercial District, the period of non use for a full service
8 restaurant use, as defined in Section 790.91, to be deemed discontinued shall be three years.

9 (e) Relocation. A nonconforming use in a Neighborhood Commercial District may be
10 reestablished at another location within that Neighborhood Commercial District only upon
11 approval of a new conditional use application pursuant to the provisions of Article 3 of this
12 Code, provided that the following conditions are met:

13 (1) The original premises shall not be occupied by an establishment of the same type
14 of use as the relocating use unless by another establishment that is relocating from within the
15 district; and

16 (2) No final permits to operate the relocated use at the new premises are granted prior
17 to the issuance of a certificate of final completion of any work to the original premises which is
18 required as conditions attached to the approval of the conditional use application; and

19 (3) Deed restrictions are recorded for the original premises in the Official Records of
20 the City and County of San Francisco, which restrictions prohibit for the duration of the Code
21 sections prohibiting the use for the district in which the use is located, the establishment and
22 operation of a new use of the same type of use as the relocated use, unless such new use is
23 relocating from within the district.

1 Section 7. In accordance with Planning Code Sections 106 and 302, the following
2 changes are hereby adopted as an amendment to the Special Use District Map SU 07 of the
3 Zoning Map of the City and County of San Francisco:
4

Description of Property	Special Use District Created
5 6 Small-Scale Neighborhood Commercial District located generally along Haight 7 Street at Divisadero Street; 8 Neighborhood Commercial Cluster District located 9 generally along Haight 10 Street at Scott Street; 11 Neighborhood Commercial Cluster District located 12 generally along Haight 13 Street at Pierce Street; 14 Small-Scale Neighborhood Commercial District located generally along Haight Street at and between Steiner and Webster Streets.	Lower Haight Street Tobacco Paraphernalia Restricted Use Subdistrict

15
16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By:


19 ANDREA RUIZ-ESQUIDE
Deputy City Attorney

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25
Supervisor Mirkarimi
BOARD OF SUPERVISORS



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 090141

Date Passed:

Ordinance amending the Planning Code to amend Section 227(v), to create a special definition for Tobacco Paraphernalia Establishments applicable in the Haight Street Neighborhood Commercial District and in the Lower Haight Street Tobacco Paraphernalia Restricted Use District, as defined; amending Section 790.123 to refer to this special definition; amending Section 719.1 and the Table at Section 719, to make Tobacco Paraphernalia Establishments, as defined, not permitted in the Haight Street Neighborhood Commercial District; adding new Section 786, to create the Lower Haight Street Tobacco Paraphernalia Restricted Use Subdistrict; amending Section 186.1, to change the period of non-use for a nonconforming Tobacco Paraphernalia Establishment use to be deemed discontinued in the Haight Street Neighborhood Commercial District and in the newly created Lower Haight Street Tobacco Paraphernalia Restricted Use Subdistrict from three years to eighteen months; amending Special Use District Map SU 07 of the Zoning Map of the City and County of San Francisco, to reflect the new Lower Haight Street Tobacco Paraphernalia Restricted Use Subdistrict, and making findings, including findings of consistency with the Priority policies of Planning Code Section 101.1 and environmental findings.

June 23, 2009 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

June 30, 2009 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

File No. 090141

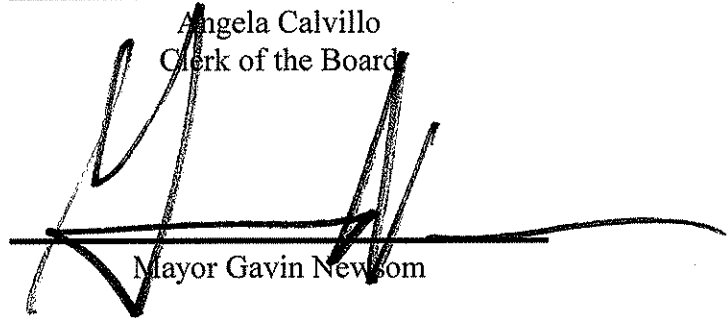
I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on June 30, 2009 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board

7/10/2009

Date Approved



Mayor Gavin Newsom