

1 [Zoning – Amending the Citywide Definition of Tobacco Paraphernalia Establishments by
 2 Lowering the Threshold for Retail Stores to Be Considered Tobacco Paraphernalia
 Establishments, and Making Tobacco Paraphernalia Establishments a Non-Permitted Use in
 the Polk Street Neighborhood Commercial District.]
 3

4 **Ordinance amending the Planning Code to amend the definition of Tobacco**
 5 **Paraphernalia Establishments in Section 227(v), to lower the threshold for retail stores**
 6 **to be considered Tobacco Paraphernalia Establishments from 15% of the square**
 7 **footage of the establishment to 10% of the occupied floor area, as defined in Section**
 8 **102.10, or 10 linear feet of display area in total, whichever is less; amending Sections**
 9 **790.123 and 890.123 to reflect this amended definition; amending Section 723.1 and the**
 10 **Table at Section 723, to make Tobacco Paraphernalia Establishments, as defined, not**
 11 **permitted in the Polk Street Neighborhood Commercial District; amending Section**
 12 **186.1, to change the period of non use for a non conforming Tobacco Paraphernalia**
 13 **Establishment use to be deemed discontinued in the Polk Street Neighborhood**
 14 **Commercial District from three years to eighteen months, and making findings,**
 15 **including findings of consistency with the priority policies of Planning Code Section**
 16 **101.1 and environmental findings.**

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

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

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

23 (a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
 24 ordinance will serve the public necessity, convenience and welfare, for the reasons set forth in
 25 Planning Commission Resolution No. _____, and incorporates such reasons by this

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1 reference thereto. A copy of said resolution is on file with the Clerk of the Board of
 2 Supervisors in File No. _____.

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

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

12

13 Section 2. The San Francisco Planning Code is hereby amended by amending Section
 14 227, to read as follows:

15 **SEC. 227. OTHER USES.**

16	C-	C-	C-	C-	C-	C-	M-	M-2	
17	1	2	3-	3-	3-	3-	M	1	
18			O	R	G	S			
19									SEC. 227. OTHER USES.
20	P*	P*				P	P	P	(a) Greenhouse or plant nursery.
21									
22	P*	P*					P	P	(b) Truck gardening, horticulture.
23		C			C	C	P	P	(c) Mortuary establishment, including retail establishments
24									that predominantly sell or offer for sale caskets,
25									

1										tombstones, or other funerary goods.
2	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.
3										
4										
5										
6	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.
7										
8										
9										
10	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:
11										
12										
13										
14									(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	
15										
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18									(2) Landing field for aircraft.	
19										
20									(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.	
21										
22	C*	C*	C	C	C	C	P	P		
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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

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										parabolic antenna with a diameter in excess of three meters or a composite diameter of antennae in excess of six meters. (See also Section 204.3.)
P*	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	P	(k) General advertising sign, as defined and regulated by Article 6 of this Code.
P*	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	(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.

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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.
	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 45% <u>10%</u> of the gross square footage of the establishment <u>square footage of occupied floor area, as defined in Section 102.10, or more than 10 linear feet of display area in total, whichever is less</u> , 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, <u>723 and 723.1</u> of this Code, Tobacco Paraphernalia Establishments shall mean retail

1 uses where Tobacco Paraphernalia is sold, distributed,
2 delivered, furnished or marketed from one person to
3 another. "Tobacco Paraphernalia" means paraphernalia,
4 devices, or instruments that are designed or manufactured
5 for the smoking, ingesting, inhaling, or otherwise
6 introducing into the body of tobacco, products prepared
7 from tobacco, or controlled substances as defined in
8 California Health and Safety Code Sections 11054 et seq.
9 "Tobacco Paraphernalia" does not include lighters,
10 matches, cigarette holders, any device used to store or
11 preserve tobacco, tobacco, cigarettes, cigarette papers,
12 cigars, or any other preparation of tobacco that is permitted
13 by existing law. Medical Cannabis Dispensaries, as defined
14 in Section 3201(f) of the San Francisco Health Code, are
15 not Tobacco Paraphernalia Establishments.

16 Section 3. The San Francisco Planning Code is hereby amended by amending Section
17 790.123, to read as follows:

18 **SEC. 790.123. TOBACCO PARAPHERNALIA ESTABLISHMENT.**

19 A Tobacco Paraphernalia Establishment shall be, as established in Section 227(v) of
20 this code, a retail use where more than ~~15%~~ 10% of the ~~gross square footage of the~~
21 ~~establishment~~ square footage of occupied floor area, as defined in Section 102.10, or more than 10
22 linear feet of display area in total, whichever is less, is dedicated to the sale, distribution, delivery,
23 furnishing or marketing of Tobacco Paraphernalia from one person to another. For purposes
24 of Sections 719, 719.1, ~~and 786,~~ 723 and 723.1 of this Code, Tobacco Paraphernalia
25 Establishments shall mean retail uses where Tobacco Paraphernalia is sold, distributed,

1 delivered, furnished or marketed from one person to another. "Tobacco Paraphernalia"
2 means paraphernalia, devices, or instruments that are designed or manufactured for the
3 smoking, ingesting, inhaling, or otherwise introducing into the body of tobacco, products
4 prepared from tobacco, or controlled substances as defined in California Health and Safety
5 Code Sections 11054 et seq. "Tobacco Paraphernalia" does not include lighters, matches,
6 cigarette holders, any device used to store or preserve tobacco, tobacco, cigarettes, cigarette
7 papers, cigars, or any other preparation of tobacco that is permitted by existing law. Medical
8 Cannabis Dispensaries, as defined in Section 3201(f) of the San Francisco Health Code, are
9 not Tobacco Paraphernalia Establishments.

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11 Section 4. The San Francisco Planning Code is hereby amended by amending Section
12 890.123, to read as follows:

13 **SEC. 890.123. TOBACCO PARAPHERNALIA ESTABLISHMENT**

14 A Tobacco Paraphernalia Establishment shall be, as established in Section 227(v) of
15 this code, a retail use where more than ~~45%~~ 10% of the ~~gross square footage of the~~
16 ~~establishment~~ square footage of occupied floor area, as defined in Section 102.10, or more than 10
17 linear feet of display area in total, whichever is less, is dedicated to the sale, distribution, delivery,
18 furnishing or marketing of Tobacco Paraphernalia from one person to another. "Tobacco
19 Paraphernalia" means paraphernalia, devices, or instruments that are designed or
20 manufactured for the smoking, ingesting, inhaling, or otherwise introducing into the body of
21 tobacco, products prepared from tobacco, or controlled substances as defined in California
22 Health and Safety Code Sections 11054 et seq. "Tobacco Paraphernalia" does not include
23 lighters, matches, cigarette holders, any device used to store or preserve tobacco, tobacco,
24 cigarettes, cigarette papers, cigars, or any other preparation of tobacco that is permitted by
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1 existing law. Medical Cannabis Dispensaries, as defined in Section 3201(f) of the San
2 Francisco Health Code, are not Tobacco Paraphernalia Establishments.

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4 Section 5. The San Francisco Planning Code is hereby amended by amending Section
5 723.1, to read as follows:

6 **SEC. 723.1. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

7 Sitting in the gulch between Nob and Russian Hills and Pacific Heights, the Polk Street
8 Neighborhood Commercial District extends for a mile as a north-south linear strip, and
9 includes a portion of Larkin Street between Post and California Streets. Polk Street's dense
10 mixed-use character consists of buildings with residential units above ground-story
11 commercial use. The district has an active and continuous commercial frontage along Polk
12 Street for almost all of its length. Larkin Street and side streets in the district have a greater
13 proportion of residences than Polk Street itself. The district provides convenience goods and
14 services to the residential communities in the Polk Gulch neighborhood and to the residents
15 on the west slopes of Nob and Russian Hills. It has many apparel and specialty stores, as well
16 as some automobile uses, which serve a broader trade area. Commercial uses also include
17 offices, as well as movie theaters, restaurants, and bars which keep the district active into the
18 evening.

19 The Polk Street District controls are designed to encourage and promote development
20 which is compatible with the surrounding neighborhood. The building standards monitor large-
21 scale development and protect rear yards at residential levels. Consistent with Polk Street's
22 existing mixed-use character, new buildings may contain most commercial uses at the first
23 two stories. The controls encourage neighborhood-serving businesses, but limit new eating,
24 drinking, other entertainment, and financial service uses, which can produce parking
25 congestion, noise and other nuisances or displace other types of local-serving convenience

1 goods and services. They also prohibit new adult entertainment uses. Restrictions on drive-up
 2 and most automobile uses protect the district's continuous retail frontage and prevent further
 3 traffic congestion.

4 Housing developed in new buildings is encouraged above the second story, especially
 5 in the less intensely developed portions of the district along Larkin Street. Existing housing
 6 units are protected by limitations on demolitions and upper-story conversions.

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 9 **SEC. 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING**

10 **CONTROL TABLE**

			Polk Street
No.	Zoning Category	§ References	Controls
BUILDING STANDARDS			
23.10	7 Height and Bulk Limit	§§ 102.12, 105, 106, 250– 252, 260, 270, 271	65-A, 80-A, 130-E See Zoning Map
23.11	7 Lot Size [Per Development]	§§ 790.56, 121.1	P up to 9,999 sq. ft. C 10,000 sq. ft. & above § 121.1
23.12	7 Rear Yard	§§ 130, 134, 136	Required at residential levels only § 134(a) (e)
23.13	7 Street Frontage		Required § 145.1
23.14	7 Awning	§ 790.20	P § 136.1(a)

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23.15	7	Canopy	§ 790.26	P § 136.1(b)
23.16	7	Marquee	§ 790.58	P § 136.1(c)
23.17	7	Street Trees		Required § 143
COMMERCIAL AND INSTITUTIONAL STANDARDS AND USES				
23.20	7	Floor Area Ratio	§§ 102.9, 102.11, 123	2.5 to 1 § 124(a) (b)
23.21	7	Use Size [Non-Residential]	§ 790.130	P up to 1,999 sq. ft.; C 2,000 sq. ft. & above § 121.2
23.22	7	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)
23.23	7	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)
23.24	7	Outdoor Activity Area	§ 790.70	P if located in front; C if located elsewhere § 145.2(a)

1	7	Drive-Up Facility	§ 790.30	
2	23.25			
3	7	Walk-Up Facility	§ 790.140	P if recessed 3 ft.; C if
4	23.26			not recessed § 145.2(b)
5	7	Hours of Operation	§ 790.48	P 6 a.m.– 2 a.m. C 2
6	23.27			a.m.– 6 a.m.
7	7	General Advertising Sign	§§ 262, 602–	
8	23.30		604, 608, 609	
9	7	Business Sign	§§ 262, 602–	P § 607.1(f)2
10	23.31		604, 608, 609	
11	7	Other Signs	§§ 262, 602–	P § 607.1(c) (d) (g)
12	23.32		604, 608, 609	

14	No. Zoning					
15	Category §					
16	References					
17	Polk Street					
18	Controls by Story					
19			§ 790.118	1	2n	3rd+
20				st	d	
21	723.38	Residential	§ 790.84	F	C	
22		Conversion				
23	723.39	Residential	§ 790.86	F	C	C
24						
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1		Demolition				
2	Retail Sales and Services					
3	723.40	Other Retail Sales and Services [Not Listed Below]	§ 790.102	F	P	
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5						
6	723.41	Bar	§ 790.22	C		
7						
8	723.42	Full-Service Restaurant	§ 790.92	C		
9						
10	723.43	Large Fast Food Restaurant	§ 790.90			
11						
12	723.44	Small Self-Service Restaurant	§ 790.91	C		
13						
14	723.45	Liquor Store	§ 790.55	C		
15	723.46	Movie Theater	§ 790.64	F		
16	723.47	Adult Entertainment	§ 790.36			
17						
18	723.48	Other Entertainment	§ 790.38	C		
19						
20	723.49	Financial Service	§ 790.110	C	C	
21						
22	723.50	Limited Financial Service	§ 790.112	F		
23						
24	723.51	Medical Service	§ 790.114	F	P	
25	723.52	Personal Service	§ 790.116	F	P	

1	723.53	Business or	§ 790.108	F	P	
2		Professional Service				
3	723.54	Massage	§ 790.60,	C		
4		Establishment	§ 1900 Health			
5			Code			
6	723.55	Tourist Hotel	§ 790.46	C	C	C
7	723.56	Automobile	§§ 790.8,	C	C	C
8		Parking	156, 160			
9	723.57	Automotive Gas	§ 790.14			
10		Station				
11	723.58	Automotive Service	§ 790.17			
12		Station				
13	723.59	Automotive Repair	§ 790.15	C		
14	723.60	Automotive Wash	§ 790.18			
15	723.61	Automobile Sale or	§ 790.12			
16		Rental				
17	723.62	Animal Hospital	§ 790.6	C		
18	723.63	Ambulance Service	§ 790.2			
19	723.64	Mortuary	§ 790.62			
20	723.65	Trade Shop	§ 790.124	F	C	
21	723.66	Storage	§ 790.117			
22	723.67	Video Store	§ 790.135	C	C	
23	723.68	Fringe Financial	§ 790.111	#	#	#

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	Service				
723.69	Tobacco Paraphernalia Establishments	§ 790.123	€	#	#
723.69A	Self-Service Specialty Food	§ 790.93	C		
Institutions and Non-Retail Sales and Services					
723.70	Administrative Service	§ 790.106			
723.80	Hospital or Medical Center	§ 790.44			
723.81	Other Institutions, Large	§ 790.50	F	C	C
723.82	Other Institutions, Small	§ 790.51	F	P	P
723.83	Public Use	§ 790.80	C	C	C
723.84	Medical Cannabis Dispensary	§ 790.141	F		
RESIDENTIAL STANDARDS AND USES					
723.90	Residential Use	§ 790.88	F	P	P
723.91	Residential	§§ 207,	Generally, 1 unit per		

	Density, Dwelling Units	207.1, 790.88(a)	400 sq. ft. lot area § 207.4		
723.92	Residential Density, Group Housing	§§ 207.1, 790.88(b)	Generally, 1 bedroom per 140 sq. ft. lot area § 208		
723.93	Usable Open Space [Per Residential Unit]	§§ 135, 136	Generally, either 60 sq. ft. if private, or 80 sq. ft. if common § 135(d)		
723.94	Off-Street Parking, Residential	§§ 150, 153– 157, 159– 160, 204.5	Generally, 1 space for each dwelling unit §§ 151, 161(a) (g)		
723.95	Community Residential Parking	§ 790.10	C	C	C

SPECIFIC PROVISIONS FOR THE POLK STREET DISTRICT

Arti cle 7 Code Section	Oth er Code Section	Zoning Controls
723 .68	§24 9.35	<p align="center">FRINGE FINANCIAL SERVICE RESTRICTED USE DISTRICT</p> <p>(FFSRUD) Boundaries: The FFSRUD and its 1/4 mile buffer includes, but is not limited to, properties within the North of Market Residential Special Use District; and includes some properties within the Polk Street Neighborhood Commercial District. Controls: Within the FFSRUD and its 1/4 mile buffer, fringe financial services are NP pursuant to Section 249.35. Outside the FFSRUD and its 1/4 mile buffer, fringe financial services are P subject to the restrictions set forth in Subsection 249.35(c)(3).</p>

<p>1 <u>§ 723.69</u></p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p>	<p><u>§ 790.123</u></p> <p><u>§ 186.1</u></p>	<p><u>Tobacco Paraphernalia Establishments – the special definition of "Tobacco Paraphernalia Establishments" applicable to the Polk 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></p> <p><u>In the Polk 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></p>
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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~~
5 Street Tobacco Paraphernalia Restricted Use Subdistrict, and the Polk Street Neighborhood
6 Commercial District for Tobacco Paraphernalia Establishments, as defined in Sections 227(v)
7 and 790.123 of this Code, only, shall be eighteen (18) months, except in the North Beach
8 Neighborhood Commercial District, the period of non use for a full service restaurant use, as
9 defined in Section 790.91, to be deemed discontinued shall be three years.

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

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

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

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

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

By: ANDREA RUIZ-ESQUIDE
Deputy City Attorney