

1 [Planning Code - Tobacco Paraphernalia Establishments in North of Market SUD and Lower  
2 Polk Street NCD]

3 **Ordinance amending the Planning Code to ~~require~~prohibit in the North of Market**  
4 **Special Use District (SUD) and Lower Polk Street Neighborhood Commercial District**  
5 **(NCD)that Tobacco Paraphernalia Establishments where any Tobacco Paraphernalia is**  
6 **sold, delivered, distributed, furnished, or marketed ~~obtain conditional use~~**  
7 **authorization, and to establish that after ~~18 months~~180 days of non-use a legal non-**  
8 **conforming Tobacco Paraphernalia Establishment in the SUD or NCD will be deemed**  
9 **abandoned, preventing its restoration ~~except as a new Tobacco Paraphernalia~~**  
10 **Establishment; and affirming the Planning Department’s determination under the**  
11 **California Environmental Quality Act, making findings of consistency with the General**  
12 **Plan and the eight priority policies of Planning Code, Section 101.1, and making**  
13 **findings of public necessity, convenience, and welfare pursuant to Planning Code,**  
14 **Section 302.**

15 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
16 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
17 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
18 **Board amendment additions** are in double-underlined Arial font.  
19 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
20 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
21 subsections or parts of tables.

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

23 Section 1. Environmental and Land Use Findings.

24 (a) The Planning Department has determined that the actions contemplated in this  
25 ordinance comply with the California Environmental Quality Act (California Public Resources

1 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
2 Supervisors in File No. 231225 and is incorporated herein by reference. The Board affirms  
3 this determination.

4 (b) On February 8, 2024, the Planning Commission, in Resolution No. 21508, adopted  
5 findings that the actions contemplated in this ordinance are consistent, on balance, with the  
6 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board  
7 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
8 Board of Supervisors in File No. 231225, and is incorporated herein by reference.

9 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code  
10 amendments will serve the public necessity, convenience, and welfare for the reasons set  
11 forth in Planning Commission Resolution No. 21508, and the Board incorporates such  
12 reasons herein by reference. A copy of said resolution is on file with the Clerk of the Board of  
13 Supervisors in File No. 231225.

14  
15 Section 2. Articles ~~1, and 2, and 7~~ of the Planning Code are hereby amended by  
16 revising Sections 102, 209.3, 210.2, 249.5, and 744, to read as follows:

17  
18 **SEC. 102. DEFINITIONS.**

19 \* \* \* \*

20 ***Tobacco Paraphernalia Establishment.*** A Retail Sales and Service Use where more  
21 than 10% of the square footage of Occupied Floor Area, as defined in Section 102, or more  
22 than 10 linear feet of display area projected to the floor, whichever is less, is dedicated to the  
23 sale, distribution, delivery, furnishing, or marketing of Tobacco Paraphernalia from one person  
24 to another. For purposes of Sections 249.5, 719, ~~and 723~~, and 744 of this Code, however,  
25 Tobacco Paraphernalia Establishments shall mean retail uses where any Tobacco

1 Paraphernalia is sold, distributed, delivered, furnished, or marketed from one person to  
 2 another. "Tobacco Paraphernalia" means paraphernalia, devices, or instruments that are  
 3 designed or manufactured for the smoking, ingesting, inhaling, or otherwise introducing into  
 4 the body of tobacco, products prepared from tobacco, or controlled substances as defined in  
 5 California Health and Safety Code Sections 11054, et seq. "Tobacco Paraphernalia" does not  
 6 include lighters, matches, cigarette holders, any device used to store or preserve tobacco,  
 7 tobacco, cigarettes, cigarette papers, cigars, or any other preparation of tobacco that is  
 8 permitted by existing law. Cannabis Retail Uses as defined in Section 102, Temporary  
 9 Cannabis Retail Uses as defined in Section 205.2, and Medical Cannabis Dispensary Uses as  
 10 defined in Section 102 are not Tobacco Paraphernalia Establishments.

11 \* \* \* \*

12  
 13 **SEC. 209.3. RC (RESIDENTIAL-COMMERCIAL) DISTRICTS.**

14 \* \* \* \*

15 **Table 209.3**

16 **ZONING CONTROL TABLE FOR RESIDENTIAL-COMMERCIAL DISTRICTS**

Zoning Category	§ References	RC-3	RC-4
* * * *			
<b><i>NON-RESIDENTIAL STANDARDS AND USES</i></b>			
* * * *			
<b>Sales and Service Category</b>			
* * * *			
Tobacco Paraphernalia <i>Store Establishment</i>	§ 102	C (6)	C <u>(2)</u> (6)
* * * *			

25 \* \* \* \*

(2) ~~{Note Deleted}~~ TOBACCO PARAPHERNALIA ESTABLISHMENTS IN THE NORTH OF MARKET RESIDENTIAL SPECIAL USE DISTRICT – A special definition of “Tobacco Paraphernalia Establishments” set forth in Section 102 applies to parcels in the North of Market Residential Special Use District (Sec. 249.5). Tobacco Paraphernalia Establishments are not permitted in the North of Market Residential Special Use District. Additionally, a legal non-conforming Tobacco Paraphernalia Establishment in the North of Market Residential Special Use District is deemed abandoned after ~~18 months~~ 180 days of non-use.

\* \* \* \*

(6) NP above the second floor.

\* \* \* \*

**SEC. 210.2. C-3 DISTRICTS: DOWNTOWN COMMERCIAL.**

\* \* \* \*

**Table 210.2**

**ZONING CONTROL TABLE FOR C-3 DISTRICTS**

Zoning Category	§ References	C-3-O	C-3-O(SD)	C-3-R	C-3-G	C-3-S
* * * *						
<b>NON-RESIDENTIAL STANDARDS AND USES</b>						
* * * *						
<b>Sales and Service Category</b>						
* * * *						
Tobacco Paraphernalia Store Establishment	§ 102	C	C	C	C(11)	C
* * * *						

\* \* \* \*

1           (10) C on the 2nd floor and above, except that a Massage Establishment located on the  
2 2nd floor or above accessory to a Hotel, Personal Service or Health Service is P.

3           (11) TOBACCO PARAPHERNALIA ESTABLISHMENTS IN THE NORTH OF MARKET  
4 RESIDENTIAL SPECIAL USE DISTRICT – A special definition of “Tobacco Paraphernalia  
5 Establishments” set forth in Section 102 applies to parcels in the North of Market Residential Special  
6 Use District (Sec. 249.5). Tobacco Paraphernalia Establishments are not permitted in the North  
7 of Market Residential Special Use District. Additionally, a legal non-conforming Tobacco  
8 Paraphernalia Establishment in the North of Market Residential Special Use District is deemed  
9 abandoned after ~~18 months~~ 180 days of non-use.

10  
11 **SEC. 249.5. NORTH OF MARKET RESIDENTIAL SPECIAL USE DISTRICT.**

12           \* \* \* \*

13           (e) **Fringe Financial Services.** In addition to all other applicable controls set forth in  
14 this Code, properties in the North of Market Residential Special Use District are within the  
15 Fringe Financial Service Restricted Use District established by Section 249.35 and are subject  
16 to the controls and exemptions set forth in Section 249.35.

17           (f) Tobacco Paraphernalia Establishments. A special definition of “Tobacco Paraphernalia  
18 Establishments” applicable to the North of Market Residential Special Use District is set forth in  
19 Section 102. ~~Zoning controls for Tobacco Paraphernalia Establishments are set forth in other~~  
20 Sections of this Code. Tobacco Paraphernalia Establishments are not permitted in the North of  
21 Market Residential Special Use District. In the North of Market Residential Special Use District, a  
22 legal non-conforming Tobacco Paraphernalia Establishment shall be deemed abandoned after  
23 ~~18 months~~ 180 days of non-use.

1 **SEC. 744. LOWER POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

2 \* \* \* \*

3 **Table 744. LOWER POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING**  
 4 **CONTROL TABLE**

5 \* \* \* \*

Zoning Category	§ References	Controls		
* * * *				
<b>NON-RESIDENTIAL USES</b>	<b>Controls by Story</b>			
	1st	2nd	3rd+	
* * * *				
<b>Sales and Service Use Category</b>				
* * * *				
Tobacco Paraphernalia Establishment	§ 102	<u>GNP(6)</u>	<u>NP(6)</u>	<u>NP(6)</u>
* * * *				

14 \* \* \* \*

15 (5) P where existing use is any Automotive Use.

16 (6) TOBACCO PARAPHERNALIA ESTABLISHMENTS – Tobacco Paraphernalia  
 17 Establishments are not permitted in the Lower Polk Street Neighborhood Commercial District  
 18 and within one-quarter mile of the boundaries of that Neighborhood Commercial District. A  
 19 special definition of “Tobacco Paraphernalia Establishments” set forth in Section 102 applies  
 20 to parcels in the Lower Polk Street Neighborhood Commercial District. Additionally, a legal  
 21 non-conforming Tobacco Paraphernalia Establishment in the Lower Polk Street Neighborhood  
 22 Commercial District is deemed abandoned after 180 days of non-use.

23  
 24 Section 3. Effective Date. This ordinance shall become effective 30 days after  
 25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisors overrides the Mayor’s veto of the ordinance.

3  
4 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
8 additions, and Board amendment deletions in accordance with the “Note” that appears under  
9 the official title of the ordinance. The number “10” in Footnote 10 of Table 210.2 of the  
10 Planning Code has been reproduced with font indicating an addition to the Code, to correct a  
11 prior numbering error.

12  
13 APPROVED AS TO FORM:  
14 DAVID CHIU, City Attorney

15 By: /s/ HEATHER GOODMAN  
16 HEATHER GOODMAN  
Deputy City Attorney

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