

File No. 231225

Committee Item No. 4

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date: March 18, 2024

Board of Supervisors Meeting: \_\_\_\_\_

Date: \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Resolution                                   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract / DRAFT Mills Act Agreement         |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER

- |                                     |                          |  |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Commission Transmittal Package – February 20, 2024</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>CEQA Determination – December 21, 2023</u>                      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral CEQA and PC – December 6, 2023</u>                     |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
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Prepared by: John Carroll

Date: March 14, 2024

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Planning Code - Tobacco Paraphernalia Establishments in North of Market Special Use  
District]

2  
3 **Ordinance amending the Planning Code to require in the North of Market Special Use**  
4 **District (SUD) that Tobacco Paraphernalia Establishments where any Tobacco**  
5 **Paraphernalia is sold, delivered, distributed, furnished, or marketed obtain conditional**  
6 **use authorization, and to establish that after 18 months of non-use a legal non-**  
7 **conforming Tobacco Paraphernalia Establishment in the SUD will be deemed**  
8 **abandoned, preventing its restoration except as a new Tobacco Paraphernalia**  
9 **Establishment; and affirming the Planning Department’s determination under the**  
10 **California Environmental Quality Act, making findings of consistency with the General**  
11 **Plan, and the eight priority policies of Planning Code, Section 101.1, and making**  
12 **findings of public necessity, convenience, and welfare pursuant to Planning Code,**  
13 **Section 302.**

14  
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  
Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of

1 Supervisors in File No. 231225 and is incorporated herein by reference. The Board affirms  
2 this determination.

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

13

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

16

17 **SEC. 102. DEFINITIONS.**

18

\* \* \* \*

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 of this Code, however, Tobacco  
25 Paraphernalia Establishments shall mean retail uses where any Tobacco Paraphernalia is  
sold, distributed, delivered, furnished, or marketed from one person to another. “Tobacco

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

10 \* \* \* \*

11  
 12 **SEC. 209.3. RC (RESIDENTIAL-COMMERCIAL) DISTRICTS.**

13 \* \* \* \*

14 **Table 209.3**

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

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

23  
 24 \* \* \* \*

(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). Additionally, a legal non-conforming Tobacco Paraphernalia Establishment in the North of Market Residential Special Use District is deemed abandoned after 18 months 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
* * * *						

\* \* \* \*

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

1           (11) TOBACCO PARAPHERNALIA ESTABLISHMENTS IN THE NORTH OF MARKET  
2 RESIDENTIAL SPECIAL USE DISTRICT – A special definition of “Tobacco Paraphernalia  
3 Establishments” set forth in Section 102 applies to parcels in the North of Market Residential Special  
4 Use District (Sec. 249.5). Additionally, a legal non-conforming Tobacco Paraphernalia Establishment  
5 in the North of Market Residential Special Use District is deemed abandoned after 18 months of non-  
6 use.

7  
8 **SEC. 249.5. NORTH OF MARKET RESIDENTIAL SPECIAL USE DISTRICT.**

9           \* \* \* \*

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

14           (f) **Tobacco Paraphernalia Establishments.** A special definition of “Tobacco Paraphernalia  
15 Establishments” applicable to the North of Market Residential Special Use District is set forth in  
16 Section 102. Zoning controls for Tobacco Paraphernalia Establishments are set forth in other Sections  
17 of this Code. In the North of Market Residential Special Use District, a legal non-conforming Tobacco  
18 Paraphernalia Establishment shall be deemed abandoned after 18 months of non-use.

19  
20           Section 3. Effective Date. This ordinance shall become effective 30 days after  
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
23 of Supervisors overrides the Mayor’s veto of the ordinance.

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

9

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

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

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25

**LEGISLATIVE DIGEST**

[Planning Code - Tobacco Paraphernalia Establishments in North of Market Special Use District]

**Ordinance amending the Planning Code to require in the North of Market Special Use District (SUD) that Tobacco Paraphernalia Establishments where any Tobacco Paraphernalia is sold, delivered, distributed, furnished, or marketed obtain conditional use authorization, and to establish that after 18 months of non-use a legal non-conforming Tobacco Paraphernalia Establishment in the SUD will be deemed abandoned, preventing its restoration except as a new Tobacco Paraphernalia Establishment; 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**

Existing Law

The Planning Code defines a Tobacco Paraphernalia Establishment as a business where more than 10% of the square footage of Occupied Floor Area or more than 10 linear feet of display area is dedicated to selling Tobacco Paraphernalia, including pipes or other devices for smoking. The Planning Code also 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. Tobacco Paraphernalia Establishments, as defined, are conditionally permitted in the Downtown General Commercial (C-3-G) and Residential-Commercial High Density (RC-4) zoning districts, the zoning districts underlying the North of Market Residential Special Use District (SUD).

Amendments to Current Law

This ordinance extends the special definition of Tobacco Paraphernalia Establishments currently applicable only to the Polk and Haight Street NCDs to the North of Market SUD. This will require any new business that sells any Tobacco Paraphernalia in the North of Market SUD to obtain conditional use authorization. The ordinance also establishes that a legal non-conforming Tobacco Paraphernalia Establishment in the North of Market SUD shall be deemed abandoned after 18 months of non-use.





February 20, 2024

Ms. Angela Calvillo, Clerk  
Honorable Supervisor Preston  
Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: Transmittal of Planning Department Case Number 2023-011362PCA:  
Tobacco Paraphernalia Establishments in North of Market Special Use District  
Board File No. 231225

**Planning Commission Recommendation: Approval with Modification**

Dear Ms. Calvillo and Supervisor Preston,

On February 8, 2024, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Preston, amending the Planning Code to increase regulations on Tobacco Paraphernalia Establishments in the North of Market Special Use District (SUD). At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

1. Make Tobacco Paraphernalia Establishments Not Permitted in the North of Market Special Use District.
2. Expand the controls proposed for the NoMa SUD to also apply to the Lower Polk Street NCD (i.e. the special definition of TPE's in Sec. 102, the 18-month abandonment period for nonconforming TPE's, and making new TPE's NP).
3. Apply the same ¼ mile boundary for TPE restrictions that the Polk Street NCD already possesses to the Lower Polk NCD.
4. Look into shortening the proposed Ordinance's 18-month abandonment period for non-conforming

TPE's in the NoMa SUD.

5. Look into limiting the hours of operation for uses that are detrimental to a vibrant and safe neighborhood in the Tenderloin.
6. *If* the sponsor does not take Recommended Modification Number 1, amend the NoMa SUD to clarify that the Polk Street NCD's TPE controls apply where the SUD overlaps with the Polk Street NCD's ¼ mile buffer.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,



Aaron D. Starr  
*Manager of Legislative Affairs*

cc: Heather Goodman, Deputy City Attorney  
Kyle Smealie, Aide to Supervisor Preston  
John Carroll, Office of the Clerk of the Board

**Attachments :**

Planning Commission Resolution  
Planning Department Executive Summary



# PLANNING COMMISSION RESOLUTION NO. 21508

**HEARING DATE: FEBRUARY 8, 2024**

**Project Name:** Tobacco Paraphernalia Establishments in North of Market Special Use District  
**Case Number:** 2023-011362PCA [Board File No. 231225]  
**Initiated by:** Supervisor Preston/ Introduced November 28, 2023  
**Staff Contact:** Audrey Merlone, Legislative Affairs  
Audrey.Merlone@sfgov.org, 628-652-7534  
**Reviewed by:** Aaron Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 628-652-7533

**RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO REQUIRE IN THE NORTH OF MARKET SPECIAL USE DISTRICT (NOMA SUD) THAT TOBACCO PARAPHERNALIA ESTABLISHMENTS WHERE ANY TOBACCO PARAPHERNALIA IS SOLD, DELIVERED, DISTRIBUTED, FURNISHED, OR MARKETED OBTAIN CONDITIONAL USE AUTHORIZATION, AND TO ESTBALISH THAT AFTER 18 MONTHS OF NON-USE A LEGAL NON-CONFORMING TOBACCO PARAPHERNALIA ESTABLISHMENT IN THE NOMA SUD WILL BE DEEMED ABANDONED, PREVENTING ITS RESTORATION EXCEPT AS A NEW TOBACCO PARAPHERNALIA ESTABLISHMENT; AND AFFIRMING THE PLANNING COMMISSION’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.**

WHEREAS, on November 28, 2023, Supervisor Preston introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 231225, amending the Planning Code to require in the North of Market Special Use District (SUD) that Tobacco Paraphernalia Establishments where any Tobacco Paraphernalia is sold, delivered, distributed, furnished, or marketed obtain conditional use authorization, and to establish that after 18 months of non-use a legal non-conforming Tobacco Paraphernalia Establishment in the SUD will be deemed abandoned, preventing its restoration except as a new Tobacco Paraphernalia Establishment;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on February 8, 2024; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15378 and 15060(c)(2); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. The Commission’s proposed recommendation(s) is/are as follows:

1. Make Tobacco Paraphernalia Establishments Not Permitted in the North of Market Special Use District.
2. Expand the controls proposed for the NoMa SUD to also apply to the Lower Polk Street NCD (i.e. the special definition of TPE’s in Sec. 102, the 18-month abandonment period for nonconforming TPE’s, and making new TPE’s NP).
3. Apply the same ¼ mile boundary for TPE restrictions that the Polk Street NCD already possesses to the Lower Polk NCD.
4. Look into shortening the proposed Ordinance’s 18-month abandonment period for non-conforming TPE’s in the NoMa SUD.
5. Look into limiting the hours of operation for uses that are detrimental to a vibrant and safe neighborhood in the Tenderloin.
6. *If* the sponsor does not take Recommended Modification Number 1, amend the NoMa SUD to clarify that the Polk Street NCD’s TPE controls apply where the SUD overlaps with the Polk Street NCD’s ¼ mile buffer.

## Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

There is a clear concentration of drug-related incidents in the North of Market SUD and the Lower Polk NCD. Advocates in the Tenderloin have identified the proliferation of variety stores selling drug or tobacco paraphernalia as a land use exacerbating illicit drug use in the neighborhood. The overconcentration of these types of stores also prevents neighborhood-serving uses from locating in the district. The NoMa SUD's stated purpose in Section 249.5 of the Planning Code is to among other things, limit commercial uses that could adversely impact the residential nature of the area, limit the number of commercial establishments which are not intended primarily for customers who are residents of the area, and support neighborhood vitality and character. Applying a strict definition of TPE will assist in curbing the influx of new variety shops inundating Tenderloin storefronts with targeted TPE products. Preventing new stores from opening and reducing the number of existing stores through attrition will help make the Tenderloin's streets safer, and the commercial uses more varied and useful to its residents.

### **General Plan Compliance**

The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

#### **COMMERCE AND INDUSTRY ELEMENT**

##### **OBJECTIVE 1**

**MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.**

##### **Policy 1.1**

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

##### **Policy 1.2**

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

#### **HOUSING ELEMENT**

##### **GOAL 5**

**PROMOTE NEIGHBORHOODS THAT ARE WELL-CONNECTED, HEALTHY, AND RICH WITH COMMUNITY CULTURE.**

##### **Policy 18**

Tailor zoning changes within Priority Equity Geographies and intersecting Cultural Districts to serve the specific needs of American Indian, Black, and other communities of color while implementing programs to stabilize communities and meet community needs.

*The proliferation of stores selling drug paraphernalia are not only harming the residents by encouraging illicit drug use, but also by taking up retail space that could be used to meet the daily needs of the community. The*

*proposed ordinance will help to reduce the number of stores where drug paraphernalia is sold, which will lead to safer streets and a more vibrant commercial corridor in the Tenderloin.*

### **Planning Code Section 101 Findings**

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The proposed Ordinance would not have a negative effect on housing or neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.*

**Planning Code Section 302 Findings.**

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 8, 2024.



**Jonas P Ionin**

Digitally signed by Jonas P Ionin  
Date: 2024.02.16 12:24:27 -08'00'

Jonas P. Ionin  
Commission Secretary

AYES: Braun, Ruiz, Imperial, Koppel, Moore, Diamond

NOES: None

ABSENT: None

ADOPTED: February 8, 2024



# EXECUTIVE SUMMARY

## PLANNING CODE TEXT AMENDMENT

**HEARING DATE: February 8, 2024**

**90-Day Deadline:** March 5, 2024

**Project Name:** Tobacco Paraphernalia Establishments in North of Market Special Use District  
**Case Number:** 2023-011362PCA [Board File No. 231225]  
**Initiated by:** Supervisor Preston/ Introduced November 28, 2023  
**Staff Contact:** Audrey Merlone, Legislative Affairs  
 Audrey.Merlone@sfgov.org, 628-652-7534  
**Reviewed by:** Aaron Starr, Manager of Legislative Affairs  
 aaron.starr@sfgov.org, 628-652-7533  
**Environmental Review:** Not a Project Under CEQA

**Recommendation:** Approval with Modifications

### Planning Code Amendment

The proposed Ordinance would amend the Planning Code to require in the North of Market Special Use District (NoMa SUD) that Tobacco Paraphernalia Establishments where any Tobacco Paraphernalia is sold, delivered, distributed, furnished, or marketed obtain conditional use authorization, and to establish that after 18 months of non-use a legal non-conforming Tobacco Paraphernalia Establishment in the NoMa SUD will be deemed abandoned, preventing its restoration except as a new Tobacco Paraphernalia Establishment.

#### The Way It Is Now:

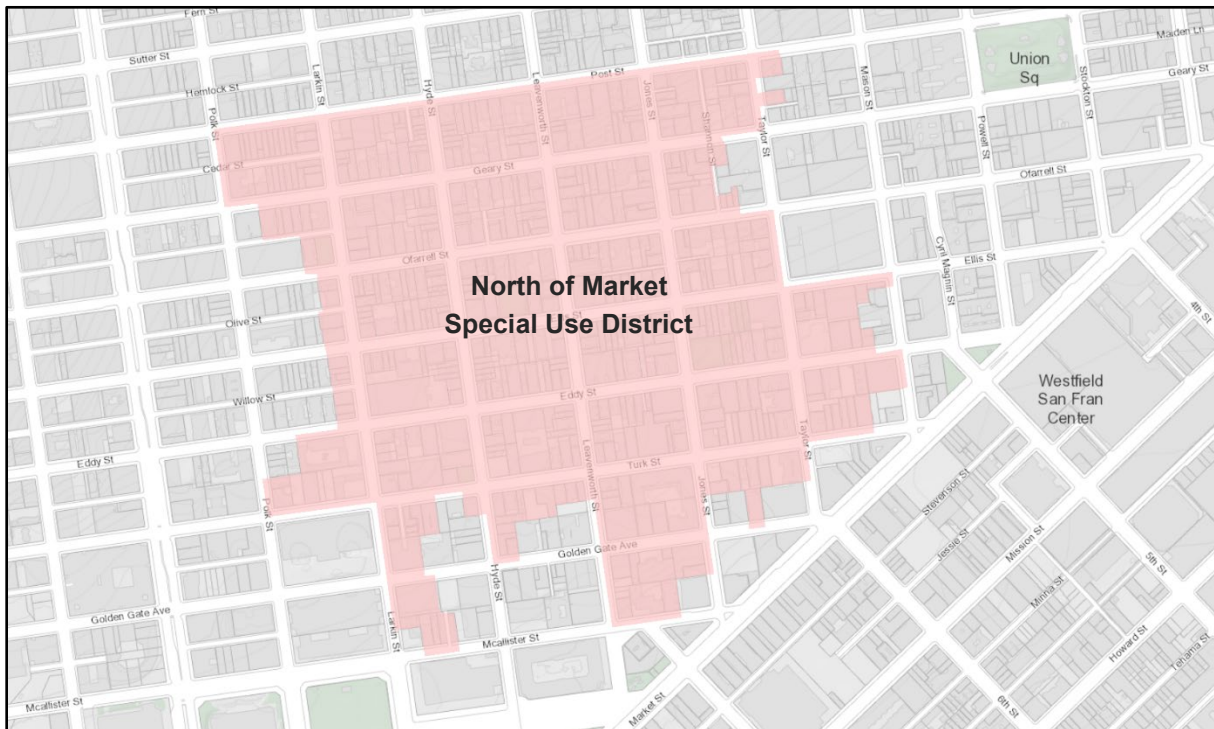
1. Planning Code Section 102 defines Tobacco Paraphernalia Establishment (TPE) as “A Retail Sales and Service Use where more than 10% of the square footage of Occupied Floor Area . . . or more than 10 linear feet of display area projected to the floor, whichever is less, is dedicated to the sale, distribution, delivery, furnishing, or marketing of Tobacco Paraphernalia from one person to another.” Additionally, in the Polk Street NCD and the Haight Street NCD, TPE’s are defined as a retail use that sells *any* amount of tobacco paraphernalia.



2. There are two zoning districts within the North of Market SUD: C-3-G and RC-4. Tobacco Paraphernalia Establishments are Conditionally Permitted in both districts.
3. Generally, legal non-conforming uses are considered abandoned after a three-year period of discontinuance.

**The Way It Would Be:**

1. The special definition of TPE’s that applies to the Polk Street NCD and the Haight Street NCD would be extended to apply to the NoMa SUD.
2. TPE’s would remain a Conditionally Permitted use in the C-3-G and RC-4 districts, including within the NoMa SUD.
3. Any legal, non-conforming TPE within the NoMa SUD would be considered abandoned after an 18-month period of discontinuance.



**Background**

Neighborhood advocates in the Tenderloin have noticed a proliferation of variety stores (which are currently Principally Permitted), selling targeted drug consumption products like foils; however, the quantity falls below the threshold of 10% or ten linear feet required to classify them as a TPE. The number of stores selling these products continues to rise, encouraging consumption of illicit drugs outside the stores, at all hours of the day and night. As such, advocates have worked with Supervisor Preston’s office to find ways to prevent the further

spread of these variety stores. This ordinance is just one of the many needed actions to help control the illicit drug consumption problem in the Tenderloin.

## Issues and Considerations

### Tobacco Paraphernalia Establishments (TPE's)

In most of the city, TPE's are defined as a Retail Sales and Service Use where more than 10% of the square footage, or more than 10 linear feet of display area dedicated to the sale of Tobacco Paraphernalia. In the Haight Street NCD and Polk Street NCD, however, a business that sells *any* amount of tobacco paraphernalia is considered a TPE use.

The Planning Code's definition of "tobacco paraphernalia" includes devices or instruments that are designed or manufactured for the consumption of controlled substances.

Planning Code Section 102 defines "tobacco paraphernalia" to be 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. "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. Tobacco Paraphernalia Establishment uses do not include actual tobacco sales, any type of cannabis retail, or medical dispensary uses, which are considered separate uses under the Code.

Except in the Haight Street NCD and Polk Street NCD, any business that sells more than 10% or has more than 10 linear feet of tobacco paraphernalia products on display must receive a use permit to operate as a Tobacco Paraphernalia Establishment.

Any business defined as a TPE must receive a use permit to operate. In most Neighborhood Commercial districts, TPE's are Conditionally permitted on the ground floor, and Not Permitted above. In some neighborhoods, like the Polk St NCD, this use is prohibited. Only in the City's Production, Distribution, and Repair districts are TPE's Principally Permitted.

### History of TPE Controls in Haight Street and Polk Street NCD's

In 2009, the Board adopted zoning controls specific to the Polk Street and Haight Street NCD's that defined any store where any tobacco paraphernalia was sold as a Tobacco Paraphernalia Establishment. The controls were set to last for a period of three and six years respectively. In the Polk Street NCD the definition change was then extended for another three years. During the 2015 Article 2 Code Reorganization, the definition was made permanent, but still only applied to Haight and Polk Street NCDs. In the Haight Street NCD, TPE's require a

Conditional Use authorization, and in the Polk Street NCD, and within a ¼ mile boundary of the district, TPE's are Not Permitted.

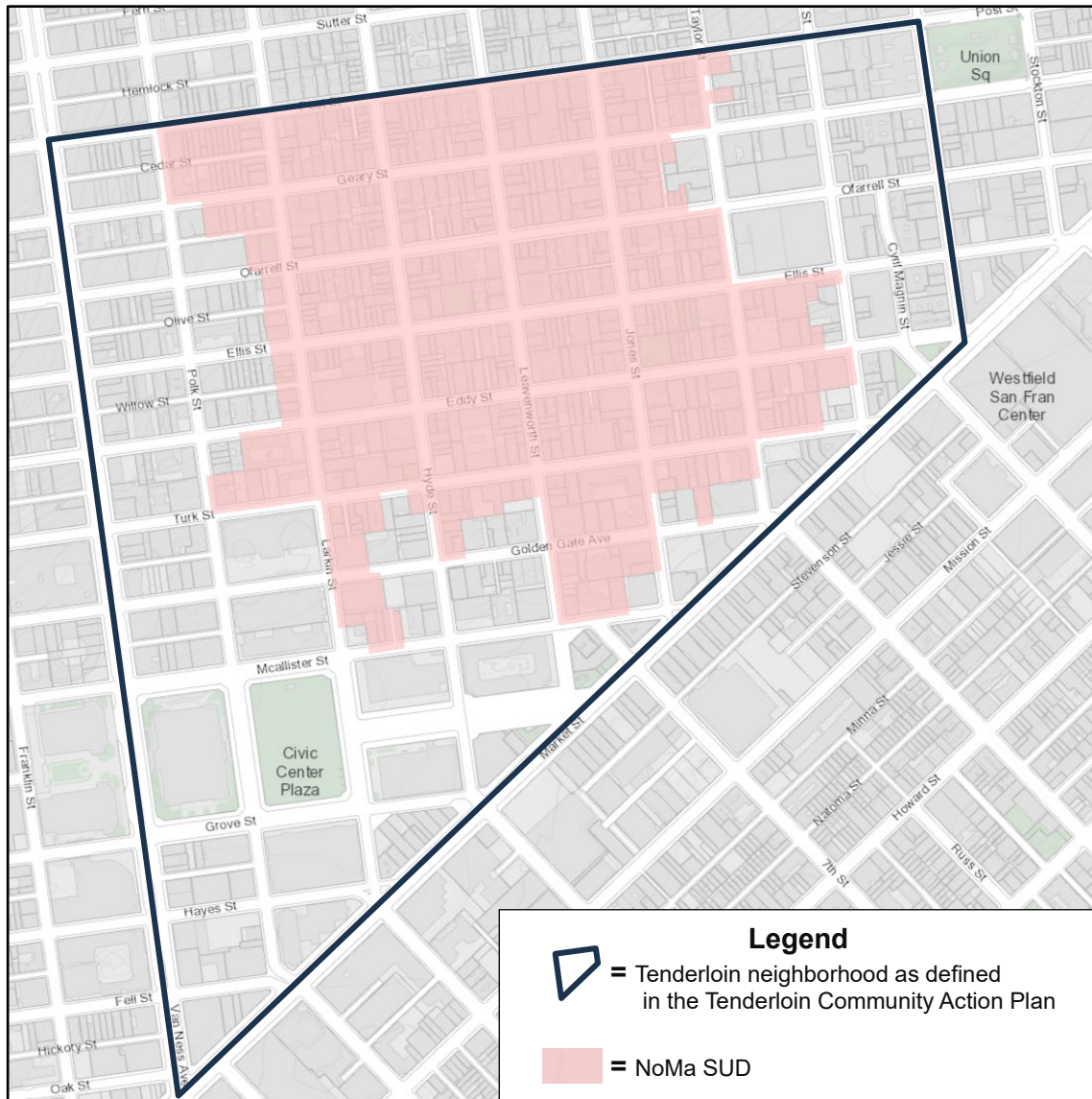
### **Polk Street NCD TPE Controls**

While challenges persist with enforcement within the Polk Street NCD, there has been notable success in reducing the number of stores selling drug paraphernalia in the district. Before the establishment of the stricter controls, the Polk Street NCD experienced a rapid influx of corner stores specializing in targeted drug paraphernalia products. Advocates within the Polk Street Community Business District have expressed satisfaction with both the immediate and more gradual impacts of the controls on the district. They highlight the controls' effectiveness in swiftly curbing the emergence of new variety stores selling targeted drug products following the passage of the ordinance. The reduction in the concentration of stores selling targeted drug products took much longer due to difficulties in enforcing against stores that existed prior to the controls. These difficulties are detailed further in the "Implementation" section of this report. Despite the initial enforcement challenges however, advocates note that over the course of 10 years existing operators were phased out and the controls succeeded in reducing the overconcentration of TPE's in the district.

A distinguishing factor between the controls in the Polk Street NCD and those proposed in the ordinance lies in their permissibility. TPE's are Not Permitted in the Polk Street NCD, while TPE's would remain Conditionally permitted in the NoMa SUD in the proposed ordinance. Designating TPE's as Not Permitted means that the only authorized sellers of tobacco paraphernalia in the Polk Street NCD are those that have been consistently operational since at least 2009. In most cases, these retailers are restricted to selling 10% or ten linear feet of paraphernalia, as they functioned as retail stores with a minimal amount of paraphernalia before the more stringent definition came into effect.

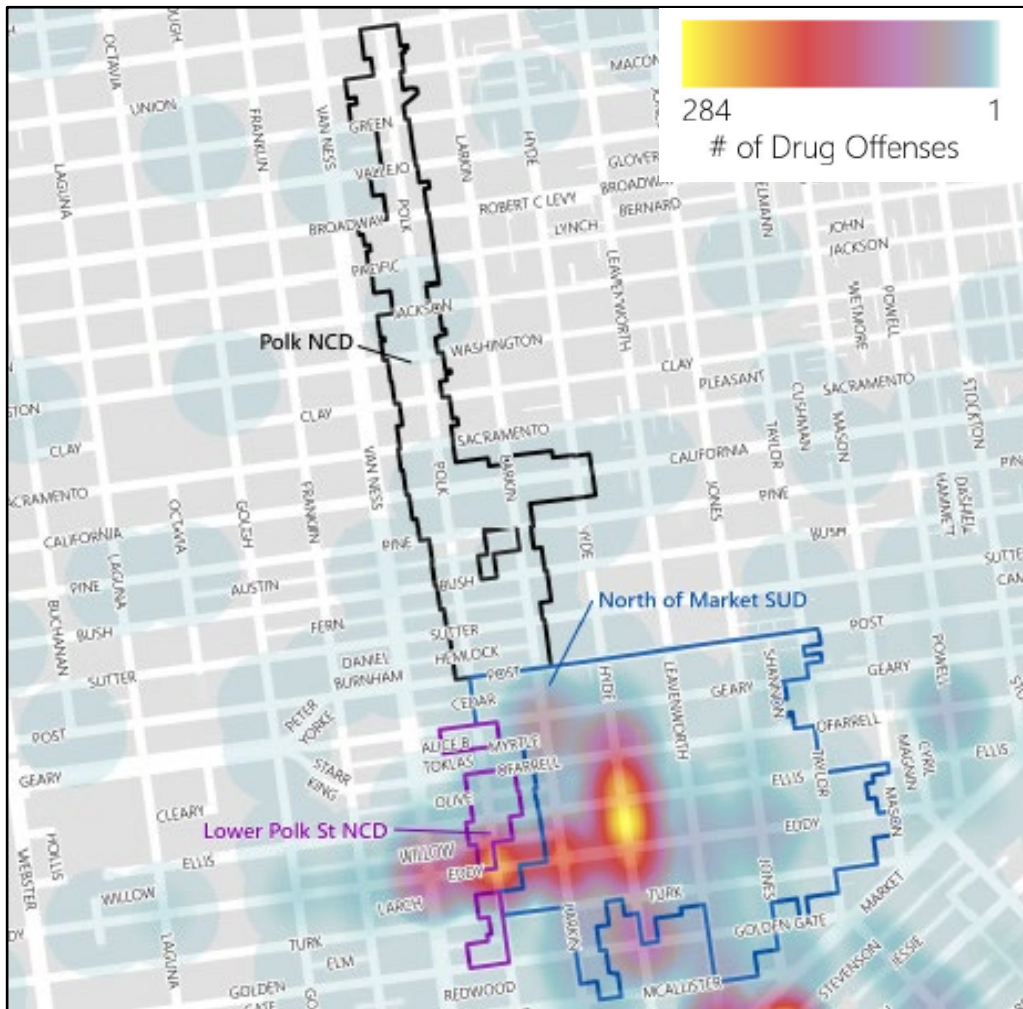
### **The Tenderloin Neighborhood**

In the heart of the city lies one of its densest and most unique neighborhoods. The Tenderloin has the highest density of children in the city and has a high concentration of communities of color, seniors, people living with disabilities, artists, and community-based organizations. The neighborhood has long been a refuge for immigrants and the LGBTQ+ communities. Unfortunately, the neighborhood also struggles with a high poverty rate, with 30% of Tenderloin households living in poverty vs 12% citywide. It is also challenged with an overconcentration of fatal overdoses, representing 20% of the citywide total, and has a substantial number of people experiencing homelessness.



On December 17, 2021, Mayor Breed declared an official 90-day State of Emergency in the Tenderloin. This declaration allowed the city to quickly respond to the conditions relating to the health and safety of the people in the neighborhood. As the operational lead, the Department of Emergency Management (DEM) drafted the Tenderloin Emergency Initiative (TEI). The TEI was a three-phase plan for sustained operations in the Tenderloin to help stabilize conditions on the street. This multi-phased plan sought to bring both housed and unhoused residents needed services, improving safety, reducing crime and sidewalk hazards, and increasing investment in the neighborhood. The plan cited deaths from drug overdoses at an epidemic level in the neighborhood, with residents and business owners plagued by violence and crime related to drug dealing and drug use as some of its largest hurdles. As the TEI transitioned from crisis response operations to sustained operations over the course of the year, San Francisco Planning was asked by community members to incorporate this third phase of TEI's sustained operations into the Tenderloin Community Planning effort. Since then, multiple agencies in the City continue to provide street operations to address safety and cleanliness, as well as services to those unhoused and struggling with substance use disorder.

## Drug Offense Counts 2023



### Racial and Social Equity Analysis

In 2022, the Department embarked on a collaborative effort with other agencies to develop and implement the Tenderloin Community Action Plan (TCAP). TCAP's vision is that the Tenderloin will transition out of a state of crisis into a neighborhood where residents have equitable access to improved quality of life and a diverse and vibrant neighborhood for all. TCAP aims to achieve this through facilitating community-driven initiatives, cultivating new capacities, and interagency collaborations and investments.

The TCAP team has been working closely with Tenderloin community stakeholders to elevate community priorities to decision makers. Public safety and health continue to be the top priorities for Tenderloin communities where living among an open-air drug scene is a fixture of their daily lives. The contribution of the variety stores to the drug market in the Tenderloin is consistently brought to the attention of TCAP by community stakeholders. Through these conversations, advocates have cited a rapid proliferation of variety stores that sell

targeted paraphernalia products like foils. The sale of these foils often leads to drug consumption and drug dealing right outside the business at all hours of the day and night. Limiting where these products may be sold in the district will not solve the neighborhood's drug problem; however, neighborhood advocates, Supervisor Preston, and the Department, all agree that limiting access to these products is an important step to improving the quality of life and safety for residents of the Tenderloin.

The Tenderloin Community Action Plan's vision is that the Tenderloin will transition out of a state of crisis into a neighborhood where residents have equitable access to improved quality of life and a diverse and vibrant neighborhood for all.

Beyond the issues with the availability of paraphernalia leading to increased consumption immediately surrounding where it is sold, there are land use considerations as well. Like all neighborhoods, the Tenderloin needs a variety of uses that serve residents to thrive. The overconcentration of any one use deprives residents of other essential services and goods, forcing them to leave the neighborhood to have their daily needs met. Additionally, most variety stores sell only pre-packaged foods, leading to a lack of affordable, fresh foods available for residents in the neighborhood. The Tenderloin lacks a full-service grocery store. Residents must rely on two small produce markets, food banks, and food pantries for their grocery needs. Additionally, the Environmental Action Plan has identified the Tenderloin as within the top 1/3 of burdened areas in the city: where access to healthy food and neighborhood serving uses are not adequate to meet the population density. Neighborhood advocates state that most new variety stores opening in the neighborhood are focused on profiting off their drug paraphernalia products, rather than selling goods that residents need. By removing the ability for new businesses to sell tobacco paraphernalia, including targeted drug paraphernalia, the ordinance will succeed in preventing these types of stores from continuing to saturate the neighborhood, which will free up retail space to be utilized by neighborhood serving uses.

The overconcentration of any one use deprives residents of other essential services and goods, forcing them to leave the neighborhood to have their daily needs met.

## General Plan Compliance

Policy 1.1 of the Commerce and Industry Element is to “*Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.*”. Additionally, Goal 5 of the Housing Element is to “*Promote neighborhoods that are well-connected, healthy, and rich with community culture.*”. Both policies aim to ensure that development is beneficial to the residents of that neighborhood. The proliferation of stores selling drug paraphernalia are not only harming the residents by encouraging illicit drug use, but also by taking up retail space that could be used to meet the daily needs of the community. The proposed ordinance will help to reduce the number of stores where drug paraphernalia is sold, which will lead to safer streets and a more vibrant commercial corridor in the Tenderloin.

## Implementation

As noted in a previous section, except in the Haight Street NCD and Polk NCD, a business is not considered a TPE unless it is selling over 10% or 10 linear feet of tobacco paraphernalia. This means that any retail store may sell *some* amount of tobacco paraphernalia without needing a use permit to operate as a TPE. Without a use permit documenting that the establishment sells tobacco paraphernalia, it is difficult for the city to know which establishments sell tobacco paraphernalia under the 10% allowance. This ambiguity complicates the enforcement of unpermitted TPE's when a stricter definition of TPE has been enacted in a particular district (i.e. Haight Street and Polk Street NCD's).

Without a use permit documenting that the establishment sells tobacco paraphernalia, it is difficult for the city to know which establishments sell tobacco paraphernalia under the 10% allowance.

The Haight Street and Polk Street NCD's contain an abandonment period of 18 months for nonconforming TPE's. Stores that were selling under 10% of TPE before the stricter, special definition of TPE applied to the district are grandfathered; however, there is often no permit history documenting that the stores were selling TPE prior to the stricter controls. If a complaint is filed on a long-standing business for selling tobacco paraphernalia without permits, it is difficult to determine whether the business sold tobacco paraphernalia prior to 2009. Unless the Department can find evidence to the contrary, any variety store that has been in constant operation since before the stricter definition applied will be able to sell tobacco paraphernalia in a concentration of less than 10%. The controls are most effective in preventing new TPE's from opening and preventing businesses that were already operating under the grandfathering provisions from re-selling TPE if they have closed for 18 months or more. This same issue would likely occur in the NoMa SUD under the proposed ordinance. The Department has informed Supervisor Preston and the neighborhood advocates of these challenges. The interested parties accept the challenges of enforcement and are still hopeful about the positive effects the ordinance will have on preventing new TPE's from opening, and gradually reducing the nonconforming TPE's in the district, as has occurred in the Polk Street NCD.

Additionally, there is a potential conflict in implementation of TPE controls between a portion of the NoMa SUD and the Polk Street NCD. The Polk Street NCD states its TPE controls shall also apply within a ¼ mile radius surrounding the district. This radius overlaps with parts of the NoMa SUD. The proposed ordinance's controls and the Polk Street controls do not match perfectly. Normally, where overlapping districts have conflicting controls, the more stringent are applied. However, when the overlapping district is an SUD, the SUD often controls. In this case, the proposed ordinance would allow TPE's as a Conditionally permitted use, whereas TPE's are Not Permitted in the Polk Street NCD.

## Recommendation

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Make Tobacco Paraphernalia Establishments Not Permitted in the North of Market Special Use District.
2. Expand the controls proposed for the NoMa SUD to also apply to the Lower Polk Street NCD (i.e. the special definition of TPE's in Sec. 102, the 18-month abandonment period for nonconforming TPE's, and making new TPE's NP).
3. *If the sponsor does not take Recommended Modification Number 1, amend the NoMa SUD to clarify that the Polk Street NCD's TPE controls apply where the SUD overlaps with the Polk Street NCD's ¼ mile buffer.*

### **Basis for Recommendation**

There is a clear concentration of drug-related incidents in the North of Market SUD and the Lower Polk NCD. Advocates in the Tenderloin have identified the proliferation of variety stores selling targeted drug or tobacco paraphernalia as a land use exacerbating illicit drug use in the neighborhood. The overconcentration of these types of stores also prevents neighborhood-serving uses from locating in the district. The NoMa SUD's stated purpose in Section 249.5 of the Planning Code is to among other things, limit commercial uses that could adversely impact the residential nature of the area, limit the number of commercial establishments which are not intended primarily for customers who are residents of the area, and support neighborhood vitality and character. Applying a strict definition of TPE will assist in curbing the influx of new variety shops inundating Tenderloin storefronts with targeted TPE products. Preventing new stores from opening and reducing the number of existing stores through attrition will help make the Tenderloin's streets safer, and the commercial uses more varied and useful to its residents.

**Recommendation 1: Make Tobacco Paraphernalia Establishments Not Permitted in the North of Market Special Use District.** There is already an overconcentration as attested to by the residents of the neighborhood. Not Permitting the use will allow for the gradual subsidence of the over-concentration. If at any time the neighborhood feels it does not have enough TPE's, the zoning controls can be changed to be more permissive.

**Recommendation 2: Expand the controls proposed for the NoMa SUD to also apply to the Lower Polk Street NCD (i.e. the special definition of TPE's in Sec. 102, the 18-month abandonment period for nonconforming TPE's, and making new TPE's NP).** The Lower Polk Street NCD also has a concentration of drug incidents as can be seen in the map on page 6. The NCD sits between the Polk Street NCD, and the NoMa SUD, which either have, or will have because of this ordinance, much stricter controls on TPE. The Lower Polk NCD should have the same restrictions as the Polk and NoMa neighborhoods to prevent a further increase in TPE's in their district.

**Recommendation 3: If the sponsor does not take Recommended Modification Number 1, amend the NoMa SUD to clarify that the Polk Street NCD's TPE controls apply where the SUD overlaps with the Polk Street NCD's ¼ mile buffer.** Although generally when two zoning districts overlap, the stricter controls apply, that is not always the case when the district that overlaps is an SUD. To ensure stricter controls of the Polk Street NCD apply to the quarter mile buffer where it overlaps with the NoMa SUD, clarifying language should be added to state that where there is overlap between the NCD and the SUD, the stricter controls apply.



## **Required Commission Action**

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

## **Environmental Review**

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

## **Public Comment**

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

BOARD of SUPERVISORS



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TDD/TTY No. (415) 554-5227

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## MEMORANDUM

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Date: December 6, 2023  
To: Planning Department/Planning Commission  
From: John Carroll, Assistant Clerk, Land Use and Transportation Committee  
Subject: Board of Supervisors Legislation Referral - File No. 231225  
Planning Code - Tobacco Paraphernalia Establishments in North of Market Special Use District

California Environmental Quality Act (CEQA) Determination  
(*California Public Resources Code, Sections 21000 et seq.*)

Ordinance / Resolution

Ballot Measure

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

12/21/23

A handwritten signature in black ink, appearing to be "John Carroll".

Amendment to the Planning Code, including the following Findings:  
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)

General Plan     Planning Code, Section 101.1     Planning Code, Section 302

Amendment to the Administrative Code, involving Land Use/Planning  
(*Board Rule 3.23: 30 days for possible Planning Department review*)

General Plan Referral for Non-Planning Code Amendments  
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)

(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)

Historic Preservation Commission

Landmark (*Planning Code, Section 1004.3*)

Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)

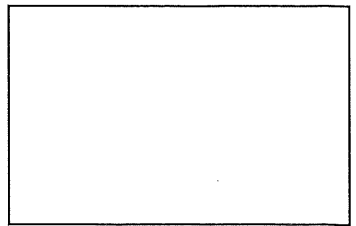
Mills Act Contract (*Government Code, Section 50280*)

Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to John Carroll at [john.carroll@sfgov.org](mailto:john.carroll@sfgov.org).

## 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 Dean Preston

Subject:

Planning Code - Tobacco Paraphernalia Establishments in North of Market SUD

Long Title or text listed:

Ordinance amending the Planning Code to require in the North of Market Special Use District (SUD) that Tobacco Paraphernalia Establishments where any Tobacco Paraphernalia is sold, delivered, distributed, furnished, or marketed obtain conditional use authorization, and to establish that after 18 months of non-use a legal non-conforming Tobacco Paraphernalia Establishment in the SUD will be deemed abandoned, preventing its restoration except as a new Tobacco Paraphernalia Establishment; 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: 