

1 [Zoning –Urgency Ordinance imposing an interim zoning moratorium on enterprises that sell
2 Tobacco Paraphernalia.]

3 **Urgency Ordinance imposing an interim zoning moratorium to temporarily prohibit the**
4 **establishment of new enterprises, subject to specified exceptions, that sell Tobacco**
5 **Paraphernalia, as defined, in all Commercial, Mixed Use and Industrial districts for 45**
6 **days and making findings, including findings of consistency with the Priority Policies**
7 **of Planning Code Section 101.1 and environmental findings.**

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

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

12 Section 1. Findings.

13 (a) General Findings.

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

19 (2) The inordinate number of these enterprises appears to contribute directly to
20 numerous peace, health, safety, and general welfare problems, including drug use, drug
21 sales, drug trafficking, other crimes associated with drug use, loitering, and littering, as well as
22 traffic circulation, parking, and noise problems on public streets and neighborhood lots.

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

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

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

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

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

11 (8) The imposition of this interim moratorium is necessary to alleviate the problems
12 and detrimental impacts associated with enterprises selling Tobacco Paraphernalia pending a
13 study and a determination by the Department of City Planning and the Board of Supervisors of
14 the appropriate permanent controls for such enterprises.

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

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

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

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

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

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

9 (c) Planning Code Section 101.1 Findings.

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

15 (d) Environmental Findings.

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

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

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

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

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

8 (1) A change in ownership; or

9 (2) Re-establishment or repair of an enterprise selling Tobacco Paraphernalia on the
10 same lot after destruction or damage due to fire, riot, insurrection or act of God; provided,
11 however, that there is no expansion or significant change in mode or character of the
12 enterprise which intensifies the area devoted to selling tobacco paraphernalia.

13 (d) This interim moratorium shall remain in effect for 45 days unless it is extended in
14 accordance with California Government Code Section 65858 or permanent controls are
15 adopted to address Tobacco Paraphernalia.

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

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


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

3 Section 3. Within 25 days of the Board's approval of this Ordinance, the Planning
4 Department shall submit to the Clerk of the Board a written report describing the measures
5 taken to alleviate the conditions that led to the adoption of the Ordinance. Upon receipt of the
6 report, the Clerk shall calendar a motion for the full Board to consider and approve said report.
7 Said hearing and the action taken thereon shall be no later than 35 days after this Ordinance
8 is finally adopted.

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

12 By:


13 ANDREA RUIZ ESQUIDE
14 Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 080237

Date Passed:

Urgency Ordinance imposing an interim zoning moratorium to temporarily prohibit the establishment of new enterprises, subject to specified exceptions, that sell tobacco paraphernalia, as defined, in all Commercial, Mixed Use and Industrial districts for 45 days and making findings, including findings of consistency with the Priority Policies of Planning Code Section 101.1 and environmental findings.

April 8, 2008 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 080237

I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on April 8, 2008 by
the Board of Supervisors of the City and
County of San Francisco.

Angela Calvillo

Angela Calvillo
Clerk of the Board

4.14.08

Date Approved

[Signature]
Mayor Gavin Newsom