



# SAN FRANCISCO PLANNING DEPARTMENT

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## New Planning Code Summary: Change in Definition of Tobacco Paraphernalia Establishments & Changes to T.P.E's within the Polk Street NCD

**Code Change:** The new Ordinance introduced by Supervisor Chiu would amend Planning Code doing the following:

1. Amend 227(v) to redefine the definition of Tobacco Paraphernalia Establishments;
2. Amend 790.123 and 890.123 to reflect this new definition;
3. Amend 723 (Polk Street Neighborhood Commercial District) to make Tobacco Paraphernalia Establishments not permitted; and
4. Amend Section 186.1 (Exemption of Non-Conforming Uses in NCDs) to change the period of non-use for a nonconforming Tobacco Paraphernalia Establishment in the Polk Street NCD from 3 years to 18 months.

**Case Number:** 2009.0784T  
**Board File No.** 09-0962/ Ordinance No. 03-10  
**Initiated By:** Supervisor David Chiu  
**Effective Date:** February 16, 2010

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### The Way It Was:

On October 21, 2008, the Board of Supervisors passed Ordinance No. 244-08 (BOS File No. 080567), which created a new use category in the Planning Code for Tobacco Paraphernalia Establishments. This use required Conditional Use Authorization in all Commercial and Industrial districts throughout San Francisco.

A Tobacco Paraphernalia Establishment was previously defined as: (emphasis added)  
"A retail use where more than 15% of the gross square footage of the establishment is dedicated to the sale, distribution, delivery, furnishing or marketing of Tobacco Paraphernalia from one person to another. "Tobacco Paraphernalia" means paraphernalia, devices, or instruments that are designed or manufactured for the smoking, ingesting, inhaling, or otherwise introducing into the body of tobacco, products prepared from tobacco, or controlled substances as defined in California Health and Safety Code Sections 11054 et seq. "Tobacco Paraphernalia" does not include lighters, matches, cigarette holders, any device used to store or preserve tobacco, tobacco, cigarettes, cigarette papers, cigars, or any other preparation of tobacco that is permitted by existing law. Medical Cannabis Dispensaries, as defined in Section 3201(f) of the San Francisco Health Code, are not Tobacco Paraphernalia Establishments."

On June 30, 2009, the Board of Supervisors passed Ordinance No. 151-09 (BOS File No. 09-0141). Created for the upper and lower Haight Street, the legislation lowered the threshold that a retail establishment will be considered to be a Tobacco Paraphernalia Establishment. In these two areas, if a store sells ONE piece that qualified as

paraphernalia, then it was a Tobacco Paraphernalia Establishment. It also made this use not permitted in the Haight Street NCD and created a Lower Haight Street Tobacco Paraphernalia Restricted Use District. On October 6, 2009, the Board of Supervisors passed an interim zoning controls (BOS File No. 09-0963), requiring a conditional use authorization for all Tobacco Paraphernalia Establishments in the Polk Street NCD. These controls are in effect for one year, or until they are supplanted by additional controls. The controls described in this summary now replace the interim zoning controls.

**The Way It Is Now:**

The adopted Ordinance has amended Planning Code as follows:

1. **Amended 227(v) to redefine the definition of Tobacco Paraphernalia Establishments.** The new definition is now  
 “Tobacco Paraphernalia Establishments, defined as retail uses where more than ~~45%~~ 10% of the ~~gross square footage of the establishment~~ square footage of occupied floor area, as defined in Section 102.10, or more than 10 linear feet of display area in total projected to the floor, whichever is less, is dedicated to the sale, distribution, delivery, furnishing or marketing of Tobacco Paraphernalia from one person to another. For purposes of Sections 719, 719.1, ~~and~~ 786, 723 and 723.1 of this Code, Tobacco Paraphernalia Establishments shall mean retail uses where Tobacco Paraphernalia is sold, distributed, delivered, furnished or marketed from one person to another. "Tobacco Paraphernalia" means paraphernalia, devices, or instruments that are designed or manufactured for the smoking, ingesting, inhaling, or otherwise introducing into the body of tobacco, products prepared from tobacco, or controlled substances as defined in California Health and Safety Code Sections 11054 et seq. "Tobacco Paraphernalia" does not include lighters, matches, cigarette holders, any device used to store or preserve tobacco, tobacco, cigarettes, cigarette papers, cigars, or any other preparation of tobacco that is permitted by existing law. Medical Cannabis Dispensaries, as defined in Section 3201(f) of the San Francisco Health Code, are not Tobacco Paraphernalia Establishments.”
  
2. **Amended 790.123 and 890.123 to reflect this new definition;**
  
3. **Amended 723 (Polk Street Neighborhood Commercial District) to make Tobacco Paraphernalia Establishments not permitted;** and
  
4. **Amended Section 186.1 (Exemption of Non-Conforming Uses in NCDs) to change the period of non-use for a nonconforming Tobacco Paraphernalia Establishment in the Polk Street NCD from 3 years to 18 months.**

To read the adopted Ordinance in full, visit:

<http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances10/o0003-10.pdf>

090962	0003-10	Amend the Citywide Definition of Tobacco Paraphernalia Establishments by Lowering the Threshold for Retail Stores to be Considered Tobacco Paraphernalia Establishments
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