



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: MARCH 29, 2018

90-DAY DEADLINE: JUNE 4, 2018

Project Name: Extending Lower Polk Street Alcohol Restricted Use District for Five Years
Case Number: **2018-003109PCA** [Board File No. 180190]
Initiated by: Supervisor Peskin / Introduced February 27, 2018
Staff Contact: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to extend the Lower Polk Street Alcohol Restricted Use District (RUD) until June 1, 2023 (five years) and to expand the circumstances in that District when a temporary closure of a liquor establishment is not considered an abandonment of such use.

The Way It Is Now:

1. The Lower Polk Alcohol RUD is set to expire on May 30, 2018, or five years after the ordinance establishing the RUD became effective.
2. The RUD has an abandonment period of one year. Businesses are exempt from abandonment if 1) the business closed due to fire, riot, insurrection, toxic accident or other force majeure; 2) the business closed temporarily for repair, renovation or remodeling; or 3) the business changes in ownership.

The Way It Would Be:

1. The Lower Polk Alcohol RUD would be extended for five more years to June 1, 2023. The new sunset provision includes the following language "Following its expiration, the City Attorney shall cause this Section to be removed from the Municipal Code."
2. The one year abandonment period would remain, but in addition to the exceptions listed above, full demolition of an existing building and new construction, including voluntary repairs, renovations, or remodeling, would be added as exceptions to the abandonment period. Such exceptions would be limited to demolition permits approved by January 1, 2018.

BACKGROUND

The Lower Polk Street RDU runs along Polk Street from approximately California to O'Farrell (see Exhibit C for a map of the district). This RUD was adopted in 2013 in response to "the presence of a large number of establishments dispensing alcoholic beverages..." The ordinance found that the existence of this many alcoholic beverage establishments contribute to numerous peace, health, safety and general welfare problems in the area. These problems include 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 ordinance also found that 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 RUD prohibits new Bars and Liquor Stores; however, it does permit new Restaurants (so long as they operate as a bona fide eating place) and Grocery or Specialty Grocery uses to sell alcohol. The RUD does allow an existing alcohol license within the RUD to be transfer to another site within RUD, but the transfer requires Conditional Use authorization from the Planning Commission.

ISSUES AND CONSIDERATIONS

Lower Polk Street Today

According to a recent survey by the Office of Economic and Workforce Development (OEWD), there are approximately 157 storefronts within the Lower Polk Street RUD. Of this, 13 are bars and two are establishments with an off-site alcohol license. There are also 21 eating places that sell alcohol for onsite consumption. While restaurants are not included in the ban in the RUD, they still add to the number of alcohol establishments on this portion of Polk Street.

From January 2013 to December 2017, the Lower Polk Street RUD averaged a vacancy rate of nine percent. This includes both active (stores that are available for lease) and inactive vacancies (stores where there is a permit that identifies a new business entity or obtained a City permit for major construction work). A vacancy rate of between five and ten percent is generally considered to be healthy.

It's difficult to tell exactly what impact the RUD has had on this portion of Polk Street. Because the RUD does not allow new bars or liquor stores, we know that there have been no new ones since the RUD went into effect; however, we do not have a baseline that tells us how many there were before the RUD went into effect to account for attrition. We also don't have vacancy rates taken before the RUD was established. What we do know is that with the RUD, the Lower Polk has maintained a diversity of goods and services, and remains a highly popular night life destination. It also has what's generally considered a health vacancy rate. At the very least, this shows that the RUD has not negatively impacted the neighborhood's vitality, or diversity of goods and services. The RUD could even be contributing to its success by ensuring that new bars and liquor stores don't displace existing neighborhood serving businesses.

Exceptions to Abandonment

The proposed ordinance adds a new provision to the abandonment period exceptions. This provision would allow an existing Bar use to reestablish if it temporarily closed due to demolition and new construction, provided that the demolition permit was approved by January 1, 2018. The Hemlock Tavern, located at 1131 Polk Street, may be able to take advantage of this provision, as the building that

the Hemlock Tavern is located in will be demolished and rebuilt with ground floor retail and 54 residential units. However, in order for that to occur, the January 1, 2018 date would need to be updated since 1131 Polk Street's demolition permit was approved by Planning on January 5, 2018 and has not yet been approved by DBI.

General Plan Compliance

The proposed ordinance is consistent with the following objectives and policies of the General Plan.

COMMERCE & INDUSTRY ELEMENT:

Objective 6

Maintain and strengthen viable neighborhood commercial areas easily accessible to city residents.

Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The proposed Ordinance will extend the Lower Polk Street Alcohol RUD for an additional five years. Continuing the prohibition new Bars and Liquor Stores uses will help protect existing neighborhood-serving goods and services from displacement by these uses. It will also ensure that the neighborhood doesn't become over-saturated with Bar or Liquor Store uses.

Implementation

The Department has determined that this ordinance will not impact our current implementation procedures.

RECOMMENDATION

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect.

1. Amend the Ordinance to revise the January 1, 2018 date so that the new exception to abandonment provision can be used by the Hemlock Tavern.
2. Revise the ordinance so that the footnote for Bar uses added to the Polk Street NCD table specifically identifies the Lower Polk Street RUD, and also includes any date restriction in the Lower Polk Street RUD.

BASIS FOR RECOMMENDATION

The Department supports the proposed extension of the RUD because it will help ensure that the Lower Polk Street neighborhood maintains a diversity of goods and services, while also allowing existing Bars and Liquor Stores to remain and relocate. After the RUD being in effect for five years, the lower Polk area remains a lively nighttime destination, in addition to having a healthy mix of goods and services. The proposed amendments to the abandonment period exceptions will allow Bars and Liquor Store uses that are closed due to demolition and new construction to be reestablished in the new building. This will help to ensuring the vitality of the areas nighttime entertainment uses. Further, this RUD is set to expire after

five years, ensuring that it will need to be reevaluated by both the Commission and the Board if there is a desire to extend it.

Recommendation 1: Amend the Ordinance to revise the January 1, 2018 so that this provision can be used by the Hemlock Tavern.

As currently drafted, it does not appear that the Hemlock Tavern would be able to utilize this added exception to the abandonment period. Staff recommends revising this date so that the Hemlock Tavern could utilize this provision.

Recommendation 2: Revise the ordinance so that the footnote for Bar uses added to the Polk Street NCD table specifically identifies the Lower Polk Street RUD, and also includes any date restriction in the Lower Polk Street RUD.

This recommendation is intended to clarify the intention of the proposed amendments. As currently written, it appears that any Bar use that was displaced due to demolition or new construction within the Polk Street Neighborhood Commercial District would be allowed to reestablish within the District without Conditional Use authorization. Staff's understanding is that the intention is to only allow Bar uses within the in the Lower Polk Street Alcohol RUD to reestablish if they closed temporarily due to demolition and new construction; therefore this section should be clarified to limit this provision only to the Lower Polk Street Alcohol RUD.

REQUIRED COMMISSION ACTION

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

ENVIRONMENTAL REVIEW

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

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance. We did receive a memo from OEWD, which is included in this packet as Exhibit B.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Letters of Support/Opposition or other supporting documentation, etc.
- Exhibit C: Map of Lower Polk Street Alcohol Restricted Use District
- Exhibit D: Board of Supervisors File No. 180190



Exhibit A

SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution

HEARING DATE MARCH 29, 2018

Project Name: Extending Lower Polk Street Alcohol Restricted Use District for Five Years
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RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO EXTEND THE LOWER POLK STREET ALCOHOL RESTRICTED USE DISTRICT TO JUNE 1, 2023; TO EXPAND THE CIRCUMSTANCES IN THAT DISTRICT WHEN TEMPORARY CLOSURES OF LIQUOR ESTABLISHMENTS ARE NOT CONSIDERED ABANDONMENT OF SUCH USES, AND PROVIDE THAT SUCH TEMPORARY CLOSURES IN THAT DISTRICT ARE NOT CONSIDERED AN ENLARGEMENT ALTERATION INTENSIFICATION, ABANDONMENT, OR CHANGE OF USE, PROVIDED THAT ANY DEMOLITION PERMITS REQUIRED FOR THE REPAIR, RENOVATION, OR REMODELING WORK HAVE BEEN APPROVED JANUARY 1, 2018; 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 February 27, 2018, Supervisors Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 180190, which would that would amend the Planning Code to extend the Lower Polk Street Alcohol Restricted Use District to June 1, 2023; to expand the circumstances in that District when temporary closures of Liquor Establishments are not considered abandonment of such uses, and provide that such temporary closures in that district are not considered an enlargement alteration intensification, abandonment, or change of use, provided that any demolition permits required for the repair, renovation, or remodeling work have been approved January 1, 2018;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on March 29, 2018; and,

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

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

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance.

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. The Commission supports the proposed extension of the RUD because it will help ensure that the Lower Polk Street neighborhood maintains a diversity of goods and services, while also allowing existing Bars and Liquor Stores to remain and relocate.
2. The Commissions finds that after the RUD being in effect for five years, the Lower Polk area remains a lively nighttime destination, in addition to having a healthy mix of goods and services.
3. The Commission finds that the proposed amendments to the abonnement period exceptions will allow Bars and Liquor Store uses that are closed due to demolition and new construction to be reestablished in the new building. This will help to ensuring the vitality of the areas nighttime entertainment uses.
4. **General Plan Compliance.** The proposed Ordinance s consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 6

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

Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The proposed Ordinance will extend the Lower Polk Street Alcohol RUD for an additional five years. Continuing the prohibition new Bars and Liquor Stores uses will help protect existing neighborhood-serving goods and services from displacement by these uses. It will also ensure that the neighborhood doesn't become over-saturated with Bar or Liquor Store uses.

5. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

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

The proposed Ordinance will help protect neighborhood serving retail uses by limiting Bar and Liquor Store uses, and it will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

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

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

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

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

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

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

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

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

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

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

7. That the landmarks and historic buildings be preserved;

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

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

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

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

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

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 29, 2018.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: March 29, 2018

March 21, 2018

Aaron Starr
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Re: File No. 180190 – Planning Code – Lower Polk Street Alcohol Restricted Use District

Dear Aaron,

This letter is intended to offer a few thoughts in anticipation of the Planning Commission's review of Supervisor Peskin's legislation to renew the Lower Polk Street Alcohol Restricted Use District.

As you know, under the current code provisions, an existing Bar use within the Lower Polk RUD may relocate to a new location within the district with Conditional Use authorization. However, this use is deemed abandoned if the business' operations are discontinued for one year. A bar may be exempt from the abandonment provision where there has been destruction or damage to the property. Unfortunately, there is no exemption for the return of a bar to its previous location if the existing building is voluntarily demolished and rebuilt.

We deeply appreciate the Supervisor's amendment to this legislation that would create an exemption to the 12-month time limit for bars facing the voluntary demolition of their buildings. This change will make it possible for a neighborhood nightlife establishment to return to its location following the demolition of its existing location and the construction of a new building in its place.

As we recently discussed with the Supervisor's staff, we would also encourage them to consider amending the legislation to establish a period of time longer than one year during which a bar might relocate and resume operations before its use is deemed abandoned. Under the current code, if a bar within the RUD is unable to renew its lease, it must identify and lease a new space in the district, secure Conditional Use authorization, complete any needed tenant improvements, and be ready to open its doors within one year. Otherwise, the use is deemed abandoned and the business will be unable to remain within the district.

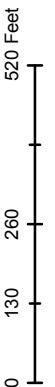
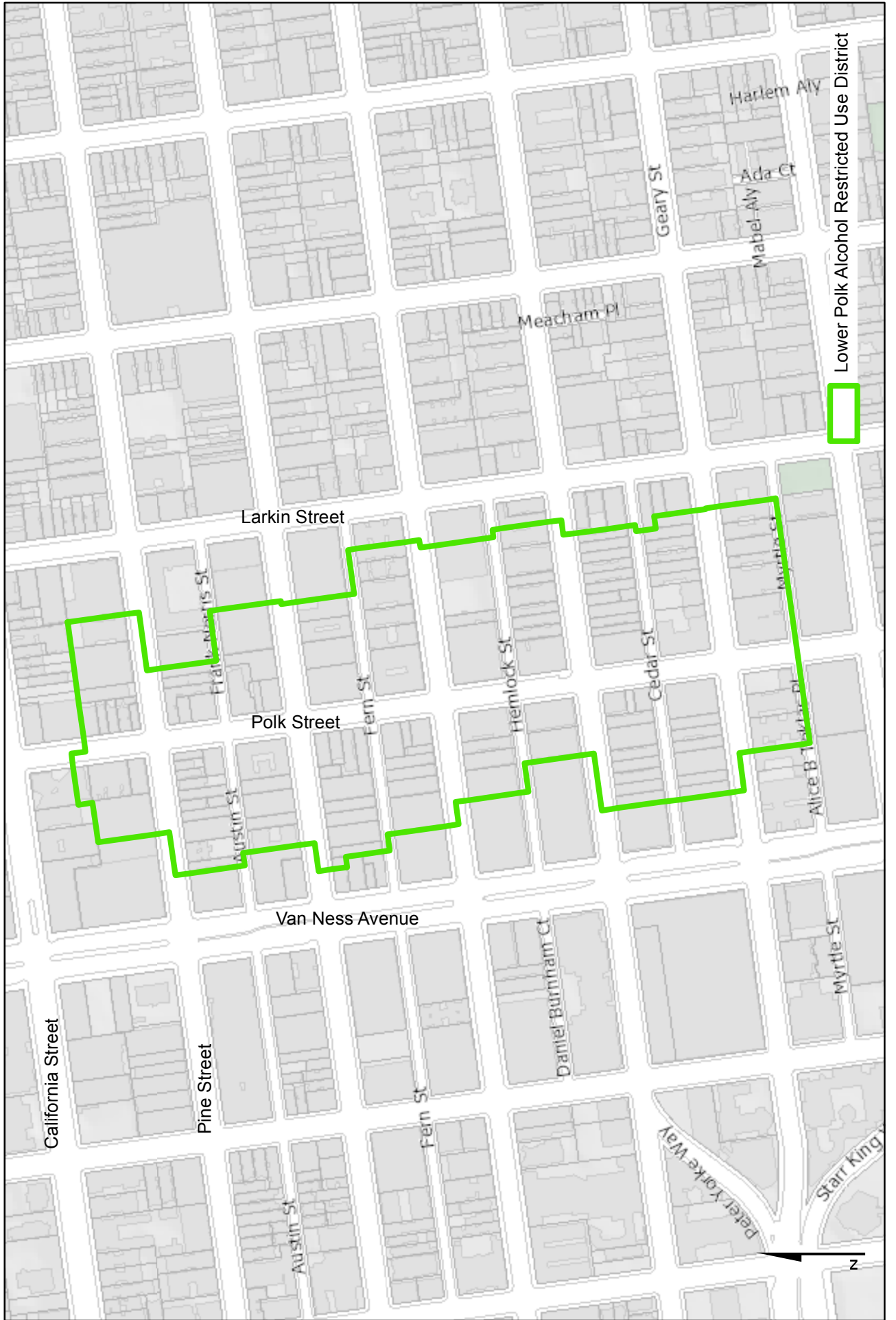
This is an extremely challenging, if not impossible, hurdle for any bar that might need to relocate. We suggest that three years would be a more reasonable timeframe in order to enable businesses to relocate and reopen, and avoid having their uses deemed abandoned. A three-year time limit would also be in alignment with the timeframe for the abandonment of a discontinued conditional use within the district. As a result, we would encourage the Supervisor to further amend Planning Code Section 788(d)(2) to replace "one year" with "three years."

Sincerely,



Benjamin Van Houten
Business Development Manager, Nightlife & Entertainment Sector
Office of Economic and Workforce Development

Lower Polk Alcohol Restricted Use District



[Planning Code – Lower Polk Street Alcohol Restricted Use District]

Ordinance amending the Planning Code to extend the Lower Polk Street Alcohol Restricted Use District to June 1, 2023; to expand the circumstances in that District when temporary closures of liquor establishments are not considered abandonment of such uses, and provide that such temporary closures in that District are not considered an enlargement, alteration, intensification, abandonment, or change of use, provided that any demolition permits required for the repair, renovation, or remodeling work have been approved by January 1, 2018; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of public necessity, convenience, and welfare under Planning Code Section 302, and findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in single-underline italics Times New Roman font.
Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Environmental and Land Use Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of

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

(b) On _____, the Planning Commission, in Resolution No. _____, adopted findings that the actions contemplated in this ordinance are consistent, on balance, with the City's General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. _____, and is incorporated herein by reference.

(c) On _____, the Planning Commission, in Resolution No. _____, approved this ordinance, recommended it for adoption by the Board of Supervisors, and adopted findings that it will serve the public necessity, convenience, and welfare. Pursuant to Planning Code Section 302, the Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. _____, and is incorporated herein by reference.

Section 2. The Planning Code is hereby amended by revising Section 788, to read as follows:

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

* * * *

(d) Controls.

* * * *

(2) Whenever a liquor establishment has discontinued its use for a continuous period of one year or more, the liquor establishment shall be deemed to have abandoned its use as a liquor establishment; provided that a break in continuous operation shall not be interpreted to include the following, as long as the location of the establishment does not change, the square footage used for the sale of alcoholic beverages does not increase, and

1 the type of California Department of Alcoholic Beverage Control Liquor License ("ABC
2 License") does not change:

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

6 (B) Temporary closure of an existing liquor establishment for repair,
7 renovation, or remodeling, including full demolition of an existing building and new construction,
8 and including voluntary repairs, renovations, or remodeling, provided that permit applications for
9 the repair, renovation, or remodeling work shall be submitted to the City upon or prior to the
10 temporary closure and such permits and work shall be pursued diligently to completion; or

11 (C) A change in ownership of a liquor establishment or an owner-to-
12 owner transfer of an ABC License.

13 * * * *

14 (e) **Sunset ~~Provision~~ Date.** This Section 788 shall expire by operation of law on June 1,
15 2023, be repealed five (5) years after its initial Effective Date unless the Board of Supervisors, on
16 or before that date, extends or re-enacts it. Following its expiration, the City Attorney shall cause
17 this Section to be removed from the Municipal Code.

18
19 Section 3. The Planning Code is hereby amended by revising Section 723, to read as
20 follows:

21 **SEC. 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

22 * * * *

23 Table 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT
24 ZONING CONTROL TABLE

25 * * * *

Zoning Category	§ References	Controls		
NON-RESIDENTIAL STANDARDS AND USES (7)				
* * * *				
Sales and Service Use Category				
Retail Sales and Service Uses*	§§ 102, 202.2(a), 202.3	P	P	NP
* * * *				
Bar	§§ 102, 202.2(a)	C(1)	NP	NP
* * * *				

* Not listed below

(1) ~~[Note deleted.]~~ Temporary closures of existing liquor establishments for repair, renovation, or remodeling that meet the requirements of Section 788(d)(2)(B) shall not be considered enlargement, alteration, intensification, abandonment, or a change of use of a conditional use permit pursuant to Section 178 of this Code, provided that any demolition permits required for the repair, renovation, or remodeling work have been approved by January 1, 2018.

* * * *

Section 4. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

1
2 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
3 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
4 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
5 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
6 additions, and Board amendment deletions in accordance with the "Note" that appears under
7 the official title of the ordinance.

8
9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By:


12 ANDREA RUIZ-ESQUIDE
Deputy City Attorney

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