

1 [Zoning – Interim zoning controls requiring conditional use authorization for new development
2 in the Bernal Heights Brewster/Joy Neighborhood.]

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4 **Ordinance approving interim zoning controls requiring conditional use authorization**
5 **for new development in the Bernal Heights Brewster/Joy Neighborhood on the East**
6 **Slope of Bernal Heights, and making findings of consistency with the priority policies**
7 **of Planning Code Section 101.1 and environmental findings.**

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

10 Section 1. Findings.

11 (a) General Findings.

12 (1) The Brewster/Joy Neighborhood, defined as the property consisting of Blocks
13 5556, 5557 , 5574, 5575, and 5577, has a history of significant problems pertaining to
14 outdated and unimproved infrastructure, fire protection services, soil erosion, emergency
15 vehicle access, parking, loss of open space, and degradation of neighborhood character.

16 (2) In a 1993 memorandum the Planning Department recognized that the Brewster/Joy
17 Neighborhood needed "significant street and infrastructure improvements in order to make the
18 existing, developed areas accessible to fire engines and other emergency vehicles" and
19 recognized neighborhood problems with "poor water pressure" and an "inadequate sewer
20 system." Subsequent remedial efforts by the City have not addressed the significant health,
21 safety, and quality of life issues facing the Brewster/Joy Neighborhood as evidenced by
22 ongoing complaints and concerns by neighborhood residents.

23 (3) In a memorandum dated February 19, 2002, the San Francisco Department of
24 Public Works recognized the continued existence of public health and safety issues in the
25 Brewster/Joy Neighborhood and identified infrastructure and other improvements to be made

1 by the City in order to address concerns raised by neighborhood residents. Many of these
2 issues remain unaddressed or unresolved.

3 (4) The Brewster/Joy Neighborhood continues to have sewer flooding and backflow
4 problems. Winter storms regularly flood the area of Brewster and Holladay streets. In 2005,
5 there was a category 3 sewage backflow at 18 Joy Street for which the City and County of
6 San Francisco ("City") accepted responsibility. On December 7, 2005, staff from the San
7 Francisco Public Utilities Commission recommended to a neighborhood resident the lining of
8 the entire Joy Street main by summer of 2006 to avoid future problems. Permanent
9 improvements have not been made.

10 (5) Neighborhood residents have complained to the City about the "obnoxious odor"
11 emanating from the sewers on Holladay Avenue.

12 (6) The Brewster/Joy Neighborhood Committee has observed significant soil and hill
13 slippage during heavy rains due to lack of retaining walls on City property located on either
14 side of the Joy Street stairs for lots 5575 (007-011). Development of the Joy Street hill
15 threatens eight mature trees that provide erosion control as well as wildlife habitat.

16 (7) A fire on Joy Street on July 4, 2000, raised significant concerns regarding City fire
17 protection capability in the Brewster/Joy Neighborhood. Emergency vehicle access was
18 limited due to congestion and narrowness of Holladay and Brewster streets. The "hook and
19 ladder" truck and smaller fire engines were unable to access the area. Furthermore, the San
20 Francisco Fire Department had a difficult time obtaining sufficient water pressure for fire
21 hoses.

22 (8) Forty-seven new houses have been constructed in the Brewster/Joy Neighborhood
23 since the 1984. New homes typically are much larger and more expensive than historic
24 neighborhood residences and threaten the character and identity of the neighborhood.
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1 (9) Neighborhood residents report that construction equipment from new development
2 projects sometimes blocks access to narrow one-lane streets and further restricts emergency
3 vehicle access.

4 (10) Uncontrolled development of the unimproved lots on Brewster and Joy streets will
5 exacerbate existing problems with infrastructure, emergency vehicle access, fire protection
6 services, soil erosion, and parking.

7 (11) The public health, safety, and general welfare necessitate imposition of zoning
8 controls that will ensure that additional development in the Brewster/Joy Neighborhood will not
9 worsen conditions. Conditional use authorization will require the Planning Commission to
10 make detailed written findings that infrastructure issues, fire protection services, and other
11 concerns have been resolved prior to new construction that could aggravate known health
12 and safety issues in the area. Pre-construction investigation of these issues will provide the
13 basis for safe and well-planned development consistent with the character of the Brewster/Joy
14 Neighborhood.

15 (b) Findings related to imposition of interim zoning controls.

16 (1) Planning Code Section 306.7 provides for the imposition of interim zoning controls
17 to accomplish several objectives, including preservation of historic and architecturally
18 significant buildings and areas; preservation of residential neighborhoods; control of uses
19 which have an adverse impact on open space and other recreational areas and facilities; and
20 control of uses which generate an adverse impact on pedestrian and vehicular traffic.

21 (2) Pursuant to this resolution, Planning Commission approval of conditional use
22 application will require detailed findings relating to health, safety, and general welfare of
23 residents of the Brewster/Joy Neighborhood in order to ensure that the area can support
24 additional development without exacerbating existing neighborhood problems.

1 (3) Pursuant to Planning Code Section 307, Subsection (b), no City department may
2 approve any application for a building or site permit unless the action would conform both to
3 the existing provisions of the Planning Code and also to the provisions set forth in this
4 resolution.

5 (4) These controls will work in parallel with City and neighborhood efforts to identify
6 and ameliorate the problems and conditions associated with infrastructure, fire protection
7 services, emergency vehicle access, soil erosion, parking, and protection of the
8 neighborhood's unique character and open space.

9 (5) This 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 (6) This Board has determined that the public interest will be best served by imposition
12 of these interim controls at this time in order to ensure that the legislative scheme that may be
13 ultimately adopted is not undermined during the planning and legislative process for
14 permanent controls, 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 Priority Policy 6 of Planning
17 Code Section 101.1 because it promotes fire protection services, emergency vehicle access,
18 and infrastructure repair that will protect against injury and loss of life in an earthquake. The
19 program is consistent with Priority Policies 2 and 3 in that it seeks to conserve existing
20 housing and neighborhood character and protect the cultural and economic diversity of our
21 neighborhoods. The Board finds that the interim zoning moratorium does not affect or conflict
22 with Priority Policies 1, 4, 5, 7, and 8.

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

5 Section 2. The following interim zoning controls shall apply to the Brewster/Joy
6 Neighborhood:

7 (a) For purposes of this ordinance, the "Brewster/Joy Neighborhood" shall be defined as
8 the property consisting of Blocks 5556, 5557 , 5574, 5575, and 5577.

9 (b) Pursuant to the City's authority to issue interim zoning controls under Section 306.7 of
10 the Planning Code, any new development in the Brewster/Joy Neighborhood shall require
11 conditional use authorization pursuant to procedure set forth in Article 3 of the Planning Code.

12 (c) In addition to the conditional use authorization requirements set forth in Article 3 of the
13 Planning Code, the Planning Commission shall only approve an application for a conditional
14 use authorization if facts are presented to establish:

15 (1) Sewer infrastructure and flooding problems in the Brewster/Joy
16 Neighborhood have been resolved and new development in the Brewster/Joy Neighborhood
17 will not cause such problems to recur;

18 (2) New construction and construction related-activities neighborhood will not
19 significantly and adversely impact emergency vehicle access to the Brewster/Joy
20 Neighborhood;

21 (3) Fire-hydrant water pressure and fire protection infrastructure is adequate to
22 address current neighborhood needs and can support new construction in the Brewster/Joy
23 Neighborhood;

1 (4) Garbage and recycling services in the Brewster/Joy Neighborhood can and
2 will support new construction;

3 (5) Sufficient erosion control and landslide prevention measures exist to prevent
4 damage to new and existing property in the Brewster/Joy Neighborhood;

5 (6) Construction in the Brewster/Joy Neighborhood is consistent with City
6 priority policy of preserving open space and protecting wildlife habitat from development; and

7 (7) New construction in the Brewster/Joy Neighborhood will not significantly and
8 adversely impact parking availability, particularly with regard to residences dependent on
9 street parking due to lack of direct street access.

10 (d) Any conditional use authorization pursuant to this Resolution shall be accompanied by
11 detailed written findings for each of the required showings set forth in subsection (c), above.

12 (e) This ordinance shall apply to all development projects that have not received a first
13 site or building permit on or before the effective date of this ordinance.

14 (f) These interim zoning controls shall remain in effect for 18 months unless extended in
15 accordance with Planning Code Section 306.7(h) or until permanent controls are adopted to
16 address the issues posed by new development in the Brewster/Joy Neighborhood.

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

19 By: _____
20 Andrew W. Garth
21 Deputy City Attorney
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