

1 [Zoning – Urgency Ordinance Extending An Interim Zoning Moratorium On Enterprises That
2 Sell Tobacco Paraphernalia.]

3 **Urgency Ordinance extending an interim zoning moratorium for six (6) months, to**
4 **temporarily prohibit the establishment of new enterprises, subject to specified**
5 **exceptions, that sell Tobacco Paraphernalia, as defined, in all Commercial, Mixed Use**
6 **and Industrial districts, and making findings, including findings of consistency with the**
7 **Priority Policies of Planning Code Section 101.1 and environmental findings.**

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

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

14 Section 1. Findings.

15 (a) General Findings.

16 (1) San Francisco has witnessed an increase in the number of enterprises selling
17 paraphernalia, devices, or instruments that are designed and manufactured for the smoking,
18 ingesting, inhaling, or otherwise introducing into the body of tobacco, products prepared from
19 tobacco, or controlled substances as defined in California Health and Safety Code Sections
20 11054 et seq. (“Tobacco Paraphernalia”).

21 (2) The inordinate number of these enterprises appears to contribute directly to
22 numerous peace, health, safety, and general welfare problems, including drug use, drug
23 sales, drug trafficking, other crimes associated with drug use, loitering, and littering, as well as
24 traffic circulation, parking, and noise problems on public streets and neighborhood lots.
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1 (3) The existence of such problems adversely impacts the health, safety, and welfare
2 of residents of nearby areas, including fear for the safety of children, elderly and disabled
3 residents, and visitors to San Francisco.

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

6 (5) Such adverse impacts also discourage more desirable and needed commercial
7 uses in various neighborhoods throughout the City.

8 (6) San Francisco's Commercial, Industrial, and Mixed Use Districts as established in
9 the San Francisco Municipal Code Part II, Chapter II ("Planning Code") Sections 210 et seq.
10 and 801 et seq., have experienced an increase in the number of retail sales and service
11 enterprises selling Tobacco Paraphernalia.

12 (7) The proliferation of these enterprises has had, and will continue to have,
13 detrimental impacts on the City's Commercial, Industrial and Mixed Use Districts.

14 (8) This interim moratorium is necessary to alleviate the problems and detrimental
15 impacts associated with enterprises selling Tobacco Paraphernalia pending a study and a
16 determination by the Department of City Planning and the Board of Supervisors of the
17 appropriate permanent controls for such enterprises.

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

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

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

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

7 (3) This moratorium was initially enacted on April 8, 2008, as Ordinance No. 64-08,
8 and went into effect on April 14, 2008. A copy of this Ordinance is on file with the Clerk of the
9 Board of Supervisors on File No. _____, and is incorporated herein by reference.

10 (4) On May 5, 2008, the Planning Department issued a Report to the Clerk of the
11 Board of Supervisors, analyzing the interim moratorium and describing the Department's
12 efforts to address the problem of excessive enterprises selling Tobacco Paraphernalia. On
13 _____, 2008, the Board adopted such report in Motion No. _____. Said Report
14 and Motion are on file with the Clerk of the Board of Supervisors in File No. _____, and
15 are incorporated herein by reference.

16 (5) The Board has considered the impact on the public health, safety, peace, and
17 general welfare if the interim controls proposed herein are not extended.

18 (6) The Board has determined that the public interest will be best served by extension
19 of this interim moratorium at this time, in order to ensure that the permanent controls which
20 may be ultimately adopted are not undermined during the planning and legislative process,
21 which process shall be conducted within a reasonable time.

22 (7) The Board has determined that the extension of this moratorium will have no effect
23 on multifamily housing, therefore there is no need to make the findings specified in California
24 Government Code Section 65858(c)(1)-(3).

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1 (8) The Board has decided to extend the moratorium for a total of six (6) months from
2 the day of expiration of the initial moratorium.

3 (c) Planning Code Section 101.1 Findings.

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

9 (d) Environmental Findings.

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

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

16 (a) New Uses Selling Tobacco Paraphernalia Prohibited. As of the effective date of
17 this emergency ordinance, the establishment of any new use that sells Tobacco
18 Paraphernalia, as defined herein, is prohibited in all of the City's Commercial, Industrial and
19 Mixed Use districts.

20 (b) Existing Uses Exempted. Any lawfully existing enterprise that sells Tobacco
21 Paraphernalia prior to the effective date of this emergency ordinance is exempt from this
22 interim moratorium unless such enterprise ceases to operate or discontinues operation for
23 ninety (90) days or longer, in which event the use shall be deemed abandoned.

24 (c) This interim zoning moratorium shall not apply to:
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1 (1) A change in ownership; or
2 (2) Re-establishment or repair of an enterprise selling Tobacco Paraphernalia on the
3 same lot after destruction or damage due to fire, riot, insurrection or act of God; provided,
4 however, that there is no expansion or significant change in mode or character of the
5 enterprise which intensifies the area devoted to selling tobacco paraphernalia.

6 (d) This interim moratorium shall remain in effect for six (6) months from the date of
7 expiration of the initial interim moratorium.

8 (e) Definitions. For the purposes of this interim moratorium, the following definitions
9 shall apply:

10 (1) "Sell", "Sells", or "Selling" means a commercial transaction in which Tobacco
11 Paraphernalia is sold, distributed, delivered, furnished, or marketed from one person to
12 another;

13 (2) "Tobacco Paraphernalia" means paraphernalia, devices, or instruments that are
14 designed or manufactured for the smoking, ingesting, inhaling, or otherwise introducing into
15 the body of tobacco, products prepared from tobacco, or controlled substances as defined in
16 California Health and Safety Code Sections 11054 et seq. Tobacco Paraphernalia does not
17 include tobacco, cigarettes, cigarette papers, cigars, or any other preparation of tobacco that
18 is permitted by existing law.

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

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23 By: ANDREA RUIZ-ESQUIDE
24 Deputy City Attorney

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