

File No. 121065

Committee Item No. 5

Board Item No. 4

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date April 8, 2013

Board of Supervisors Meeting

Date APRIL 23, 2013

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Resolution                                   |
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| <input checked="" type="checkbox"/> | <input checked="" 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 checked="" type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <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/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                                  |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Environmental Review Determination, dtd 11/9/12</u>       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Planning Commission Resolution No. 18823</u>              |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Small Business Commission Recommendation, dtd 2/20/13</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Notice of Public Hearing</u>                              |
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Completed by: Alisa Miller Date April 5, 2013

Completed by: Alisa Miller Date April 11, 2013

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

2  
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 ~~strikethrough 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**

12 \*\*\*

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

Article 7 Code Section	Other Code Section	Zoning Controls
<p>15 <u>***</u></p> <p>16 § 723.69</p>	<p>17 § 186.1</p> <p>18 § 790.123</p> <p>19 <u>§ 788</u></p>	<p>20 Tobacco Paraphernalia Establishments –</p> <p>21 Tobacco Paraphernalia Establishments are not</p> <p>22 permitted in the Polk Street Neighborhood</p> <p>23 Commercial District <i>and within one-quarter mile of</i></p> <p>24 <i>the boundaries of that Neighborhood Commercial</i></p> <p>25 <i>District.</i> The special definition of "Tobacco</p> <p>Paraphernalia Establishments" applicable to the</p> <p>Polk Street Neighborhood Commercial District</p>

		<p>shall be repealed <del>three</del> <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.

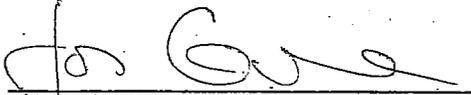
16 Section 5. Effective Date. This ordinance shall become effective 30 days from the  
17 date of passage.

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 67. 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.

3  
4 APPROVED AS TO FORM:  
5 DENNIS J. HERRERA, City Attorney

6 By:   
7 JON GIVNER  
8 Deputy City Attorney

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**REVISED LEGISLATIVE DIGEST**

(4/1/2013, Amended in Committee)

[Planning Code, Zoning Map - Polk Street Alcohol and Tobacco Paraphernalia Restrictions; Establishing Lower Polk Street Alcohol Restricted Use District]

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

Existing Law

The Polk Street Neighborhood Commercial District ("NCD") currently provides controls for tobacco paraphernalia that expire 3 years from the original effective date of the restrictions.

The current controls encourage neighborhood-serving businesses, but limit new eating, drinking, other entertainment, and financial service uses. Bars and liquor stores require conditional use approval. Limited Restaurants are principally permitted uses and Restaurants require conditional use approval. A Restaurant may only add ABC license types 47, 49 or 75 as a conditional use on the ground level if the Planning Commission finds that the restaurant is operating as a Bona Fide Eating Place, as defined in Section 790.142 of the Planning Code.

Amendments to Current Law

This Ordinance extends the tobacco paraphernalia restrictions from 3 years to 6 years of the original effective date of the restrictions in the Polk Street NCD and extends the restriction to the area within one-quarter mile of the Polk Street NCD.

This Ordinance establishes the Lower Polk Street Alcohol Restricted Use District (the "RUD") for the properties located on Polk Street between California Street and O'Farrell Street, 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 and O'Farrell Street to the

north and south. This RUD comprises a portion of the Polk Street NCD and extends to the side streets around Polk Street.

The RUD prohibits the establishment of new liquor establishments, and exempts from the definition of "liquor establishments" a Bona Fide Eating Place, an "other retail sales and service" use that sells only general groceries or specialty groceries, as defined in Planning Code Section 790.102 (a) or (b), respectively.

Liquor license transfers are permitted between two liquor establishments located within the RUD, or a liquor license may be transferred out of the RUD.

Restaurants with Types 47 and 49 liquor licenses may be open past 12:00 midnight, as long as they continue to serve food.

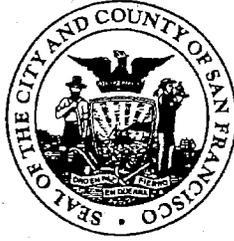
The legislation also amends the San Francisco Zoning Map, Sectional Map ZN-02, to establish the boundaries of the Lower Polk Alcohol Restricted Use District.

The legislation will be repealed five (5) years after its initial Effective Date, unless the Board of Supervisors extends or re-enacts it. The legislation would not apply to any liquor establishment that has filed a complete application for an ABC License with the California Alcoholic Beverage Control Board prior to the Effective Date of the Ordinance.

#### Background Information

Concerns about the number of tobacco paraphernalia stores and alcohol establishments, and the resulting impacts on the neighborhood, have created the need for these amendments.

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

November 7, 2012

File No. 121065

Bill Wycko  
Environmental Review Officer  
Planning Department  
1650 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Mr. Wycko:

On October 30, 2012, Supervisor Chiu introduced the following proposed legislation:

**File No. 121065**

Ordinance amending the San Francisco Planning Code by amending Section 723 to extend the restriction on Tobacco Paraphernalia Establishments in the Polk Street Neighborhood Commercial District (NCD) for an additional three years and apply it to an area within one-quarter mile of the boundaries of the NCD; adding Section 788 to establish the Lower Polk Street Alcohol Restricted Use District for the properties located on Polk Street between California and O'Farrell Streets, and Polk Street's side streets between California Street, Larkin Street, O'Farrell Street and Van Ness Avenue; amending the San Francisco Zoning Map to designate the Lower Polk Street Alcohol Restricted Use District on Map Sheet ZN-02; and making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

By: Alisa Miller, Committee Clerk  
Land Use & Economic Development Committee

Attachment

c: Monica Pereira, Environmental Planning  
Joy Navarrete, Environmental Planning

*Non-physical exemption  
CEQA Section 15060(c)(2)  
J. Navarrete Nov. 9, 2012  
JOY NAVARRETE*

Miller, Alisa

---

**From:** Hayward, Sophie  
**Sent:** Monday, March 18, 2013 10:11 AM  
**To:** Chiu, David; Calvillo, Angela  
**Cc:** Miller, Alisa; Chan, Amy; Elliott, Jason; Stacy, Kate; Rodgers, AnMarie  
**Subject:** Transmittal of BF-12-1065: Polk Street Tobacco and Alcohol Restrictions  
**Attachments:** BF 12-1065 Polk Street Tobacco and Alcohol Restrictions.pdf

Dear Supervisor Chiu and Clerk Calvillo,

Please find the attached recommendation from the Planning Commission concerning Supervisor Chiu's Ordinance (BF-12-1065: Polk Street Alcohol and Tobacco Restrictions). The Commission recommended approval with modifications intended to make enforcement more efficient and to include proximity controls and a sunset provision.

To this end, the Commission recommends the following modifications:

1. Remove the Tobacco Paraphernalia restriction from the Polk Street NCD; and
2. Modify the controls within the proposed Lower Polk Alcohol RUD as follows:
  - a. Prohibit new bars and liquor stores uses when located on a parcel within 100' of a parcel on which an existing bar or liquor store is located; and
  - b. New bar and liquor store uses may be permitted with Conditional Use authorization from the Planning Commission unless they are located on a parcel within 100' of a parcel with an existing bar or liquor store; and
  - c. Require that new Restaurants with Type 47 ABC licenses obtain Conditional Use authorization; and
  - d. Remove the requirement that Restaurants with Type 47 or 49 liquor licenses close by midnight; and
  - e. Require that restaurants continue food service until closing; and
  - f. Modify the proposed abandonment period for existing liquor establishments such that liquor establishments are considered an abandoned use if the use has been discontinued 3 years or more; and
  - g. Add an emphasis on enforcement of existing problem operators; and
  - h. Add a sunset provision for the proposed Lower Polk Alcohol Restricted Use District so that the provisions of the district would expire after three years.

Supervisor, if you would like to incorporate all or some of the recommendations by the Commission, please instruct the City Attorney to make the modifications.

Please feel free to be in touch if I can answer any questions.

Best,  
Sophie

Sophie Middlebrook Hayward, LEED AP  
San Francisco Planning Department, Legislative Affairs  
1650 Mission Street, SF, CA 94103  
(415) 558-6372



# SAN FRANCISCO PLANNING DEPARTMENT

March 18, 2013

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

1650 Mission S  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

Re: Transmittal of Planning Department Case Number 2012.1411TZ:  
Polk Street Alcohol and Tobacco Paraphernalia Restrictions  
Board File No. 12-1065  
Planning Commission Recommendation: Approval with Modifications

Dear Ms. Calvillo and Supervisor Chiu,

On March 14, 2013, the San Francisco Planning Commission (hereinafter, the "Planning Commission") conducted a duly noticed public hearing at its regularly scheduled meeting to consider the proposed amendments to Planning Code Section 723 (Polk Street Neighborhood Commercial District) and the proposed addition of Planning Code Section 788 (the Lower Polk Alcohol Restricted Use District) introduced by Supervisor David Chiu. At the hearing, the Planning Commission recommended approval with modifications.

The proposed amendments have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2). Pursuant to San Francisco's Administrative Code Section 8.12.5 "Electronic Distribution of Multi-page Documents", the Department is sending electronic documents and one hard copy. Additional hard copies may be requested by contacting Sophie Hayward at 558-6372.

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

Please find attached documents relating to the action taken by the Planning Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "AnMarie Rodgers".

AnMarie Rodgers  
Manager of Legislative Affairs

cc:

Supervisor David Chiu

Kate Stacy, Deputy City Attorney

Jason Elliot, Mayor's Director of Legislative & Government Affairs

Attachments (two hard copies of the following):

Planning Commission Resolution 18823

Draft Ordinance

Planning Department Executive Summary



# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Resolution No. 18823

HEARING DATE MARCH 14, 2013

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

*Project Name:* Amendment to Planning Code Section 723 (Polk Street NCD) and the establishment of new Section 788 to establish the Lower Polk Alcohol Restricted Use District, including amendment to Zoning Map Sheet ZN-02

*Case Number:* 2012.1411TZ [Board File No. 12-1065]

*Initiated by:* Supervisor Chiu / Introduced October 30, 2012

*Staff Contact:* Sophie Hayward, Legislative Affairs  
sophie.hayward@sfgov.org, 415-558-6257

*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*Recommendation:* Recommend Approval with Modifications

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION 723 TO EXTEND THE RESTRICTION ON TOBACCO PARAPHERNALIA ESTABLISHMENTS IN THE POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND ADD PLANNING CODE SECTION 788 TO ESTABLISH THE LOWER POLK STREET ALCOHOL RESTRICTED USE DISTRICT, AND AMEND SECTIONAL MAP SHEET ZN02 TO ADD THE LOWER POLK ALCOHOL RESTRICTED USE DISTRICT; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on October 30, 2012, Supervisor Chiu introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 12-1065, which would amend Section 723, which describes the Polk Street Neighborhood Commercial District (NCD) and add Section 788 and amend the San Francisco Planning Code Sectional Map Sheet ZN02 to create the Lower Polk Alcohol Restricted Use District (RUD);

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on March 14, 2013; and,

WHEREAS, the proposed Ordinance has been determined to be a non-physical project, and therefore subject to a categorical exemption under Section 15060(c)(2) of the CEQA Guidelines; 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 1650 Mission Street, Suite 400, San Francisco; and

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

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors approve with modifications the proposed ordinance. Specifically, the Commission recommends the following modifications:

1. Remove the Tobacco Paraphernalia restriction from the Polk Street NCD; and
2. Modify the controls within the proposed Lower Polk Alcohol RUD as follows:
  - a. Prohibit new bars and liquor stores uses when located on a parcel within 100' of a parcel on which an existing bar or liquor store is located; and
  - b. New bar and liquor store uses may be permitted with Conditional Use authorization from the Planning Commission unless they are located on a parcel within 100' of a parcel with an existing bar or liquor store; and
  - c. Require that new Restaurants with Type 47 ABC licenses obtain Conditional Use authorization; and
  - d. Remove the requirement that Restaurants with Type 47 or 49 liquor licenses close by midnight; and
  - e. Require that restaurants continue food service until closing; and
  - f. Modify the proposed abandonment period for existing liquor establishments such that liquor establishments are considered an abandoned use if the use has been discontinued 3 years or more; and
  - g. Add an emphasis on enforcement of existing problem operators; and
  - h. Add a sunset provision for the proposed Lower Polk Alcohol Restricted Use District so that the provisions of the district would expire after three years.

#### 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:

1. Tobacco Paraphernalia Establishments are prohibited within the Polk Street NCD. This prohibition was repealed on January 15, 2013, three years after its initial effective date of January 15, 2010;
2. Tobacco Paraphernalia Establishments are considered a distinct land use (defined in Planning Code Section 790.123); however, it is in reality difficult to distinguish this use from any other retail space. Because of this, enforcement of Tobacco Paraphernalia Establishments and response to complaints and violations is unusually challenging;
3. The area that would become the Lower Polk Street Alcohol Restricted Use District currently contains the following zoning districts: Polk Street Neighborhood Commercial District, Neighborhood Commercial-3, and Residential Commercial-4. The proposed new Lower Polk Alcohol Restricted Use District would overlay portions of all three of these zoning districts;

4. The proposed new Lower Polk Alcohol Restricted Use District would extend along Polk Street from California Street to the north, and to O'Farrell Street to the south, without including the lots that front on California and O'Farrell Streets, and would also extend west to Van Ness Avenue, excluding the lots that front on Van Ness, and east to Larkin Street, excluding the lots that front on Larkin Street;
5. The proposed modifications will require that the Department and the Commission consider proximity of existing bars when reviewing new applications;
6. That the standard three years is an appropriate length of time after which an existing use – including as a liquor establishment – is considered discontinued, and is consistent with the timeline defined in Planning Code Section 183;
7. That Restaurants that are Bona Fide Eating Establishments be allowed to remain open past midnight as one method to reduce concerns including loitering, littering, and public drunkenness, by keeping eyes on the street and providing an alternative to liquor by way of serving food; and
8. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

**I. COMMERCE & INDUSTRY ELEMENT**

THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES, AND SUPPORT SYSTEMS THAT CONSTITUTE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

**GOALS**

THE THREE GOALS OF THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN RELATE TO CONTINUED ECONOMIC VITALITY, SOCIAL EQUITY, AND ENVIRONMENTAL QUALITY.

**OBJECTIVE 6**

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

**POLICY 6.2**

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

**POLICY 6.10**

Promote neighborhood commercial revitalization, including community-based and other economic development efforts where feasible.

*The proposed Ordinance would create the Lower Polk Alcohol Restricted Use District in order to address concerns including loitering, littering, public drunkenness, parking, and noise problems. The proposal would provide close oversight for new liquor licenses within a specific and limited geographic area, while minimizing disruptive nuisance to the surrounding neighborhood by adding a requirement that new entertainment permits obtain Conditional Use Authorization in order to be approved. With the proposed modifications, the proposed Ordinance will allow new liquor establishments to open in areas within the Lower Polk Neighborhood that are not currently over-saturated with existing bars and in a manner that is consistent with the neighborhood character and that will not contribute to the deterioration of the neighborhood.*

8. **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 amendments will not have a negative impact on neighborhood serving retail uses and will not impact 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 amendments will help preserve existing neighborhood character by allowing carefully monitoring new liquor establishments within the Polk NCD and the proposed Lower Polk Street Alcohol Restricted Use District.*

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

*The proposed amendments will have no 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 amendments will 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 amendments 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;

*Any new construction or building alterations would be subject to all current building and safety codes, therefore improving the City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*Landmarks and historic buildings would not be negatively impacted by the proposed amendments.*

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

*The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments.*

8. **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 recommends that the Board ADOPT the proposed Ordinance as described in this Resolution and in the proposed Ordinance with the modifications outlined above.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 14, 2013.

Jonas P. Ionin  
Commission Secretary

AYES: Commissioners Antonini, Borden, Fong, Hillis, Moore, Sugaya, and Wu

NOES: None

ABSENT: None

ADOPTED: March 14, 2013



# SAN FRANCISCO PLANNING DEPARTMENT

## Executive Summary

### Planning Code and Zoning Map Amendments

HEARING DATE: MARCH 14, 2013

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
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415.558.6409

Planning  
Information:  
415.558.6377

*Project Name:* Amendment to Planning Code Section 723 (Polk Street NCD) and the establishment of new Section 788 to establish the Lower Polk Alcohol Restricted Use District, including amendment to Zoning Map Sheet ZN-02

*Case Number:* 2012.1411TZ [Board File No. 12-1065]

*Initiated by:* Supervisor Chiu / Introduced October 30, 2012

*Staff Contact:* Sophie Hayward, Legislative Affairs  
sophie.hayward@sfgov.org, 415-558-6257

*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*Recommendation:* Recommend Approval with Modifications

#### PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code by: 1) amending Section 723 to extend the restriction on Tobacco Paraphernalia Establishments in the Polk Street Neighborhood Commercial District (NCD) for an additional three years and apply it to an area within one-quarter mile of the boundaries of the NCD; 2) add Section 788 to establish the Lower Polk Street Alcohol Restricted Use District for the properties located on Polk Street between California and O'Farrell Streets, and Polk Street's side streets between California Street, Larkin Street, O'Farrell Street and Van Ness Avenue; 3) amend the Zoning Map to designate the Lower Polk Street Alcohol Restricted Use District on Map Sheet ZN-02.

#### The Way It Is Now:

Section 723 of the Planning Code defines specific provisions for the Polk Street NCD, and includes Section 723.69, which prohibits Tobacco Paraphernalia Establishments within the NCD. This prohibition was to be repealed on January 15, 2013, three years after its initial effective date of January 15, 2010. The 2012 Code Corrections Ordinance [BF 130062] includes an amendment to repeal this expired provision.

The area that would become the Lower Polk Street Alcohol Restricted Use District currently contains the following zoning districts: Polk Street Neighborhood Commercial District, Neighborhood Commercial-3, and Residential Commercial-4.

The Polk Street Neighborhood Commercial District (hereinafter "Polk NCD") extends along Polk Street from Filbert Street to the north, to Post Street to the south, and includes a short stretch of Larkin Street between Sacramento and Post Streets, and California Street between Van Ness Avenue and Hyde Street. The Polk Street NCD governs alcohol-related uses as follows: liquor stores, bars, and restaurants require Conditional Use Authorization pursuant to Planning Code Section 303. In addition to the Section 303 findings, the Planning Commission must also find that restaurants operate as a Bona Fide Eating Establishment pursuant to Section 790.142.

The Neighborhood Commercial-3 Zoning District (hereinafter "NC-3") governs alcohol-related uses as follows: liquor stores are not permitted at the ground floor, while bars, limited restaurants, and restaurants are permitted at the ground floor.

The Residential Commercial-4 Zoning District (hereinafter "RC-4") governs alcohol-related uses as follows: liquor stores are permitted at the ground level, and bars, limited restaurants, and restaurants are permitted at the ground level because they are permitted at the ground level within NC-3 districts.

#### The Way It Would Be:

Section 723 would be amended to extend the restriction on Tobacco Paraphernalia Establishments within the Polk Street NCD for three additional years, until 2016. Further, the restriction would apply to areas within ¼ mile of the boundaries of the Polk Street NCD.

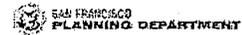
Section 788 would be added to create a Lower Polk Street Alcohol Restricted Use District (RUD). This district would extend along Polk Street from California Street to the north, to O'Farrell Street to the south, without including the lots that front on California and O'Farrell Streets, and would also extend west to Van Ness Avenue, excluding the lots that front on Van Ness, and east to Larkin Street, excluding the lots that front on Larkin. The proposed new Lower Polk Alcohol Restricted Use District would overlap with the existing Polk Street NCD, RC-4, and NC-3 Zoning Districts.

Within the new Polk Street Alcohol RUD, the following controls would apply:

1. No new on-sale or off-sale liquor establishment may be approved. Liquor licenses may be transferred within the Polk Street Alcohol RUD, provided that no new liquor licenses are transferred into the district from outside of the district. Transfers within the proposed district would require Conditional Use Authorization. Bona Fide Eating Establishments, as defined in Section 790.142, are not subject to the prohibition;
2. Liquor establishments are considered an abandoned use if the use has been discontinued for 180 days or more;
3. New entertainment permits require a Conditional Use Authorization within the Lower Polk Alcohol RUD; however, Limited Live Performance permits are principally permitted for Restaurants and Limited Restaurants; and
4. New restaurants with Types 47 or 49 liquor licenses may not be open after midnight.

The existing zoning districts as well as the proposed new Tobacco Paraphernalia restriction and the proposed Lower Polk Alcohol RUD are shown in the map below.

Existing Zoning Districts and Proposed Lower Polk Alcohol RUD



This zoning map shows the existing zoning in the area, with an overlay that indicates the extent of the proposed new restriction on Tobacco Paraphernalia Establishments and the proposed new Lower Polk Alcohol RUD.

### REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

### RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance to the Board of Supervisors and adopt the attached Draft Resolution to that effect. The recommended modifications include:

1. Remove the Tobacco Paraphernalia restriction from the Polk Street NCD; and
2. Modify the controls within the proposed Lower Polk Alcohol RUD to allow for new liquor licenses only with Conditional Use Authorization by the Planning Commission as follows:
  - A. Amend Section 303 of the Planning Code to include a separate finding regarding the concentration of existing bars. This finding would be made by the Commission when granting Conditional Use Authorization for a new liquor license within the proposed

Lower Polk Street Alcohol RUD. Specifically, the finding should indicate whether the newly proposed bar use is within 100' of a parcel on which an existing bar is located;

- B. Adopt a Planning Commission policy that the Department recommendation would be disapproval for bars proposed within 100' of existing bars within the Lower Polk Alcohol RUD;
- C. Modify the proposed abandonment period for existing liquor establishments such that liquor establishments are considered an abandoned use if the use has been discontinued 3 years or more;
- D. Remove the requirement that restaurants with Type 47 or 49 liquor licenses close by midnight.

## BASIS FOR RECOMMENDATION TO THE BOARD OF SUPERVISORS

The following discussion reviews important issues and describes the basis for the Department's position.

### 1. Tobacco Paraphernalia Restriction

The Department's recommendation is that the Planning Commission recommend to the Board that the restriction of Tobacco Paraphernalia Establishments be allowed to expire.

Tobacco Paraphernalia Establishments are considered a distinct land use (defined in Planning Code Section 790.123); however, it is, in reality, difficult for the Department to distinguish this use from any other retail space. Because of this, the Department struggles with enforcement of Tobacco Paraphernalia Establishments and response to complaints and violations is unusually challenging. The reason for this difficulty is two-fold.

First, the use is typically determined by either the percentage of floor area dedicated to Tobacco Paraphernalia (any amount greater than 10 percent of the occupied floor area), or the linear feet of display area dedicated to Tobacco Paraphernalia (any amount greater than ten linear feet). This definition is reliant on how the shelves are stocked from day to day. What is a Tobacco Paraphernalia Establishment today can easily be a less restricted retail space the next day. For the purposes of the Polk Street NCD, the distinction between a store and a Tobacco Paraphernalia Establishment is even more narrow: the presence of *any* Tobacco Paraphernalia within a retail use is prohibited within the Polk Street NCD.<sup>1</sup> For all intents and purposes within the Polk NCD, a retail establishment (permitted at the ground floor) becomes a Tobacco Paraphernalia Establishment (not permitted within the District) with the addition of a single pipe to the store's inventory.

Second, this definition was established in 2008, and therefore any store that had any quantity of space dedicated to Tobacco Paraphernalia prior to that date would be allowed to continue operation within the Polk Street NCD; proving what was (or was not) on the shelves in 2008 is next to impossible.

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<sup>1</sup> The Polk Street NCD defines Tobacco Paraphernalia Establishment as a retail establishment that sells any quantity of Tobacco Paraphernalia, whereas in other zoning districts, a retail establishment may sell a small amount of Tobacco Paraphernalia, under specific thresholds, and be permitted as a retail use. Please see Planning Code Section 790.123 for the full definition. Section 790.123 is available online here: [http://www.amlegal.com/nxt/gateway.dll/California/planning/planningcode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://www.amlegal.com/nxt/gateway.dll/California/planning/planningcode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1) (March 3, 2013).

Conversely, Medical Cannabis Dispensaries (MCD's), as defined in Planning Code Section 790.141, are more straightforward to regulate from a land use perspective, as they require a specific state-license to operate. Were Tobacco Paraphernalia Establishments required to seek a permit or license from the Department of Public Health, for example, the restriction would be more accurately monitored and enforced.

## 2. Controls for New Alcohol-Serving Establishments in the Proposed Lower Polk Alcohol RUD

The Department recommends that the controls for the proposed Lower Polk Alcohol RUD be modified in a manner that addresses concerns about safety and concentration, while allowing flexibility with oversight.

### A. *Conditional Use Authorization with Specific Findings for the Proposed RUD*

First, rather than prohibit new on-sale or off-sale liquor establishments within the geographic area defined in the proposed Ordinance, the Department recommends that new on-sale and off-sale liquor establishments controlled in the proposed Ordinance be required to obtain a Conditional Use Authorization by the Planning Commission. Further, the Department recommends that the Commission recommend adding a new Planning Code Section 303(q) that outlines specific findings required for approving new liquor establishments within the proposed Alcohol RUD. Specifically, the Department recommends adding the following language:

#### *(q) Liquor Establishments within the Lower Polk Alcohol Restricted Use District*

*(1) Conditional Use Criteria. With regard to a Conditional Use Authorization application for a liquor establishment, as defined in Section 788(c)(1), the Planning Commission shall consider, in addition to the criteria set forth in Subsection (c) above:*

*(A) The existing concentration of liquor establishments within the Lower Polk Alcohol Restricted Use District, and whether there is another liquor establishment on a parcel within 100 feet from the parcel on which the new establishment is proposed.*

### B. *Planning Commission Policy of Denial for Over Concentration*

In addition, the Department recommends that the Commission adopt a policy that when a new liquor establishment is proposed on a parcel within 100 feet of a parcel with an existing liquor establishment, the Department's preliminary recommendation will be to deny the request for Conditional Use Authorization. This approach will trigger a close examination and analysis of the concentration of bars within the proposed Alcohol Restricted Use District, but allows for the considered approval by the Planning Commission of new establishments in areas that are not currently saturated and may be appropriate locations for new businesses.

### C. *Use the Universal Abandonment Period of 3 years rather than 180 Days*

The draft Ordinance includes a provision for the proposed Lower Polk Alcohol RUD that would consider a closure for 180 days or more a "discontinued use" for liquor establishments. The Department's recommendation is that the standard three years be used as a period after which a use is considered discontinued or abandoned, as outlined in Planning Code Section 183.

### D. *Remove the Required Mid-Night Closure of Permitted Restaurants*

The findings of the proposed Ordinance cite concerns such as "loitering, littering, public drunkenness [...], parking and noise problems on public streets" as a result of the large number

of liquor establishments within the Lower Polk area. The Department's recommendation is that the proposed requirement that Restaurants – which must be Bona Fide Eating Establishments in order to get approval – close at midnight be removed. The Department believes that by remaining open at the same time as bars, Bona Fide Eating Establishments reduce the concerns outlined above by keeping eyes on the street, and by providing an alternative to liquor by way of serving food.

Bona Fide Eating Establishments, as defined in Section 790.142, require Conditional Use Authorization within the existing Polk Street NCD; therefore, in the portions of the proposed Lower Polk Alcohol Restricted Use District that overlap with the existing Polk Street NCD, new Restaurants require Conditional Use Authorization – a significant level of review by the Planning Commission. The Department does not feel that the additional restriction of a mid-night closure will serve to limit noise or public drunkenness; rather, the Department recommends that restaurants that are open late may relieve some of the crowding at existing bars.

### ENVIRONMENTAL REVIEW

The proposal to amend Planning Code Sections 723 (Polk Street NCD), and to create Section 788 (Lower Polk Alcohol RUD), and amending Sectional Map Sheet ZN02 is a non-physical project, and therefore subject to a categorical exemption under Section 15060(c)(2) of the CEQA Guidelines. This determination was made on November 9, 2012.

### PUBLIC COMMENT

As of the date of this report, the Planning Department has received one phone call in opposition to the proposed Ordinance. The Small Business Commission considered the proposed Ordinance at their February 11, 2013 public hearing, and voted to support the proposal with modifications that included considering proximity controls for new liquor establishments rather than a full prohibition for new licenses. The Small Business Commission transmittal to the Clerk of the Board is attached to this case report.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval with Modifications</b>
------------------------	--

#### Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No 12-1065
- Exhibit C: Small Business Commission Transmittal Regarding BOS File No 121065



SMALL BUSINESS COMMISSION  
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

February 20, 2013

Ms. Angela Calvillo, Clerk of the Board  
Board of Supervisors  
City Hall room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102-4694

**File No. 121065 [Planning Code - Polk Street Alcohol and Tobacco Paraphernalia Restrictions]**

**Small Business Commission Recommendation: Approval with modification**

Dear Ms. Calvillo:

On February 11, 2013 the Small Business Commission (SBC) voted 7-0 to recommend approval of BOS File No. 121065 with modifications.

The SBC recognizes alcohol related concerns in the Lower Polk Street area and agrees with Supervisor Chiu that steps are necessary to address the concentration of liquor licenses in the geographic area proposed in the Restricted Use District (RUD.) Alcohol RUD's place significant restrictions on businesses and thoughtful consideration and deliberation was undertaken by the Commission when reviewing the proposal. After receiving input from neighborhood and business stakeholders, the Commission makes the following recommendations, which it believes will allow the new RUD to meet its objectives, while reducing the impacts to small businesses.

The SBC finds that a total ban for Type 48 licenses (Bars) within the RUD is not necessary and recommends that in place of a ban, that proximity controls be put in place to require a buffer distance around existing bars. These proximity controls, recommended to be a 100 foot buffer (not to exceed 150 feet) around existing bars will address the concerns surrounding concentration of liquor establishments adjacent to each other. Noise, loitering, and crime are a legitimate concern when too many licensed establishments are close by to each other. Providing a buffer however, will spread these establishments apart and reduce impacts. It should be noted that maps prepared by the Planning Department indicated that a buffer of as little as 100 feet will essentially ban new bars along a three block stretch of Polk Street, between Post and Pine Street. This is the area of highest concentration of on-sale licenses. While it would restrict new licenses in this area, proximity controls provide enough flexibility that areas off Polk and in the Southern part of the RUD will be able to apply and go through the conditional use process.

The proposed ordinance, as drafted, affirmatively states that Limited-Live Performance (LLP) Locales, as defined in Section 1060 of the Planning Code shall be principally permitted in Restaurants and Limited-Restaurants. Absent is an affirmation that Bars and other venues, such as art galleries will be permitted to obtain a LLP permit. The Commission request that the City Attorney review the legislation and if necessary, clarify that all business types permitted to obtain an LLP be permitted to obtain this permit, without and land use limitation, inside the RUD.

SMALL BUSINESS ASSISTANCE CENTER/ SMALL BUSINESS COMMISSION  
1 DR. CARLTON B. GOODLETT PLACE, ROOM 110 SAN FRANCISCO, CALIFORNIA 94102-4681  
(415) 554-6408



SMALL BUSINESS COMMISSION  
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

Other RUD's established over the past decade include a provision adding an exemption the controls for businesses that have an active application for a liquor license on record with the California Department of Alcohol and Beverage Control as of the date the ordinance becomes effective. The Commission recommends that the following language be added to exemptions in this ordinance:

“Establishment of a Liquor Establishment if application for such Liquor Establishment is on file with the California Department of Alcoholic Beverage Control prior to the effective date of legislation establishing the Lower Polk Street Alcohol Restricted Use District.”

This language is necessary to protect businesses that have previously applied for licenses. The entitlement process, including approvals from the Planning Department, Board of Supervisors, and the ABC can take six months or more to receive approvals and businesses that have made investments in pending spaces or business models should be exempted.

The conditions that warrant the creation of the RUD will change in the upcoming years. This neighborhood is currently a night life “hot spot” bringing in thousands of individuals to the neighborhood on weekends. This will inevitably change over the upcoming years and special controls may no longer be necessary. Additionally, it is conceivable that licensed establishments will close over time and may re-locate outside of the RUD. Therefore, the Commission recommends a three to five year sunset provision be put in place. This will require the Board of Supervisors and stakeholders to review the neighborhood conditions in a specified amount of time, in which case the Board, at its discretion may extend the RUD for another period of time. This is consistent with other RUD's that have been passed over the last decade.

Again, RUD's place significant restrictions on businesses and often can have unintended consequences. For instance, a neighborhood may want restrictions placed on liquor stores, but welcome a boutique wine shop, which, under the Planning Code is considered a liquor store. In addition, the values of alcohol license and commercial spaces can be affected by a RUD. In reviewing the Lower Polk Alcohol RUD however, with the above amendments, the Commission has determined that the proposal merits support in order to address issues with concentration of alcohol licenses in this geographic area. The Commission appreciates the collaboration that Supervisor Chiu and his office have had with SBC staff and also thanks Sophie Hayward of the Planning Department for her mapping and technical assistance.

Sincerely,

Regina Dick-Endrizzi  
Director, Office of Small Business

Cc: Jason Elliott, Mayor's Office  
Supervisor Chiu  
Sophie Hayward, Planning Department

SMALL BUSINESS ASSISTANCE CENTER/ SMALL BUSINESS COMMISSION  
1 DR. CARLTON B. GOODLETT PLACE, ROOM 110 SAN FRANCISCO, CALIFORNIA 94102-4681  
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Sean R. Marciniak  
sean.marciniak@msrlegal.com  
925 941 3245

April 5, 2013

**BY FEDERAL EXPRESS AND BY EMAIL**

The Honorable Scott Wiener, Jane Kim, and David Chiu  
City and County of San Francisco Land Use and Economic Development  
Committee  
c/o Alisa Miller, Clerk  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2013 APR -8 AM 10:33  
*AM*

**Re: Case Number 2012.1411TZ [Board File No. 12-1065]; Conditional  
withdrawal of opposition.**

Supervisors Wiener, Kim, and Chiu:

Miller Starr Regalia represents DDR Corp. in its ownership and operation of certain real property located at 1000 Van Ness Avenue in the City and County of San Francisco ("DDR Property"), which includes the AMC Theatre.

Earlier this week, DDR submitted to the City and County of San Francisco Land Use and Economic Development Committee ("Committee") a letter that outlined DDR's concerns about a proposed rezoning action that would create the Lower Polk Street Alcohol Restricted Use District ("RUD"). DDR expressed concern that the legislation did not set forth a clear RUD boundary.

DDR has been informed by City staff that the Committee will be considering refinements to the draft ordinance adopting the zoning legislation that sets forth a "complete" list of Blocks and Lots included in the RUD that does not include Block 0715, Lots 014-069, thereby clarifying that this district would not include any Lots comprising the DDR Property. DDR finds that such a refinement would address its concerns and, assuming the City adopts these revisions, DDR does not anticipate maintaining any further opposition to the proposed legislation.

Finally, DDR would like to specifically thank staff members Sophie Hayward,

Supervisors Wiener, Kim, and Chiu  
April 5, 2013  
Page 2

Amy Chan, and Alisa Miller for their professionalism and receptiveness in responding to DDR's inquiries in this matter.

Very truly yours,

MILLER STARR REGALIA



Sean R. Marciniak

SRM/kli

cc: Michael Owendoff, DDR Corp.  
Eric Cotton, DDR Corp.  
Amy Chan, legislative aide to Supervisor David Chiu  
Sophie Hayward, San Francisco Planning Department  
Alisa Miller, Clerk of the Land Use and Economic Development Committee



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925 941 3245

April 3, 2013

**BY FEDERAL EXPRESS AND BY EMAIL**

The Honorable Scott Wiener, Jane Kim, and David Chiu  
City and County of San Francisco Land Use and Economic Development  
Committee  
c/o Alisa Miller, Clerk  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2013 APR -4 PM 12:08  
all

**Re: Case Number 2012.1411TZ [Board File No. 12-1065]; Request for  
revisions to proposed zoning text amendment.**

Supervisors Wiener, Kim, and Chiu:

Miller Starr Regalia represents DDR Corp. in its ownership and operation of certain real property located at 1000 Van Ness Avenue in the City and County of San Francisco ("DDR Property"). This property, which lies within Supervisor Kim's district, contains commercial uses that include the AMC Theatre, a parking garage, and a sandwich shop. DDR has owned this property for more than a dozen years.

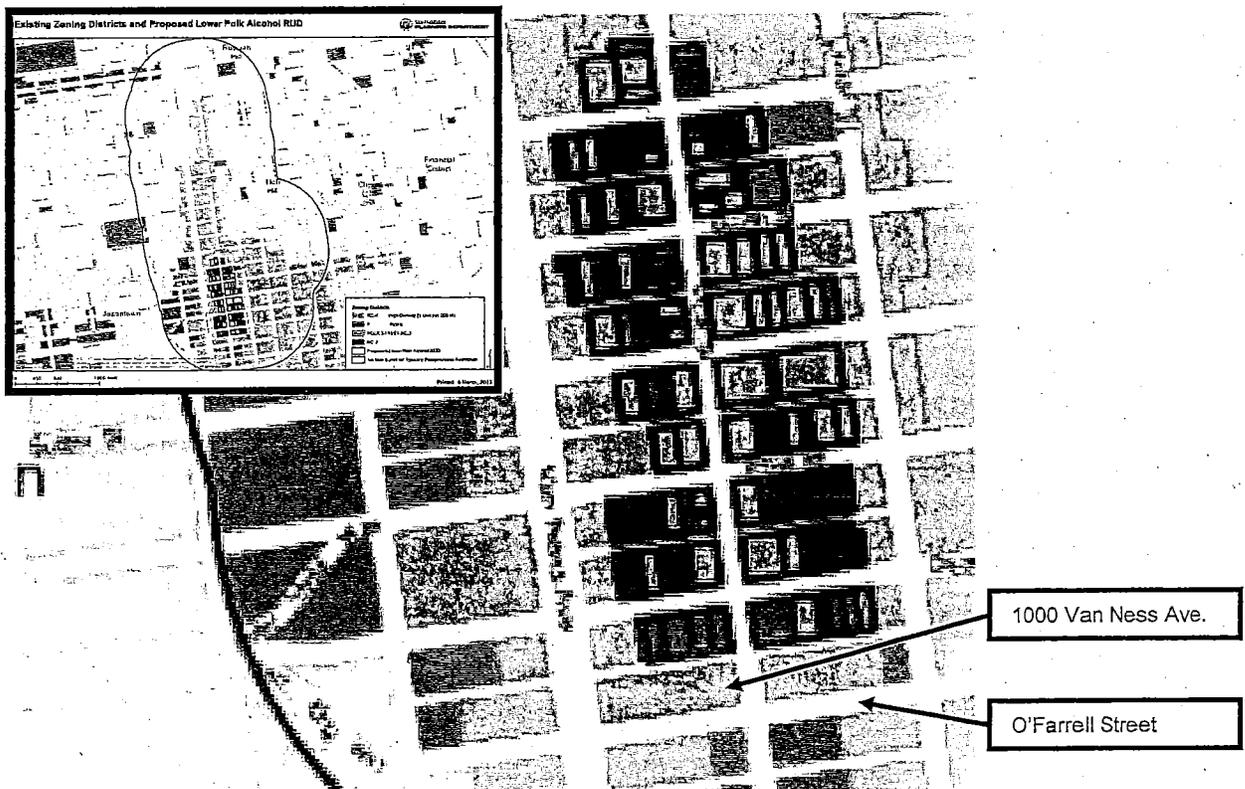
We understand that, earlier this week, the City and County of San Francisco Land Use and Economic Development Committee ("Committee") continued its consideration of a proposed rezoning action that would create the Lower Polk Street Alcohol Restricted Use District ("RUD") along certain portions of Polk Street, as more fully described in the City's March 1, 2013 Staff Report ("Staff Report") regarding Case Number 2012.1411TZ [Board File No. 12-1065]. I attended and spoke at the public hearing on April 1, 2013 but, within the two minutes allotted to public speakers, was not able to fully articulate my client's concerns.

DDR opposes this rezoning proposal because of ambiguities in the legislation that make it difficult to understand the scope of the RUD, and whether this district includes my client's property. The proposed zoning map amendment ("map amendment") clearly indicates that the entirety of the DDR Property does not fall within the RUD, the proposed zoning text amendment ("text amendment") is ambiguous. DDR only seeks certainty. Please note, City planning staff and the

Planning Commission have agreed that changes suggested by DDR would prove non-substantive, and non-controversial.

**The ambiguities with which DDR is concerned.** DDR requests that the City revise the text amendment so that it describes the boundaries of the RUD in the same manner as the map amendment. Because the text amendment explicitly references the map amendment, indicating the RUD "shall be designated" on the proposed map (Draft Ordinance, p. 4 [proposed section 788(b)]), discrepancies among the two components of the legislation create discord. My client's proposed revision would eliminate confusion and ensure that the legislation is internally consistent.

More specifically, the proposed map amendment clearly shows that the RUD does not encompass any portion of the DDR Property. (Staff Report, "Existing Zoning Districts and Proposed Lower Polk Alcohol RUD" Map, p. 3 [showing southern boundary of RUD to end at Alice B. Toklas Place, excluding entirety of DDR Property].) For your convenience, I have reproduced this map (Map Sheet ZN-02) below.



Reproductions of Map Sheet ZN-02, showing scope of RUD.

Whereas the map amendment shows that the RUD (which would include those individual lots bounded in red) excludes the DDR Property, the accompanying text amendment is not so clear. Specifically, the text amendment indicates that the RUD includes all that real property bounded by Van Ness Avenue to the west, Polk Street to the east, California Street to the north, and O'Farrell Street to the south, but would exclude lots that "front" on Van Ness Avenue or O'Farrell Street. (Staff Report, p. 2; Draft Resolution, § 4, p. 6).<sup>1</sup> DDR's property at 1000 Van Ness is adjacent to both O'Farrell Street and Van Ness Avenue, but it remains uncertain as to what extent this property falls within the RUD.

The issue is that 1000 Van Ness Avenue, while it consists of a single building, contains multiple, interior mapped lots. While the majority of lots owned by DDR have entrances and exits on O'Farrell Street and/or Van Ness Avenue, and would appear to "front" on these thoroughfares under the proposed legislation, at least one lot has an entrance/exit on Polk Street — a Subway sandwich shop. This shop may share a wall with O'Farrell Street, but the proposed rezoning legislation does not define what it means to "front" on a public thoroughfare, and thus it is unclear whether this lot falls within the RUD. The interior space of the sandwich shop also is separated from the street by many feet of building façade, and for this reason also it is unclear whether this space "fronts" on O'Farrell Street. Again, the zoning map amendment clearly excludes this lot, but the zoning text amendment renders its status unclear.

At the March 14, 2013 Planning Commission hearing, City planning staff and the Planning Commission appeared to agree that revising the text amendment to reflect the map amendment — e.g., by providing that the southern boundary of RUD is Alice B. Toklas Place — would qualify as a non-substantive, if not a beneficial, revision. We respectfully request that the Committee recommend that these conforming revisions be adopted by the Board of Supervisors, as these ambiguities create uncertainty in the law, having the potential to complicate future land use permitting and enforcement actions, as well as generate private disputes among landlords and tenants that operate at the periphery of the RUD. While DDR has no plans to seek City approvals to change the use of its property, and currently has no disputes with its tenants, it would greatly value clarity in the proposed legislation so that it may avoid any costly disputes in the future.

\* \* \*

It is DDR's wish to work cooperatively with the City in resolving ambiguities in the current proposed legislation. Again, DDR only requests that the City modify its text

<sup>1</sup> We note that these documents appear, incorrectly, to exclude properties that front on "Van Ness Avenue, Larkin Street, O'Farrell Street, and California Street." We respectfully request that the City revise the language to exclude properties that front on "Van Ness Avenue, Larkin Street, O'Farrell Street, or California Street," as it would be impossible for any one property to front on all four public ways.

Supervisors Wiener, Kim, and Chiu  
April 3, 2013  
Page 4

amendment to conform with the depictions in its map amendment, a change that did not generate controversy among planning staff and the Planning Commission. Such a change would provide DDR with clarity, and eliminate potential internal inconsistency in the proposed legislation.

To facilitate any clarifications, DDR has attached a list of proposed revisions to the text amendment that would alleviate its concerns, and it is my client's hope that the City will incorporate at least one of these options into the proposal that the Committee finally submits to the full Board of Supervisors for review.

Finally, while DDR does not anticipate it ultimately will need to continue opposing the proposed rezoning action, if opposition is appropriate, DDR will explain its objections at or before the continued hearing on Monday, April 8, 2013.

Please contact me at 925.935.9400 or by email at [sean.marciniak@mrsrlegal.com](mailto:sean.marciniak@mrsrlegal.com) if you have any questions or concerns. We welcome any discussions with the City on this issue, and can make ourselves available at any time to meet.

Very truly yours,

MILLER STARR REGALIA



Sean R. Marciniak

SRM/kli

cc: Michael Owendoff, DDR Corp.  
Eric Cotton, DDR Corp.  
Amy Chan, legislative aide to Supervisor David Chiu  
Sophie Hayward, San Francisco Planning Department  
Alisa Miller, Clerk of the Land Use and Economic Development Committee

**LIST OF PROPOSED REVISIONS TO DRAFT ORDINANCE  
ESTABLISHING LOWER POLK STREET ALCOHOL RESTRICTED USE  
DISTRICT (BOARD FILE NO. 12-1065)**

**Overview.**

What follows are three suggested options for revising the proposed zoning text amendment establishing the Lower Polk Street Alcohol Restricted Use District (further identifiable by Case Number 2012.1411TZ [Board File No. 12-1065].) Additions are highlighted in blue, and deletions are denoted by red "strikethrough" text.

**Option 1, amending proposed section 788(b) to read:**

..., the Lower Polk Street Alcohol Restricted Use District is hereby established for the properties located on Polk Street between California Street and O'Farrell Street, 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 south. For avoidance of uncertainty, the Lower Polk Street Alcohol Restricted Use District shall not include those lots comprising 1000 Van Ness Avenue (Block 0715/014-069 [56 lots].) The Lower Polk Street Alcohol Restricted Use District shall be designated on Map Sheet Number ZN-02 on the Zoning Map of the City and County of San Francisco.

**Option 2, adding the following clarification to the end of proposed section 788(b):**

In the event there is a conflict between the general description of the Lower Polk Street Alcohol Restricted Use District set forth above and the specific areas designated for the Lower Polk Street Alcohol Restricted Use District on Map Sheet Number ZN-02 on the Zoning Map of the City and County of San Francisco, the areas designated on the Map Sheet Number ZN-02 on the Zoning Map shall control.

**Option 3, amending sections 788(a) and 788(b), as well as Section 4 of the Draft Ordinance, to read:**

**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 to the north, Alice B. Toklas Place and O'Farrell/Myrtle 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 O'Farrell Street to the north and Alice B. Toklas Place and Myrtle Street to the 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. The problems also contribute to the deterioration of the neighborhood and concomitant devaluation of property and destruction of community values and quality of life. The number of establishments selling alcoholic beverages and the associated problems discourage more desirable and needed commercial uses in the area.

(b) Establishment of the Lower Polk Street Alcohol Restricted Use District. In order to preserve the residential character and the neighborhood-serving commercial uses of the area, the Lower Polk Street Alcohol Restricted Use District is hereby established for the properties located on Polk Street between California Street to the north, Alice B. Toklas Place and O'Farrell/Myrtle 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 and O'Farrell Street to the north and Alice B. Toklas Place and Myrtle Street to the south. The Lower Polk Street Alcohol Restricted Use District shall be designated on Map Sheet Number ZN-02 on the Zoning Map of the City and County of San Francisco.

Section 4. The Zoning Map of the City and County of San Francisco shall be amended by amending Sectional Map ZN-02 to establish the boundaries of the Lower Polk Alcohol Restricted Use District and shall include the properties located between, but not including, Van Ness Avenue, Larkin Street, O'Farrell/Alice B. Toklas Place, Myrtle Street, and California Street, which includes all or a portion of the following Assessor's Block Numbers, but shall not include the lots within these Assessor's Block Numbers that front on Van Ness Avenue, Larkin Street, O'Farrell Street and/or California Street:

**Assessor's Block Numbers 0645, 0646, 0667, 0668, 0669, 0670, 0691, 0692, 0693, 0694, 0715, and 0716.**

# LOWER POLK NEIGHBORS

1033 POLK STREET • SAN FRANCISCO, CA 94109  
415.351.3900 • FAX 415.351.3909  
WWW.LOWERPOLKNEIGHBORS.ORG

File 121065  
4/1/13 - Received  
in Committee



April 1, 2013

Honorable Members of the Land Use Committee  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place Room 244  
San Francisco, Ca 94102

Dear Supervisors:

Lower Polk Neighbors is an association made up of both residents and merchants in the lower part of San Francisco's Polk Gulch district. We meet monthly to discuss neighborhood issues and then follow up on these discussions with action.

At our March 13, 2013 Lower Polk Neighbors meeting, the membership voted to support Supervisor Chiu's proposal to create a Lower Polk Street Alcohol Restricted Use District.

Carefully crafted, the proposal before you in committee today represents a product of over six months of discussions between neighbors, merchants, and our district Supervisor, David Chiu. This proposal will prohibit new bars and liquor stores between California and O'Farrell Streets and Van Ness and Larkin for the next five years, while allowing new restaurants, grocery stores, and specialty grocery stores. Full transferability for our existing businesses applies, both for owner to owner transfers and location to location transfers within the RUD.

As with any process, some would like the restrictions to go further, and others would like them relaxed. However, I am confident that what is before you today represents both the interests of our residential and business communities and that this proposal warrants approval by the Land Use and Economic Development Committee and the full Board of Supervisors.

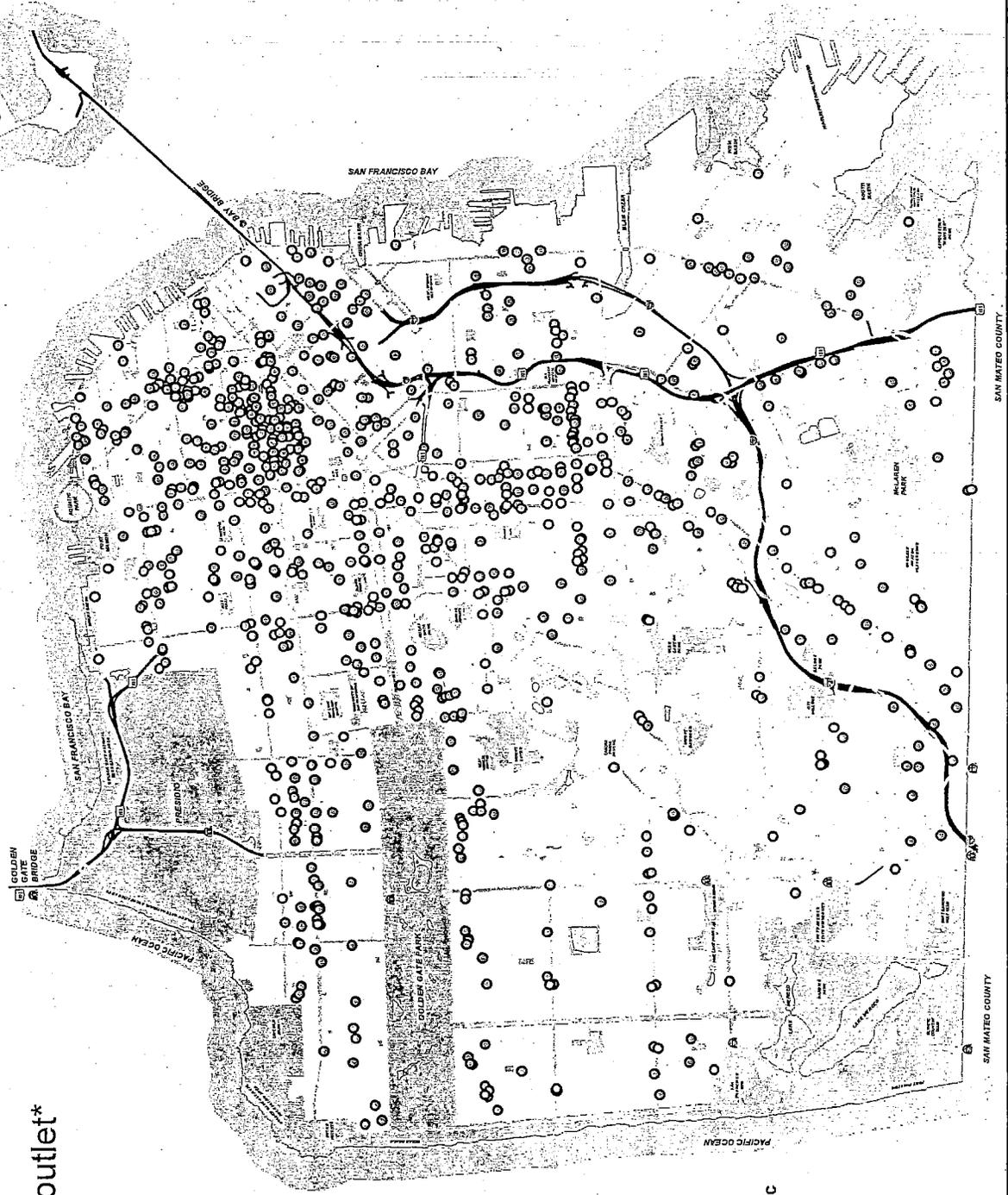
Regards,

A handwritten signature in black ink, appearing to read "Ron Case". The signature is fluid and cursive, with a large initial "R" and "C".

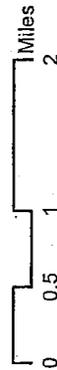
Ron Case  
Chairperson  
Lower Polk Neighbors

# Density of Off-sale Alcohol Outlets

○ Off-sale alcohol outlet\*



\* Off-sale alcohol outlets are retail establishments authorized to sell beer, wine and/or distilled spirits for consumption off the premises where sold.

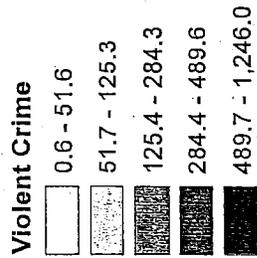


Source: California Department of Alcoholic Beverage Control, 08/11/11

City and County of San Francisco  
Department of Public Health  
Environmental Health Section

Available at [www.thehdm.org](http://www.thehdm.org)

# Violent Crime Rate (Offenses/1,000 Population)



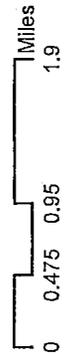
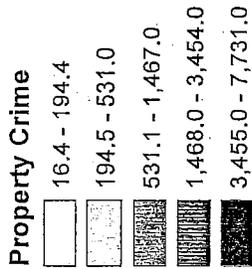
Source: San Francisco Police Department,  
2010-2012

City and County of San Francisco  
Department of Public Health  
Environmental Health Section

Available at [www.SustainableSF.org](http://www.SustainableSF.org)



# Property Crime Rate (Offenses/1,000 Population)



Source: San Francisco Police Department,  
2010-2012

City and County of San Francisco  
Department of Public Health  
Environmental Health Section  
Available at [www.SustainableSF.org](http://www.SustainableSF.org)

## Why Is This An Indicator Of Health and Sustainability?

Crime impacts the perceived safety of a neighborhood, inhibiting social interactions and adversely affecting social cohesion. a Residents' worries about safety in their neighborhoods can be a cause of chronic stress. b Fear of crime and feelings of vulnerability to crime can decrease residents' sense of control over their lives and their life satisfaction. c One study found that residents of neighborhoods with greater safety (as reported by other residents of the neighborhood) had less hypertension than residents of neighborhoods with less safety. d Residents' feelings about safety in their neighborhoods can also be a disincentive to engage in physical activity outdoors, particularly among women and older persons. e

A study in Baltimore, Maryland ranked 65 neighborhoods on the Neighborhood Psychosocial Hazards Scale, a combined measure of social disorganization, public safety, physical disorder, and economic deprivation. The researchers then linked the neighborhood measures with health data for a sample of residents. Regardless of age, gender, race, education, smoking or medical history (e.g. hypertension, diabetes), residents were more likely to have had a heart attack if they lived in the most hazardous neighborhoods compared to the least hazardous neighborhoods. f In a separate study using the same data, researchers found that living in the most hazardous neighborhoods increased the odds of being obese compared to living in the least hazardous neighborhoods of Baltimore. More importantly, this relationship could not be explained away by differences in resident demographics, wealth, education, alcohol consumption, tobacco use, diet, or physical activity. g  
Interpretation and Geographic Equity Analysis

This indicator shows the number and rate of property crimes as reported to the San Francisco Police Department between 2010 and 2012. Property crimes include actual and attempted burglaries, thefts (including of vehicles), arson, and vandalism.

The highest number of reported property crimes was in South of Market, Downtown/Civic Center, the Mission, Western Addition, and the Financial District. The highest rate of property crimes per 1,000 residents was Golden Gate Park, Financial District, South of Market, **Downtown/Civic Center** and North Beach. Notably, the areas with the highest number of tourist destinations and tourists are the neighborhoods with the highest number and rates of property crime. In general, with the exception of Golden Gate Park, residents in western San Francisco experience lower incidents and rates of property crime than eastern San Francisco.

### Methods

The data for this indicator comes from police incident reports written by the San Francisco Police Department for crimes reported from 2010 to 2012. The types of crimes included are:

**Burglaries and attempted burglaries**  
**Thefts and attempted thefts, not including pickpocketing**  
**Stolen vehicles and attempted stealing of vehicles**  
**Shoplifting and attempted shoplifting**  
**Arson and attempted arson**  
**Malicious mischief, including vandalism**

- a) Greenberg MS, Beach SR. 2004. Property crime victims' decision to notify the police: social, cognitive, and affective determinants. *Law and Human Behavior* 28:177-186.
- b) Altschuler A, Somkin CP, Adler NE. 2004. Local services and amenities, neighborhood social capital, and health. *Social Science & Medicine* 59: 1219-1229.
- c) Rountree PW, Land KC. 1996. Perceived risk versus fear of crime: empirical evidence of conceptually distinct reactions in survey data. *Social Forces* 1996: 1353-1376.
- d) Mujahid MS, Diex Roux AV, Morenoff JD, Raghunathan TE, Cooper RS, Ni H, Shea S. 2008. Neighborhood characteristics and hypertension. *Epidemiology* 19: 590-598.
- e) Foster S, Giles-Corti B. 2008. The built environment, neighborhood crime, and constrained physical activity: An exploration of inconsistent findings. *Preventive Medicine* [e-pub ahead of print]. Available at: [http://www.ncbi.nlm.nih.gov/pubmed/18499242?ordinalpos=1&itool=EntrezSystem2.PEntrez.Pubmed.Pubmed\\_ResultsPanel.Pubmed\\_RVDocSum](http://www.ncbi.nlm.nih.gov/pubmed/18499242?ordinalpos=1&itool=EntrezSystem2.PEntrez.Pubmed.Pubmed_ResultsPanel.Pubmed_RVDocSum). Retrieved 6/30/2008.
- f) Augustin T, Glass TA, James BD, Schwartz BS. Neighborhood Psychosocial Hazards and Cardiovascular Disease: The Baltimore Memory Study. *Am J Public Health*. 2008;98(9):1664-70.
- g) Augustin T, Glass TA, James BD, Schwartz BS. Neighborhood Psychosocial Hazards and Cardiovascular Disease: The Baltimore Memory Study. *Am J Public Health*. 2008;98(9):1664-70.



MILLER STARR  
REGALIA

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Fifth Floor F 925 933 4126  
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Sean R. Marciniak  
sean.marciniak@msrlegal.com  
925 941 3245

March 13, 2013

BY HAND AND BY EMAIL (Commissions.Secretary@sfgov.org)

Mr. Jonas P. Ionin, Acting Planning Commission Secretary  
San Francisco Planning Commission  
1650 Mission St., Suite 400  
San Francisco, CA 94103-2479

Re: Case Number 2012.1411TZ [Board File No. 12-1065]

Mr. Ionin:

I represent DDR Corp. in its ownership and operation of certain real property located at 1000 Van Ness Avenue in the City and County of San Francisco ("DDR Property"). We understand that the Planning Commission tomorrow will hold a public hearing on a proposed rezoning action that would create the Lower Polk Street Alcohol Restricted Use District ("RUD") along certain portions of Polk Street, as more fully described in the City's March 1, 2013 Staff Report ("Staff Report") regarding Case Number 2012.1411TZ [Board File No. 12-1065].

Upon review of publicly available documentation on this rezoning action, including without limitation the Staff Report and the associated Planning Commission Draft Resolution ("Draft Resolution"), it is our understanding that the proposed RUD does not encompass any portion of the DDR Property, which more specifically includes all that real property bounded by Van Ness Avenue to the west, O'Farrell Street to the south, Polk Street to the east, and Alice B. Toklas Place to the north. For instance, the Staff Report and Draft Resolution both indicate that the RUD would exclude lots that "front" on Van Ness Avenue or O'Farrell Street (Staff Report, p. 2; Draft Resolution, § 4, p. 6),<sup>1</sup> and a City map depicting the proposed rezone clearly shows that the RUD does not encompass any portion of the DDR Property. (Staff Report, "Existing Zoning Districts and Proposed Lower Polk Alcohol RUD" Map, p. 3.)

In addition, we received communications from City staff today, March 13, 2013, confirming that the City does not consider 1000 Van Ness Avenue to fall within the

<sup>1</sup> We note that these documents, appear, incorrectly, to exclude properties that front on "Van Ness Avenue, Larkin Street, O'Farrell Street, and California Street." We respectfully request that the City revise the language to exclude properties that front on "Van Ness Avenue, Larkin Street, O'Farrell Street, or California Street," as it would be impossible for any one property to front on all four public ways.

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Jonas P. Ionin  
March 13, 2013  
Page 2

scope of the RUD because it fronts on Van Ness Avenue, where such communications indicated that City staff confirmed the scope of the RUD with Board of Supervisor David Chiu's office.

Based on the above understanding and communications, DDR Corp. has not objected to the City's rezoning action or its environmental review. If we are mistaken in our understanding as to the scope of the RUD, please contact me immediately at 925.935.9400 or by email at [sean.marciniak@msrlegal.com](mailto:sean.marciniak@msrlegal.com). If the DDR Property is located within the proposed RUD, please consider this letter a formal objection to the proposed rezoning action and all associated entitlements.

Very truly yours,

MILLER STARR REGALIA



Sean R. Marciniak

SRM/kli

cc: Michele Knapp Boal, DDR. Corp.  
Angela Calvillo, Clerk of the San Francisco Board of Supervisors

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## NOTICE OF PUBLIC HEARING

### BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO LAND USE & ECONOMIC DEVELOPMENT COMMITTEE

NOTICE IS HEREBY GIVEN THAT the Land Use and Economic Development Committee will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

**Date:** Monday, April 1, 2013

**Time:** 1:30 p.m.

**Location:** Committee Room 263, located at City Hall  
1 Dr. Carlton B. Goodlett Place, San Francisco, CA

**Subject:** File No. 121065. Ordinance amending the Planning Code, Section 723, to extend the restriction on Tobacco Paraphernalia Establishments in the Polk Street Neighborhood Commercial District (NCD) for an additional three years and apply it to an area within one-quarter mile of the boundaries of the NCD; adding Section 788 to establish the Lower Polk Street Alcohol Restricted Use District for the properties located on Polk Street between California and O'Farrell Streets, and Polk Street's side streets between California Street, Larkin Street, O'Farrell Street and Van Ness Avenue; amending the Zoning Map to designate the Lower Polk Street Alcohol Restricted Use District on Map Sheet ZN-02; and making environmental findings, Planning Code, Section 302, findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code, Section 101.1.

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public record in this matter, and shall be brought to the attention of the Members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton Goodlett Place, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information relating to this matter will be available for public review on Friday, March 29, 2013.

A handwritten signature in black ink, appearing to read "Angela Calvillo".

Angela Calvillo, Clerk of the Board

DATED: March 19, 2013  
PUBLISHED: March 22, 2013

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**NOTICE OF PUBLIC HEARING**  
**BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO**  
**LAND USE & ECONOMIC DEVELOPMENT COMMITTEE**  
**MONDAY, APRIL 1, 2013 - 1:30 PM**  
**COMMITTEE ROOM 263, LOCATED AT CITY HALL**  
**1 DR. CARLTON B. GOODLETT PLACE, SAN FRANCISCO, CA**

NOTICE IS HEREBY GIVEN THAT the Land Use and Economic Development Committee will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard. **File No. 121065.** Ordinance amending the Planning Code, Section 723, to extend the restriction on Tobacco Paraphernalia Establishments in the Polk Street Neighborhood Commercial District (NCD) for an additional three years and apply it to an area within one-quarter mile of the boundaries of the NCD; adding Section 788 to establish the Lower Polk Street Alcohol Restricted Use District for the properties located on Polk Street between California and O'Farrell Streets, and Polk Street's side streets between California Street, Larkin Street, O'Farrell Street and Van Ness Avenue; amending the Zoning Map to designate the Lower Polk Street Alcohol Restricted Use District on Map Sheet ZN-02; and making environmental findings, Planning Code, Section

302, findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code, Section 101.1.

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public record in this matter, and shall be brought to the attention of the Members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton Goodlett Place, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information relating to this matter will be available for public review on Friday, March 29, 2013.

Angela Calvillo, Clerk of the Board

Miller, Alisa

---

**From:** glenda\_sobrique@dailyjournal.com  
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**Subject:** Confirmation of Order 2461822 for AM - 04.01.13 Land Use File 121065

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ORANGE COUNTY REPORTER, SANTA ANA	(714) 543-2027
SAN DIEGO COMMERCE, SAN DIEGO	(619) 232-3486
SAN FRANCISCO DAILY JOURNAL, SAN FRANCISCO	(800) 640-4829
SAN JOSE POST-RECORD, SAN JOSE	(408) 287-4866
THE DAILY RECORDER, SACRAMENTO	(916) 444-2355
THE INTER-CITY EXPRESS, OAKLAND	(510) 272-4747

CNS 2461822

**NOTICE OF PUBLIC HEARING**  
**BOARD OF SUPERVISORS OF THE**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**LAND USE & ECONOMIC DEVELOPMENT COMMITTEE MONDAY,**  
**APRIL 1, 2013 - 1:30 PM COMMITTEE**  
**ROOM 263, LOCATED AT CITY HALL**  
**1 DR. CARLTON B. GOODLETT**  
**PLACE, SAN FRANCISCO, CA**  
NOTICE IS HEREBY GIVEN THAT the Land Use and Economic Development Committee will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard. File No. 121065. Ordinance amending the Planning Code, Section 723, to extend the restriction on Tobacco Paraphernalia Establishments in the Polk Street Neighborhood Commercial District (NCD) for an additional three years and apply it to an area within one-quarter mile of the boundaries of the NCD; adding Section 788 to establish the Lower Polk Street Alcohol Restricted Use District for the properties located on Polk Street between California Street and O'Farrell Street, and Polk Street's side streets between California Street, Larkin Street, O'Farrell Street and Van Ness Avenue; amending the Zoning Map to designate the Lower Polk Street Alcohol Restricted Use District on Map Sheet ZN-02; and making environmental findings, Planning Code, Section 302, findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code, Section 101.1. In accordance with Section 67.7-4 of the San Francisco Administrative Code, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public record in this matter, and shall be brought to the attention of the Members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton Goodlett Place, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information relating to this matter will be available for public review on Friday, March 29, 2013. Angela Calvillo, Clerk of the Board



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BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

November 7, 2012

File No. 121065

Bill Wycko  
Environmental Review Officer  
Planning Department  
1650 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Mr. Wycko:

On October 30, 2012, Supervisor Chiu introduced the following proposed legislation:

**File No. 121065**

Ordinance amending the San Francisco Planning Code by amending Section 723 to extend the restriction on Tobacco Paraphernalia Establishments in the Polk Street Neighborhood Commercial District (NCD) for an additional three years and apply it to an area within one-quarter mile of the boundaries of the NCD; adding Section 788 to establish the Lower Polk Street Alcohol Restricted Use District for the properties located on Polk Street between California and O'Farrell Streets, and Polk Street's side streets between California Street, Larkin Street, O'Farrell Street and Van Ness Avenue; amending the San Francisco Zoning Map to designate the Lower Polk Street Alcohol Restricted Use District on Map Sheet ZN-02; and making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Miller".

By: Alisa Miller, Committee Clerk  
Land Use & Economic Development Committee

Attachment

c: Monica Pereira, Environmental Planning  
Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS



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Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Chief Greg Suhr, Police Department

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee  
Board of Supervisors

DATE: March 14, 2013

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Economic Development Committee received the following proposed ordinance, introduced by Supervisor Chiu on October 26, 2012:

**File No. 121065**

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

This matter is being forwarded to your department for informational purposes. If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Christine Fountain  
Sgt. Jennifer Jackson  
Nelly Gordon  
Joseph Fong  
Richard VanKoll

BOARD of SUPERVISORS



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Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

November 7, 2012

Planning Commission  
Attn: Linda Avery  
1660 Mission Street, 5<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Commissioners:

On October 30, 2012, Supervisor Chiu introduced the following proposed legislation:

**File No. 121065**

Ordinance amending the San Francisco Planning Code by amending Section 723 to extend the restriction on Tobacco Paraphernalia Establishments in the Polk Street Neighborhood Commercial District (NCD) for an additional three years and apply it to an area within one-quarter mile of the boundaries of the NCD; adding Section 788 to establish the Lower Polk Street Alcohol Restricted Use District for the properties located on Polk Street between California and O'Farrell Streets, and Polk Street's side streets between California Street, Larkin Street, O'Farrell Street and Van Ness Avenue; amending the San Francisco Zoning Map to designate the Lower Polk Street Alcohol Restricted Use District on Map Sheet ZN-02; and making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Miller".

By: Alisa Miller, Committee Clerk  
Land Use & Economic Development Committee

- c: John Rahaim, Director of Planning
- Scott Sanchez, Zoning Administrator
- Bill Wycko, Chief, Major Environmental Analysis
- AnMarie Rodgers, Legislative Affairs
- Monica Pereira, Environmental Planning
- Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS



City Hall  
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San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

# MEMORANDUM

TO: Regina Dick-Endrizzi, Director  
Chris Schulman, Commission Secretary  
Small Business Commission, City Hall, Room 448

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee  
Board of Supervisors

DATE: November 7, 2012

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Land Use & Economic Development Committee

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

**File No. 121065**

Ordinance amending the San Francisco Planning Code by amending Section 723 to extend the restriction on Tobacco Paraphernalia Establishments in the Polk Street Neighborhood Commercial District (NCD) for an additional three years and apply it to an area within one-quarter mile of the boundaries of the NCD; adding Section 788 to establish the Lower Polk Street Alcohol Restricted Use District for the properties located on Polk Street between California and O'Farrell Streets, and Polk Street's side streets between California Street, Larkin Street, O'Farrell Street and Van Ness Avenue; amending the San Francisco Zoning Map to designate the Lower Polk Street Alcohol Restricted Use District on Map Sheet ZN-02; and making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

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

\*\*\*\*\*

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: \_\_\_\_\_

- No Comment
- Recommendation Attached

\_\_\_\_\_  
Chairperson, Small Business Commission

**Supervisor Chiu's Amendments to Item #5, on Polk Street RUD**

**April 8, 2013**

Amendment #1: Add to findings importance of balancing nightlife vibrancy with public safety

**Insert at page 3, line 23:** "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."

Amendment #2: Clarify that the list of Block and Lots in RUD are exhaustive

**Insert at page 7, line 5:** "The following Block and Lots shall be the complete list of Blocks and Lots included in the Lower Polk Street Alcohol Restricted Use District:"

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2010 MAR 26 PM 3:55  
Time stamp  
or meeting date

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

- 1. For reference to Committee.  
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ 121065 ]
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission     Youth Commission     Ethics Commission
- Planning Commission     Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative**

Sponsor(s):

Supervisor David Chiu

Subject:

Ordinance establishing the Lower Polk Street Alcohol Restricted Use District.

The text is listed below or attached:

See attached.

Signature of Sponsoring Supervisor: David Chiu

For Clerk's Use Only:

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp  
or meeting date

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

- 1. For reference to Committee:   
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee:
- 4. Request for letter beginning "Supervisor  inquires"
- 5. City Attorney request.
- 6. Call File No.  from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No.
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission     Youth Commission     Ethics Commission
- Planning Commission     Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.**

**Sponsor(s):**

**Subject:**

**The text is listed below or attached:**

Signature of Sponsoring Supervisor: 

**For Clerk's Use Only:**

