

1 [Planning Code - Polk Street Alcohol and Tobacco Paraphernalia Restrictions]

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3 **Ordinance amending the Planning Code, Section 723, to extend the restriction on**
4 **Tobacco Paraphernalia Establishments in the Polk Street Neighborhood Commercial**
5 **District (NCD) for an additional three years and apply it to an area within one-quarter**
6 **mile of the boundaries of the NCD; adding Section 788, to establish the Lower Polk**
7 **Street Alcohol Restricted Use District for the properties located on Polk Street between**
8 **California and Street to the north, O'Farrell Streets to the south, and Polk Street's side**
9 **streets between California Street, Larkin Street, O'Farrell Street, and Van Ness Avenue;**
10 **amending the Zoning Map, Sheet ZN-02, to designate the Lower Polk Street Alcohol**
11 **Restricted Use District; and making environmental findings, Planning Code, Section**
12 **302, findings, and findings of consistency with the General Plan and the priority**
13 **policies of Planning Code, Section 101.1.**

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

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

19 Section 1. Findings.

20 (a) The Planning Department has determined that the actions contemplated in this
21 ordinance comply with the California Environmental Quality Act (California Public Resources
22 Code Section 21000 *et seq.*). Said determination is on file with the Clerk of the Board of
23 Supervisors in File No. 121065 and is incorporated herein by reference.

24 (b) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
25 amendments will serve the public necessity, convenience, and welfare for the reasons set

1 forth in Planning Commission Resolution No. 18823 and the Board incorporates such reasons
 2 herein by reference. A copy of Planning Commission Resolution No. 18823 is on file with the
 3 Clerk of the Board of Supervisors in File No. 121065.

4 (c) This Board finds that these Planning Code amendments are consistent with the
 5 General Plan and with the Priority Policies of Planning Code Section 101.1 for the reasons set
 6 forth in Planning Commission Resolution No. 18823, and the Board hereby incorporates such
 7 reasons herein by reference.

8 Section 2. The San Francisco Planning Code is hereby amended by amending Section
 9 723, to read as follows:

10 **SEC. 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT**
 11 **ZONING CONTROL TABLE**

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13 **SPECIFIC PROVISIONS FOR THE POLK STREET**
 14 **NEIGHBORHOOD COMMERCIAL DISTRICT**

Article 7 Code Section	Other Code Section	Zoning Controls
<u>***</u> § 723.69	§ 186.1 § 790.123 <u>§ 788</u>	Tobacco Paraphernalia Establishments – Tobacco Paraphernalia Establishments are not permitted in the Polk Street Neighborhood Commercial District <i>and within one-quarter mile of</i> <i>the boundaries of that Neighborhood Commercial</i> <i>District.</i> The special definition of "Tobacco Paraphernalia Establishments" applicable to the Polk Street Neighborhood Commercial District

		<p>shall be repealed three <u>six</u> years after its initial effective date, unless the Board of Supervisors, on or before that date, extends or re-enacts it. 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.</p>
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Section 3. The San Francisco Planning Code is hereby amended by adding new Section 788, to read as follows:

SEC. 788. LOWER POLK STREET ALCOHOL RESTRICTED USE DISTRICT.

(a) Findings. There is an unusually large number of establishments dispensing alcoholic beverages, including beer and wine, for off-site consumption on Polk Street between California Street and to the north, O'Farrell Street to the south, and Polk Street's side streets between, but not including, Van Ness Avenue and Larkin Street to the west and east, and between, but not including, California Street to the north and O'Farrell Street to the north and south. The existence of this many alcoholic beverage establishments appears to contribute directly to numerous peace, health, safety and general welfare problems in the area, including loitering, littering, public drunkenness, defacement and damaging of structures, and pedestrian obstructions, as well as traffic circulation, parking and noise problems on public streets and neighborhood lots. The existence of such problems creates serious impacts on the health, safety and welfare of residents of nearby single- and multiple-family areas, including fear for the safety of children, elderly residents, and visitors to the area. While nightlife is a significant cultural and economic positive that generates tax revenue and jobs, San Francisco needs to ensure that nightlife is safe and responsible while encouraging a vibrant nightlife.

1 The problems also contribute to the deterioration of the neighborhood and concomitant
2 devaluation of property and destruction of community values and quality of life. The number of
3 establishments selling alcoholic beverages and the associated problems discourage more
4 desirable and needed commercial uses in the area.

5 (b) Establishment of the Lower Polk Street Alcohol Restricted Use District. In order to
6 preserve the residential character and the neighborhood-serving commercial uses of the area, the
7 Lower Polk Street Alcohol Restricted Use District is hereby established for the properties located on
8 Polk Street between California Street and to the north, O'Farrell Street to the south, and Polk
9 Street's side streets between, but not including, Van Ness Avenue and Larkin Street to the west and
10 east, and between, but not including, California Street to the north and O'Farrell Street to the north
11 and south. The Lower Polk Street Alcohol Restricted Use District shall be designated on Map Sheet
12 Number ZN-02 on the Zoning Map of the City and County of San Francisco.

13 (c) Definitions.

14 (1) A "liquor establishment" shall mean any enterprise selling alcoholic beverages, as
15 defined by California Business & Professions Code Section 23004 and 23025, pursuant to a California
16 Alcoholic Beverage Control Board license. It shall not be interpreted to mean an establishment that (A)
17 operates as a Bona Fide Eating Place, as defined in Section 790.142 of this Code, or (B) operates as an
18 "other retail sales and service" use that sells only general groceries or specialty groceries, as defined
19 in Planning Code Section 790.102 (a) or (b), respectively; or (C) operates during daytime hours but
20 operates no later than 12:00 midnight, and is not a location for Entertainment.

21 (2) An "off sale liquor establishment" shall mean a Liquor Store as defined in Planning
22 Code Section 790.55.

23 (3) An "on sale liquor establishment" shall mean a Bar as defined in Planning Code
24 Section 790.22.

25 (d) Controls.

1 (1) No new on-sale or off-sale liquor establishment shall be permitted in the Lower Polk
2 Street Alcohol Restricted Use District; provided that a liquor establishment located in the Lower Polk
3 Street Alcohol Restricted Use District may transfer its alcohol license to another site, either within or
4 outside the Lower Polk Street Alcohol Restricted Use District; provided further that a liquor
5 establishment located outside the Lower Polk Street Alcohol Restricted Use District shall not transfer
6 any alcohol license to a liquor establishment located within the Lower Polk Street Alcohol Restricted
7 Use District; and provided further that any transfer of an alcohol license to a new location
8 within the Lower Polk Street Alcohol Restricted Use District shall require a conditional use
9 permit for the new liquor establishment.

10 (2) Whenever a liquor establishment has discontinued its use for a continuous period of
11 one hundred eighty (180) days ~~one year~~ or more, the liquor establishment shall be deemed to have
12 abandoned its use as a liquor establishment; provided that a break in continuous operation shall not be
13 interpreted to include the following, as long as the location of the establishment does not change, the
14 square footage used for the sale of alcoholic beverages does not increase, and the type of California
15 Department of Alcoholic Beverage Control Liquor License ("ABC License") does not change:

16 (A) Re-establishment, restoration or repair of an existing liquor establishment
17 on the same lot after total or partial destruction or damage due to fire, riot, insurrection, toxic accident
18 or other force majeure; or

19 (B) Temporary closure of an existing liquor establishment for ~~not more than~~
20 one hundred eighty (180) days for ~~repair, renovation or remodeling,~~ provided that permit
21 applications for the repair, renovation or remodeling work shall be submitted to the City upon
22 or prior to the temporary closure and such permits and work shall be pursued diligently to
23 completion; or

24 (C) A change in ownership of a Liquor Establishment or an owner-to-owner
25 transfer of an ABC License.

1 ~~(3) All new entertainment permits at a new location shall require approval of a~~
2 ~~conditional use permit in accordance with the requirements of Planning Code Section 303;~~
3 ~~provided that Limited-Live Performance Locales, as defined in Section 1060 of the Police~~
4 ~~Code, shall be principally permitted in Restaurants and Limited-Restaurants; and provided~~
5 ~~further that a change in ownership on the same site with the same entertainment use shall not~~
6 ~~require approval of a new conditional use permit.~~

7 (43) New Restaurants with Types 47 and 49 liquor licenses shall not be open may
8 operate past 12:00 midnight provided that the Restaurant serves food in the following manner,
9 until the time it closes:

10 (A) It continues to serve meals to guests for compensation and has
11 available kitchen facilities connected therewith, for cooking of an assortment of foods which
12 may be required for ordinary meals; and

13 (B) "Meals" that are offered after midnight shall mean an assortment of
14 foods commonly ordered at various hours of the day for breakfast, lunch or dinner. Incidental
15 food service, comprised only of appetizers to accompany drinks, is not considered a meal.
16 Incidental, sporadic or infrequent sales of meals or a mere offering of meals without actual
17 sales is not compliance; and

18 (C) "Guests" shall mean persons who come to the Restaurant after
19 midnight for the purpose of obtaining, and actually order and obtain at such time, a meal
20 therein. Nothing in this section, however, shall be construed to require that any food be sold or
21 purchased with any beverage.

22 (e) Sunset Provision. This Section 788 shall be repealed five (5) years after its initial
23 Effective Date unless the Board of Supervisors, on or before that date, extends or re-enacts it.

24 Section 4. The Zoning Map of the City and County of San Francisco shall be amended
25 by amending Sectional Map ZN-02 to establish the boundaries of the Lower Polk Alcohol

1 Restricted Use District and shall include the properties located between, but not including,
2 Van Ness Avenue, Larkin Street, O'Farrell Street, and California Street, which includes the
3 following Assessor's Block and Lot Numbers, but ~~shall not~~ is not intended to include the any
4 lots ~~within these Assessor's Block Numbers~~ that front on Van Ness Avenue, Larkin Street,
5 O'Farrell Street and or California Street. The following Block and Lots shall be the complete
6 list of Blocks and Lots included in the Lower Polk Street Alcohol Restricted Use District:

7 **Assessor's Block Numbers 0645, Lots 007, 007A, 008, 009, 011, 012, 013, 024 –**
8 **035; Block 0646, Lots 002 – 005; Assessor's Block 0667, Lots 001 – 005, 007, 013, 014,**
9 **016 – 018, 018A, 019 – 045; Assessor's Block 0668, Lots 003, 004, 004A, 004B, 006, 007,**
10 **009 – 046; Assessor's Block 0669, Lots 006 – 009, 011, 012, 012A, 013, 014, 018 – 032;**
11 **Assessor's Block 0670, Lots 002, 002A, 003 – 012, 018 – 020, 022 – 024, 026; Assessor's**
12 **Block 0691, Lots 001 – 003, 011, 012, 012A; Assessor's Block 0692, Lots 005, 007 – 011,**
13 **011A, 012, 013, 019 – 028; Assessor's Block 0693, Lots 007 – 026; Assessor's Block**
14 **0694, Lots 001 – 009, 009A, 012 – 017, 019; Assessor's Block 0715, Lots 001, 010A, 011;**
15 **and Assessor's Block 0716, Lots 001A, 008 – 011, 280.**

16 Section 5. Effective Date. This ordinance shall become effective 30 days from the
17 date of passage.

18 Section 6. Applicability Date. This ordinance shall not apply to any liquor
19 establishment that has filed a complete application for an ABC License with the California
20 Alcoholic Beverage Control Board prior to the Effective Date of this Ordinance.

21 Section ~~6~~7. This section is uncodified. In enacting this ordinance, the Board intends to
22 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
23 punctuation, charts, diagrams, or any other constituent part of the Planning Code that are
24 explicitly shown in this legislation as additions, deletions, Board amendment additions, and
25

1 Board amendment deletions in accordance with the "Note" that appears under the official title
2 of the legislation.

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

6 By: _____
7 JON GIVNER
8 Deputy City Attorney

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