

1 [Zoning –Urgency Ordinance Imposing an Interim Zoning Moratorium on Tobacco
 2 Paraphernalia Establishments in the Haight Street Neighborhood Commercial District and in
 3 all properties zoned NC-1 (Neighborhood Commercial Cluster District) and NC-2 (Small-Scale
 Neighborhood Commercial District) along Haight Street.]

4 **Urgency Ordinance imposing an interim zoning moratorium to temporarily prohibit new**
 5 **Tobacco Paraphernalia Establishments, as defined, subject to specified exceptions, in**
 6 **the Haight Street Neighborhood Commercial District and in all properties zoned NC-1**
 7 **(Neighborhood Commercial Cluster District) and NC-2 (Small-Scale Neighborhood**
 8 **Commercial District) along Haight Street, for 45 days, and making findings, including**
 9 **findings of consistency with the Priority Policies of Planning Code Section 101.1 and**
 10 **environmental findings.**

11 Note: Additions are *single-underline italics Times New Roman*;
 12 deletions are ~~*strikethrough italics Times New Roman*~~.
 13 Board amendment additions are double underlined.
 Board amendment deletions are ~~strikethrough normal~~.

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

15 Section 1. Findings.

16 (a) General Findings.

17 (1) Haight Street, both in the area designated as the Haight Street Neighborhood
 18 Commercial District and in the areas zoned as NC-1 (Neighborhood Commercial Cluster
 19 District) and NC-2 (Small-Scale Neighborhood Commercial District), has witnessed an
 20 increase in the number of enterprises selling paraphernalia, devices, or instruments that are
 21 designed and manufactured for the smoking, ingesting, inhaling, or otherwise introducing into
 22 the body of tobacco, products prepared from tobacco, or controlled substances as defined in
 23 California Health and Safety Code Sections 11054 et seq. (“Tobacco Paraphernalia”).

24 (2) The inordinate number of these enterprises appears to contribute directly to
 25 numerous peace, health, safety, and general welfare problems, including drug use, drug

1 sales, drug trafficking, other crimes associated with drug use, loitering, and littering, as well as
2 traffic circulation, parking, and noise problems on public streets and neighborhood lots.

3 (3) The existence of such problems adversely impacts the health, safety, and welfare
4 of residents of nearby areas, including fear for the safety of children, elderly and disabled
5 residents, and visitors to San Francisco.

6 (4) Such problems also contribute to the deterioration of the surrounding
7 neighborhoods, concomitant devaluation of real property, and destruction of community
8 values and quality of life.

9 (5) Such adverse impacts also discourage more desirable and needed commercial
10 uses in the area.

11 (7) The proliferation of these enterprises has had, and will continue to have,
12 detrimental impacts on Haight Street.

13 (8) The imposition of this interim moratorium is necessary to alleviate the problems
14 and detrimental impacts associated with enterprises selling Tobacco Paraphernalia in the
15 Haight Street Neighborhood Commercial District and in the areas zoned as NC-1
16 (Neighborhood Commercial Cluster District) and NC-2 (Small-Scale Neighborhood
17 Commercial District) along Haight Street, pending a study and a determination by the
18 Department of City Planning and the Board of Supervisors of the appropriate permanent
19 controls for such enterprises in the area.

20 (9) It is not the intent of these controls to regulate or affect, in any way, the sale,
21 distribution, delivery, furnishing, or marketing of tobacco, cigarettes, cigarette papers, cigars,
22 or any other preparation of tobacco that is permitted by existing law.

23 (b) Findings related to the imposition of an interim moratorium.

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1 (1) California Government Code Section 65858 and Planning Code Section 306.7
2 authorize the City to adopt interim zoning moratoria to prohibit any uses that may be in conflict
3 with a contemplated zoning proposal that the Board or the Planning Department are studying,
4 or intend to study in a reasonable time.

5 (2) This moratorium is intended and designed to deal with and ameliorate the
6 problems and conditions associated with the proliferation of establishments selling Tobacco
7 Paraphernalia on Haight Street, as the Board or the Planning Department consider the
8 establishment of permanent controls regarding the matter.

9 (3) The Board has considered the impact on the public health, safety, peace, and
10 general welfare if the interim controls proposed herein were not imposed.

11 (4) The Board has determined that the public interest will be best served by imposition
12 of this interim moratorium at this time, in order to ensure that the permanent controls which
13 may be ultimately adopted are not undermined during the planning and legislative process,
14 which process shall be conducted within a reasonable time.

15 (c) Planning Code Section 101.1 Findings.

16 This interim zoning moratorium advances and is consistent with Priority Policies the
17 Planning Code Section 101.1, particularly Policies 1 and 2, in that it attempts to preserve and
18 enhance the character and vitality of one of the City's neighborhoods. With respect to Priority
19 Policies 3, 4, 5, 6, 7, and 8, the Board finds that the interim zoning moratorium does not, at
20 this time, have an effect upon these policies, and thus, will not conflict with said policies.

21 (d) Environmental Findings.

22 The Planning Department has determined that the actions contemplated in this
23 Ordinance are in compliance with the California Environmental Quality Act (California Public
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1 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
2 Board of Supervisors in File No. _____ and is incorporated herein by reference.

3 Section 2. The following interim zoning moratorium shall be adopted as an Urgency
4 Ordinance:

5 (a) New Tobacco Paraphernalia Establishments Prohibited. As of the effective date of
6 this Urgency Ordinance, the establishment of any new Tobacco Paraphernalia Establishment,
7 as defined herein, is prohibited in the Haight Street Neighborhood Commercial District, as
8 defined in Section 719.1 of the Planning Code, and in all properties zoned NC-1
9 (Neighborhood Commercial Cluster District) and NC-2 (Small-Scale Neighborhood
10 Commercial District) along Haight Street, as follows: Block 1237 (lot 007); Block 1238 (lots
11 007A, 021); Block 0846 (lots 020, 021, 038, 058-061); Block 0847 (lots 006, 007, 017-021);
12 Block 0848 (lots 004-006, 006B, 007-011, 031, 034-041); Block 0849 (lots 008-020); Block
13 0859 (lots 001, 025, 027, 028, 028A, 028B, 029-031, 038, 039); Block 0860 (lots 026-029,
14 031, 037, 038, 041, 060-062, 085-087); Block 0861 (lots 001, 022, 023, 025, 026, 028, 035,
15 051, 056-065, 075, 076); Block 0862 (lots 001, 021, 022); Block 1239 (lot 027); and Block
16 1240 (lot 001).

17 (b) Existing Uses Exempted. Any Tobacco Paraphernalia Establishment lawfully
18 existing prior to the effective date of this Urgency Ordinance is exempt from this interim
19 moratorium unless such enterprise ceases to operate or discontinues operation for ninety (90)
20 days or longer, in which event the use shall be deemed abandoned.

21 (c) This interim zoning moratorium shall not apply to:

22 (1) A change in ownership; or

23 (2) Re-establishment or repair of a Tobacco Paraphernalia Establishment on the same
24 lot after destruction or damage due to fire, riot, insurrection or act of God; provided, however,
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1 that there is no expansion or significant change in mode or character of the enterprise which
2 intensifies the area devoted to selling Tobacco Paraphernalia; or

3 (3) Medical Cannabis Dispensaries, as defined in Section 3201(f) of the San Francisco
4 Health Code.

5 (d) This interim moratorium shall remain in effect for 45 days unless it is extended in
6 accordance with California Government Code Section 65858 or permanent controls are
7 adopted to address Tobacco Paraphernalia Establishments in the Haight Street Neighborhood
8 Commercial District and all properties zoned NC-1 (Neighborhood Commercial Cluster
9 District) and NC-2 (Small-Scale Neighborhood Commercial District) along Haight Street.

10 (e) Planning Department's Report. Within 25 days of the approval of this Urgency
11 Ordinance by the Board, the Planning Department shall submit to the Clerk of the Board a
12 written report describing the measures taken to alleviate the conditions that led to the
13 adoption of the Ordinance, i.e., the proliferation of establishments selling Tobacco
14 Paraphernalia in the Haight Street Neighborhood Commercial District and all properties zoned
15 NC-1 (Neighborhood Commercial Cluster District) and NC-2 (Small-Scale Neighborhood
16 Commercial District) along Haight Street.

17 (f) Upon receiving such report from the Planning Department, and no later than 35
18 days after this Ordinance is adopted, the Clerk must calendar a motion for the full Board to
19 consider and approve the report.

20 (g) Definitions. For the purposes of this interim moratorium, the following definitions
21 shall apply:

22 (1) "Tobacco Paraphernalia" means paraphernalia, devices, or instruments that are
23 designed or manufactured for the smoking, ingesting, inhaling, or otherwise introducing into
24 the body of tobacco, products prepared from tobacco, or controlled substances as defined in
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1 California Health and Safety Code Sections 11054 et seq. "Tobacco Paraphernalia" does not
2 include lighters, matches, cigarette holders, any device used to store or preserve tobacco,
3 tobacco, cigarettes, cigarette papers, cigars, or any other preparation of tobacco that is
4 permitted by existing law.

5 (2) "Tobacco Paraphernalia Establishments," means retail uses where more than 15%
6 of the gross square footage of the establishment is dedicated to the sale, distribution, delivery,
7 furnishing or marketing of Tobacco Paraphernalia from one person to another. Medical
8 Cannabis Dispensaries, as defined in Section 3201(f) of the San Francisco Health Code, are
9 not Tobacco Paraphernalia Establishments.

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11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

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14 By: ANDREA RUIZ-ESQUIDE
15 Deputy City Attorney

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