

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

3 **~~Ordinance~~Resolution approving interim zoning controls requiring conditional use**
4 **authorization for new development in the Bernal Heights Brewster/Joy Neighborhood**
5 **on the East Slope of Bernal Heights for 18 months, and making findings of consistency**
6 **with the priority policies of Planning Code Section 101.1 and environmental findings.**

7 Note: Board amendment additions are double underlined.
8 Board amendment deletions are ~~strikethrough~~ normal.

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

10 WHEREAS, The Board of Supervisors of the City and County of San Francisco makes
11 the following general findings:

12 ~~Section 1. Findings.~~

13 ~~(a) General Findings.~~

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16 outdated and unimproved infrastructure, fire protection services, soil erosion, emergency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

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

1 (3) In a memorandum dated February 19, 2002, the San Francisco Department of
2 Public Works recognized the continued existence of public health and safety issues in the
3 Brewster/Joy Neighborhood and identified infrastructure and other improvements to be made
4 by the City in order to address concerns raised by neighborhood residents. Many of these
5 issues remain unaddressed or unresolved.

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

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

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

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

1 (8) Forty-seven new houses have been constructed in the Brewster/Joy Neighborhood
2 since the 1984. New homes typically are much larger and more expensive than historic
3 neighborhood residences and threaten the character and identity of the neighborhood.

4 (9) Neighborhood residents report that construction equipment from new development
5 projects sometimes blocks access to narrow one-lane streets and further restricts emergency
6 vehicle access.

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

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

18 ~~(b) WHEREAS, The Board of Supervisors makes the following f~~Findings related to
19 imposition of interim zoning controls;:

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

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

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

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

13 (5) This Board has considered the impact on the public health, safety, peace, and
14 general welfare if the interim controls proposed herein were not imposed.

15 (6) This Board has determined that the public interest will be best served by imposition
16 of these interim controls at this time in order to ensure that the legislative scheme that may be
17 ultimately adopted is not undermined during the planning and legislative process for
18 permanent controls, which process shall be conducted within a reasonable time.

19 (7) Public and written comments related to the proposed controls have demonstrated
20 significant differences of opinion regarding the infrastructure conditions at issue and illustrate
21 the importance of public investigation and information gathering prior to additional
22 development of the Brewster/Joy Neighborhood; and

23 ~~(c) WHEREAS, The Board of Supervisors makes the following findings of consistency with~~
24 the Priority Policies set forth in Planning Code Section 101.1 Findings;
25

1 ~~This~~These interim zoning ~~controls~~moratorium advances and is are consistent with
2 Priority Policy 6 of Planning Code Section 101.1 because ~~it~~ they promotes fire protection
3 services, emergency vehicle access, and infrastructure repair that will protect against injury
4 and loss of life in an earthquake. The program is consistent with Priority Policies 2 and 3 in
5 that it seeks to conserve existing housing and neighborhood character and protect the cultural
6 and economic diversity of our neighborhoods. The Board finds that these interim zoning
7 ~~controls~~moratorium does not affect or conflict with Priority Policies 1, 4, 5, 7, and 8-; and

8 ~~(d) Environmental Findings.~~

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

14 ~~Section 2.~~ RESOLVED That ~~The~~ the following interim zoning controls shall apply to the
15 Brewster/Joy Neighborhood:

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

18 (b) Pursuant to the City's authority to issue interim zoning controls under Section 306.7 of
19 the Planning Code, any new development in the Brewster/Joy Neighborhood shall require
20 conditional use authorization pursuant to procedure set forth in Article 3 of the Planning Code.
21 For purposes of these controls, "new development" shall mean construction of new buildings,
22 or demolition (as defined by the Building Code) of existing buildings for purposes of new
23 construction.

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

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

7 (2) New construction and construction related-activities in the Brewster/Joy
8 Neighborhood will not significantly and adversely impact emergency vehicle access to the
9 Brewster/Joy Neighborhood;

10 (3) Fire-hydrant water pressure and fire protection infrastructure is adequate to
11 address current neighborhood needs and can support new development ~~construction~~ in the
12 Brewster/Joy Neighborhood;

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

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

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

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

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

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

4 (f) Within 90 days of the effective date of this Resolution, the affected City Departments,
5 including but not limited to the San Francisco Public Utilities Commission, the Fire
6 Department, and the Department of Public Works, shall submit to the District Supervisor
7 (representing the Brewster/Joy Neighborhood) written reports summarizing the results of their
8 investigations and describing improvement measures and related progress; and, be it

9 ~~(f)~~ FURTHER RESOLVED That ~~These~~ interim zoning controls shall remain in effect for
10 18 months unless extended in accordance with Planning Code Section 306.7(h) or until
11 permanent controls are adopted to address the issues posed by new development in the
12 Brewster/Joy Neighborhood, whichever first occurs.

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

15 By: _____
16 Andrew W. Garth
17 Deputy City Attorney