

1 [Interim Zoning Controls Requiring Conditional Use Authorization for Tobacco Paraphernalia
2 Establishments, as Defined, in the Haight Street Neighborhood Commercial District and in all
3 properties zoned NC-1 (Neighborhood Commercial Cluster District) and NC-2 (Small-Scale
4 Neighborhood Commercial District) along Haight Street.]

5 **Resolution imposing interim zoning controls establishing a requirement for conditional**
6 **use authorization for Tobacco Paraphernalia Establishments, as defined, subject to**
7 **specified exceptions, in the Haight Street Neighborhood Commercial District and in all**
8 **properties zoned NC-1 (Neighborhood Commercial Cluster District) and NC-2 (Small-**
9 **Scale Neighborhood Commercial District) along Haight Street, for a one year period,**
10 **and making findings, including findings of consistency with the priority policies of**
11 **Planning Code Section 101.1 and environmental findings.**

12 WHEREAS, Planning Code Section 306.7 provides for the imposition of interim zoning
13 controls to accomplish several objectives, including preservation of residential and mixed
14 residential and commercial areas in order to preserve the existing character of such
15 neighborhoods and areas, and development and conservation of the commerce and industry
16 of the City in order to maintain the economic vitality of the City, to provide its citizens with
17 adequate jobs and business opportunities, and to maintain adequate services for its residents,
18 visitors, businesses and institutions; and

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

3 WHEREAS, The inordinate number of these enterprises appears to contribute directly
4 to numerous peace, health, safety, and general welfare problems, including drug use, drug
5 sales, drug trafficking, other crimes associated with drug use, loitering, and littering, as well as
6 traffic circulation, parking, and noise problems on public streets and neighborhood lots; and

7 WHEREAS, The existence of such problems adversely impacts the health, safety, and
8 welfare of residents of nearby areas, including fear for the safety of children, elderly and
9 disabled residents, and visitors to San Francisco; and

10 WHEREAS, Such problems also contribute to the deterioration of the surrounding
11 neighborhoods, concomitant devaluation of real property, and destruction of community
12 values and quality of life; and

13 WHEREAS, Such adverse impacts also discourage more desirable and needed
14 commercial uses in the area; and

15 WHEREAS, The proliferation of these enterprises has had, and will continue to have,
16 detrimental impacts on the Haight Street area; and

17 WHEREAS, These interim controls are intended and designed to deal with and
18 ameliorate the problems and conditions associated with the proliferation of establishments
19 selling Tobacco Paraphernalia in the Haight Neighborhood Commercial District and in the
20 areas zoned as NC-1 (Neighborhood Commercial Cluster District) and NC-2 (Small-Scale
21 Neighborhood Commercial District) along Haight Street, by requiring conditional use
22 authorization for such establishments uses during the next year; and

23 WHEREAS, This Board has considered the impact on the public health, safety, peace,
24 and general welfare if the interim controls proposed herein were not imposed; and

1 WHEREAS, This Board has determined that the public interest will be best served by
2 imposition of these interim controls at this time in order to ensure that the legislative scheme
3 which may be ultimately adopted is not undermined during the planning and legislative
4 process for permanent controls; and

5 WHEREAS, The Planning Department has determined that the actions contemplated in
6 this Resolution are in compliance with the California Environmental Quality Act (California
7 Public Resources Code Section 21000 et. seq.). Said determination is on file with the Clerk of
8 the Board of Supervisors in File No. 090101 and is incorporated herein by reference; now,
9 therefore, be it

10 RESOLVED, Pursuant to Planning Code Section 306.7, the Board of Supervisors, by
11 this resolution, hereby prohibits any City agency, board, commission, officer or employee from
12 approving any site permit, building permit or any other permit or license authorizing the
13 establishment of any Tobacco Paraphernalia Establishments, as defined herein, unless the
14 action would conform both to the existing provisions of the Planning Code and this resolution
15 imposing interim controls; and, be it

16 FURTHER RESOLVED, That for the purpose of these interim controls "Tobacco
17 Paraphernalia" shall mean paraphernalia, devices, or instruments that are designed or
18 manufactured for the smoking, ingesting, inhaling, or otherwise introducing into the body of
19 tobacco, products prepared from tobacco, or controlled substances as defined in California
20 Health and Safety Code Sections 11054 et seq., and shall not include lighters, matches,
21 cigarette holders, any device used to store or preserve tobacco, tobacco, cigarettes, cigarette
22 papers, cigars, or any other preparation of tobacco that is permitted by existing law; and, be it

23 FURTHER RESOLVED, That for the purpose of these interim controls, "Tobacco
24 Paraphernalia Establishments" shall mean retail uses where Tobacco Paraphernalia is sold,
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1 distributed, delivered, furnished, or marketed from one person to another, and shall not
2 include Medical Cannabis Dispensaries, as defined in Section 3201(f) of the San Francisco
3 Health Code; and, be it

4 FURTHER RESOLVED, That as of the effective date of this Resolution, the
5 establishment of any new Tobacco Paraphernalia Establishment, as defined herein, in the
6 Haight Street Neighborhood Commercial District, as defined in Section 719.1 of the Planning
7 Code, and in all properties zoned NC-1 (Neighborhood Commercial Cluster District) and NC-2
8 (Small-Scale Neighborhood Commercial District) along Haight Street, as designated in the
9 Zoning Use District Maps ZN 06 and ZN 07 of the Zoning Map of the City and County of San
10 Francisco, shall be subject to a conditional use authorization; and, be it

11 FURTHER RESOLVED, That any Tobacco Paraphernalia Establishment lawfully
12 existing prior to the effective date of this interim controls is exempt from these interim controls,
13 unless such enterprise ceases to operate or discontinues operation for ninety (90) days or
14 longer, in which event the use shall be deemed abandoned; and, be it

15 FURTHER RESOLVED, That these interim zoning controls shall not apply to a change
16 in ownership; or to the re-establishment or repair of a Tobacco Paraphernalia Establishment
17 on the same lot after destruction or damage due to fire, riot, insurrection or act of God;
18 provided, however, that there is no expansion or significant change in mode or character of
19 the enterprise which intensifies the area devoted to selling Tobacco Paraphernalia; or, to
20 Medical Cannabis Dispensaries, as defined in Section 3201(f) of the San Francisco Health
21 Code.

22 FURTHER RESOLVED, That for purposes of these interim controls "conditional use"
23 shall have the meaning given that term in Planning Code Section 303; and, be it

1 FURTHER RESOLVED, That for purposes of these interim controls, the Planning
2 Commission, as part of its decision on a conditional use application for any use subject to
3 these controls, shall make the following findings:

4 (1) The concentration of such establishments in the particular zoning district for which
5 they are proposed does not appear to contribute directly to peace, health, safety, and general
6 welfare problems, including drug use, drug sales, drug trafficking, other crimes associated
7 with drug use, loitering, and littering, as well as traffic circulation, parking, and noise problems
8 on the district's public streets and lots;

9 (2) The concentration of such establishments in the particular zoning district for which
10 they are proposed does not appear to adversely impact the health, safety, and welfare of
11 residents of nearby areas, including fear for the safety of children, elderly and disabled
12 residents, and visitors to San Francisco; and

13 (3) The proposed establishment is compatible with the existing character of the
14 particular district for which it is proposed.

15 FURTHER RESOLVED, That these interim controls shall become effective upon the
16 date of introduction of this Resolution; and, be it

17 FURTHER RESOLVED, That these interim controls shall remain in effect for one year
18 or until the adoption of permanent legislation regulating Tobacco Paraphernalia
19 Establishments, as defined herein, in the Haight Street Neighborhood Commercial District, as
20 defined in Section 719.1 of the Planning Code, and in all properties zoned NC-1
21 (Neighborhood Commercial Cluster District) and NC-2 (Small-Scale Neighborhood
22 Commercial District) along Haight Street, whichever first occurs; and, be it

23 FURTHER RESOLVED, That these interim zoning controls advance and are consistent
24 with Priority Policies the Planning Code Section 101.1, particularly Policies 1 and 2, in that
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1 they attempt to preserve and enhance the character and vitality of one of the City's
2 neighborhoods. With respect to Priority Policies 3, 4, 5, 6, 7, and 8, the Board finds that these
3 interim zoning controls do not, at this time, have an effect upon these policies, and thus, will
4 not conflict with said policies.

5 APPROVED AS TO FORM:

6 DENNIS J. HERRERA, City Attorney

7
8 By:


Andrea Ruiz-Esquide
Deputy City Attorney



City and County of San Francisco

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Tails

Resolution

File Number: 090101

Date Passed:

Resolution imposing interim zoning controls establishing a requirement for conditional use authorization for Tobacco Paraphernalia Establishments, as defined, subject to specified exceptions, in the Haight Street Neighborhood Commercial District and in all properties zoned NC-1 (Neighborhood Commercial Cluster District) and NC-2 (Small-Scale Neighborhood Commercial District) along Haight Street, for a one year period, and making findings, including findings of consistency with the priority policies of Planning Code Section 101.1 and environmental findings.

March 3, 2009 Board of Supervisors — ADOPTED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

File No. 090101

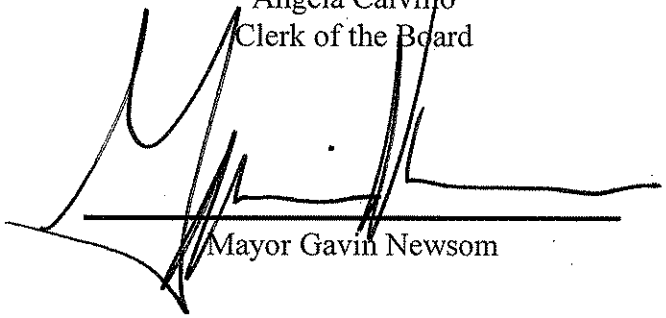
I hereby certify that the foregoing Resolution was ADOPTED on March 3, 2009 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board

3/9/09

Date Approved



Mayor Gavin Newsom