

BOARD of SUPERVISORS



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MEMORANDUM

TO: Katy Tang, Director
Small Business Commission, City Hall, Room 448
FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee
DATE: April 14, 2023
SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 230410

Ordinance amending the Planning Code to permit Health Services uses on the ground floor for specified areas of the Polk Street Neighborhood Commercial District (NCD), to clarify that in the Polk Street NCD and within a quarter-mile of its boundaries Tobacco Paraphernalia Establishments where any Tobacco Paraphernalia is sold, delivered, distributed, furnished, or marketed are not permitted, to clarify that in the Haight Street NCD such Tobacco Paraphernalia Establishments require conditional use authorization, and to clarify that Tobacco Paraphernalia Establishments do not include medicinal and adult-use cannabis retail uses; and affirming the Planning Department's determination under the California Environmental Quality Act, making findings of consistency with the General Plan, and the eight priority policies of the Planning Code, Section 101.1, and making findings of public necessity, convenience, and welfare pursuant to the Planning Code, Section 302.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

___ No Comment

___ Recommendation Attached

Chairperson, Small Business Commission

cc: Kerry Birnbach

1 [Planning Code - Polk Street and Haight Street Neighborhood Commercial Districts]

2

3 **Ordinance amending the Planning Code to permit Health Services uses on the ground**
 4 **floor for specified areas of the Polk Street Neighborhood Commercial District (NCD), to**
 5 **clarify that in the Polk Street NCD and within a quarter-mile of its boundaries Tobacco**
 6 **Paraphernalia Establishments where any Tobacco Paraphernalia is sold, delivered,**
 7 **distributed, furnished, or marketed are not permitted, to clarify that in the Haight Street**
 8 **NCD such Tobacco Paraphernalia Establishments require conditional use**
 9 **authorization, and to clarify that Tobacco Paraphernalia Establishments do not include**
 10 **medicinal and adult-use cannabis retail uses; and affirming the Planning Department's**
 11 **determination under the California Environmental Quality Act, making findings of**
 12 **consistency with the General Plan, and the eight priority policies of the Planning Code,**
 13 **Section 101.1, and making findings of public necessity, convenience, and welfare**
 14 **pursuant to the Planning Code, Section 302.**

15

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

20

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

22

22 Section 1. Environmental and Land Use Findings.

23

23 (a) The Planning Department has determined that the actions contemplated in this

24

24 ordinance comply with the California Environmental Quality Act (California Public Resources

25

25 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of

1 Supervisors in File No. ____ and is incorporated herein by reference. The Board affirms this
2 determination.

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

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

13

14 Section 2. Article 1 of the Planning Code is hereby amended by revising Section 102
15 to read as follows:

16 **SEC. 102. DEFINITIONS.**

17 * * * *

18 ***Tobacco Paraphernalia Establishment.*** A Retail Sales and Service Use where more
19 than 10% of the square footage of Occupied Floor Area, as defined in Section 102, or more
20 than 10 linear feet of display area projected to the floor, whichever is less, is dedicated to the
21 sale, distribution, delivery, furnishing, or marketing of Tobacco Paraphernalia from one person
22 to another. For purposes of Sections 719, and 723 of this Code, however, Tobacco
23 Paraphernalia Establishments shall mean retail uses where any Tobacco Paraphernalia is
24 sold, distributed, delivered, furnished, or marketed from one person to another. "Tobacco
25 Paraphernalia" means paraphernalia, devices, or instruments that are designed or

1 manufactured for the smoking, ingesting, inhaling, or otherwise introducing into the body of
 2 tobacco, products prepared from tobacco, or controlled substances as defined in California
 3 Health and Safety Code Sections 11054, et seq. "Tobacco Paraphernalia" does not include
 4 lighters, matches, cigarette holders, any device used to store or preserve tobacco, tobacco,
 5 cigarettes, cigarette papers, cigars, or any other preparation of tobacco that is permitted by
 6 existing law. Cannabis Retail Uses as defined in Section 102, Temporary Cannabis Retail Uses as
 7 defined in Section 205.2, and Medical Cannabis Dispensary Uses as defined in Section 102 ~~Medical~~
 8 ~~Cannabis Dispensaries, as defined in Section 3301(f) of the San Francisco Health Code,~~ are not
 9 Tobacco Paraphernalia Establishments.

10 * * * *

11
 12 Section 3. Article 7 of the Planning Code is hereby amended by revising Sections 719
 13 and 723 to read as follows:

14 **SEC. 719. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

15 * * * *

16 **Table 719. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT**
 17 **ZONING CONTROL TABLE**

18 * * * *

Zoning Category	§ References	Controls		
NON-RESIDENTIAL STANDARDS AND USES				
* * * *				
		Controls by Story		
		1st	2nd	3rd+
* * * *				
Sales and Service Use Category				

1	Retail Sales and Service	§§ 102, 202.2(a)	P	C	NP
2	Uses*				
3	* * * *				
4	Tobacco Paraphernalia Establishment	§ 102	C(6)	C(6)	C(6)
5	* * * *				

* * * *

(6) TOBACCO PARAPHERNALIA ESTABLISHMENTS – ~~*A the special definition of “Tobacco Paraphernalia Establishments” applicable to the Haight Street Neighborhood Commercial District is set forth in Section 102, 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.*~~ 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.

* * * *

SEC. 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT.

* * * *

**Table 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT
ZONING CONTROL TABLE**

* * * *

Zoning Category	§ References	Controls		
NON-RESIDENTIAL STANDARDS AND USES (7)				
* * * *				
		Controls by Story		
		1st	2nd	3rd+
* * * *				
Sales and Service Use Category				

1	Retail Sales and Service Uses*	§§ 102, 202.2(a),	P	P	NP
2		202.3			
3	* * * *				
4	Services, Health	§ 102	NP(3)	C	C
5	* * * *				
6	Tobacco Paraphernalia Establishment	§ 102	NP(5)	NP(5)	NP(5)
7	* * * *				

8 * * * *

9 (3) ~~{Note deleted.}~~ Health Services are principally permitted on properties that do not have
10 any frontage on Polk Street or California Street.

11 * * * *

12 (5) TOBACCO PARAPHERNALIA ESTABLISHMENTS PROHIBITION– Tobacco
13 Paraphernalia Establishments are not permitted in the Polk Street Neighborhood Commercial
14 District and within one-quarter mile of the boundaries of that Neighborhood Commercial
15 District. A ~~The~~ special definition of “Tobacco Paraphernalia Establishments” applicable to the
16 Polk Street Neighborhood Commercial District ~~is set forth in Section 102. shall be repealed six~~
17 ~~years after its initial effective date, unless the Board of Supervisors, on or before that date, extends or~~
18 ~~re-enacts it.~~ In the Polk Street Neighborhood Commercial District, the period of non-use for a
19 non-conforming Tobacco Paraphernalia Establishment to be deemed discontinued shall be 18
20 months.

21 * * * *

22
23 Section 4. Effective Date. This ordinance shall become effective 30 days after
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
25

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 5. 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.

10 APPROVED AS TO FORM:
11 DAVID CHIU, City Attorney

12 By: /s/
13 HEATHER L. GOODMAN
14 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Polk Street and Haight Street Neighborhood Commercial Districts]

Ordinance amending the Planning Code to permit Health Services uses on the ground floor for specified areas of the Polk Street Neighborhood Commercial District (NCD), to clarify that in the Polk Street NCD and within a quarter-mile of its boundaries Tobacco Paraphernalia Establishments where any Tobacco Paraphernalia is sold, delivered, distributed, furnished, or marketed are not permitted, to clarify that in the Haight Street NCD such Tobacco Paraphernalia Establishments require conditional use authorization, and to clarify that Tobacco Paraphernalia Establishments do not include medicinal and adult-use cannabis retail uses; and affirming the Planning Department's determination under the California Environmental Quality Act, making findings of consistency with the General Plan, and the eight priority policies of the Planning Code, Section 101.1, and making findings of public necessity, convenience, and welfare pursuant to the Planning Code, Section 302.

Existing Law

Under current Planning Code rules for the Polk Street NCD, Health Services uses, such as offices for doctors, dentists, and chiropractors, are not permitted on the ground floor. Health Services uses are conditionally permitted on the second or higher floors only.

The Planning Code includes a special definition for Tobacco Paraphernalia Establishments applicable in the Polk Street and Haight Street NCDs, such that businesses are regulated as Tobacco Paraphernalia Establishments if they sell any Tobacco Paraphernalia, including pipes or other devices for smoking. Tobacco Paraphernalia Establishments, as defined, are not permitted in the Polk Street NCD and are permitted as a conditional use in the Haight Street NCD.

In the Planning Code section for the Polk Street NCD, there is a footnote saying this special definition expires after six years. For the Haight Street NCD, there is a footnote saying the special definition expires after three years.

Amendments to Current Law

This ordinance allows Health Services as a permitted use on the ground floor in the Polk Street NCD, except for properties with frontage on Polk Street or California Street.

This ordinance deletes outdated references to expiration dates for the special definition of Tobacco Paraphernalia Establishments for the Polk Street and Haight Street NCDs. This ordinance confirms that the special definition is a permanent part of the Planning Code and currently does not have an expiration date.

Background Information

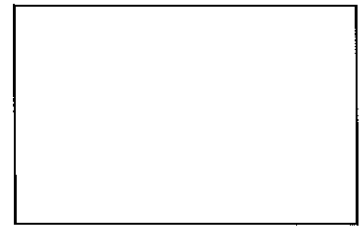
In 2009, the City established interim zoning controls prohibiting new Tobacco Paraphernalia Establishments in the Polk Street and Haight Street NCDs. The prohibition was incorporated into the City's ordinances as the special definition described above for Tobacco Paraphernalia Establishments applicable to those districts, among other code changes (Ordinance Nos. 151-09 and 3-10). The special definition was set to expire in three years, unless the Board of Supervisors extended or re-enacted it prior to its expiration. For the Polk Street NCD, the initial three-year period was extended for an additional three-years (Ordinance No. 74-13). Prior to this ordinance, the zoning control tables for each district referenced these respective three- or six-year operative periods in a footnote.

In subsequent legislation, the City re-adopted the special definition (Ordinance No. 22-15), eliminated duplicative definitions (Ordinance No. 130-17), and deleted outdated cross-references in the definition (Ordinance No. 202-18). Based on these more recent actions, it is apparent that the Board has re-enacted the special definition, thereby superseding any earlier provisions referencing an expiration of that definition. This ordinance deletes the now-outdated references to a three- or six-year operative period for the special definition and makes minor, technical changes to the definition.

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Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor [] inquires..."
- 5. City Attorney Request
- 6. Call File No. [] from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the Board on []

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Supervisor Peskin

Subject:

[Planning Code - Polk Street and Haight Street Neighborhood Commercial Districts]

Long Title or text listed:

Ordinance amending the Planning Code to permit Health Services uses on the ground floor for specified areas of the Polk Street Neighborhood Commercial District (NCD), to clarify that in the Polk Street NCD and within a quarter-mile of its boundaries Tobacco Paraphernalia Establishments where any Tobacco Paraphernalia is sold, delivered, distributed, furnished, or marketed are not permitted, to clarify that in the Haight Street NCD such Tobacco Paraphernalia Establishments require conditional use authorization, and to clarify that Tobacco Paraphernalia Establishments do not include medicinal and adult-use cannabis retail uses; and affirming the Planning Department's determination under the California Environmental Quality Act, making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1, and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

Signature of Sponsoring Supervisor: