

1 [Interim Zoning Controls Requiring Conditional Use Authorization for Tobacco Paraphernalia
2 Establishments, as Defined, in the Polk Street Neighborhood Commercial District.]

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4 **Resolution imposing interim zoning controls establishing a requirement for conditional**
5 **use authorization for Tobacco Paraphernalia Establishments, as defined, and subject**
6 **to specified exceptions, in the Polk Street Neighborhood Commercial District, for a one**
7 **year period, and making findings, including findings of consistency with the priority**
8 **policies of Planning Code Section 101.1 and environmental findings.**

9
10 WHEREAS, Planning Code Section 306.7 provides for the imposition of interim zoning
11 controls to accomplish several objectives, including preservation of residential and mixed
12 residential and commercial areas in order to preserve the existing character of such
13 neighborhoods and areas, and development and conservation of the commerce and industry
14 of the City in order to maintain the economic vitality of the City, to provide its citizens with
15 adequate jobs and business opportunities, and to maintain adequate services for its residents,
16 visitors, businesses and institutions; and

17 WHEREAS, Polk Street has witnessed an increase in the number of enterprises selling
18 paraphernalia, devices, or instruments that are designed and manufactured for the smoking,
19 ingesting, inhaling, or otherwise introducing into the body of tobacco, products prepared from
20 tobacco, or controlled substances as defined in California Health and Safety Code Sections
21 11054 et seq.; and

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

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

4 WHEREAS, Such problems also contribute to the deterioration of the surrounding
5 neighborhoods, concomitant devaluation of real property, and destruction of community
6 values and quality of life; and

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

9 WHEREAS, The proliferation of these enterprises has had, and will continue to have,
10 detrimental impacts on the Polk Street area; and

11 WHEREAS, These interim controls are intended and designed to deal with and
12 ameliorate the problems and conditions associated with the proliferation of establishments
13 selling Tobacco Paraphernalia in the Polk Neighborhood Commercial District, by requiring
14 conditional use authorization for such establishments uses during the next year; and

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

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

21 WHEREAS, The Planning Department has determined that the actions contemplated in
22 this Resolution are in compliance with the California Environmental Quality Act (California
23 Public Resources Code Section 21000 et. seq.). Said determination is on file with the Clerk of
24 the Board of Supervisors in File No. 090963 and is incorporated herein by reference; now,
25 therefore, be it

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

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

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

19 FURTHER RESOLVED, That as of the effective date of this Resolution, the
20 establishment of any new Tobacco Paraphernalia Establishment, as defined herein, in the
21 Polk Street Neighborhood Commercial District, as defined in Section 723.1 of the Planning
22 Code, as designated in the Zoning Use District ZN02 of the Zoning Map of the City and
23 County of San Francisco, shall be subject to a conditional use authorization; and, be it

24 FURTHER RESOLVED, That any Tobacco Paraphernalia Establishment lawfully
25 existing prior to the effective date of this interim controls is exempt from these interim controls,

1 unless such enterprise ceases to operate or discontinues operation for ninety (90) days or
2 longer, in which event the use shall be deemed abandoned; and, be it

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

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

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

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

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

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

1 FURTHER RESOLVED, That once effective, these interim controls shall apply to any
2 Tobacco Paraphernalia Establishment, as defined, that was not in operation as of the date of
3 introduction of this Resolution; and, be it

4 FURTHER RESOLVED, That these interim controls shall remain in effect for one year
5 or until the adoption of permanent legislation regulating Tobacco Paraphernalia
6 Establishments, as defined herein, in the Polk Street Neighborhood Commercial District, as
7 defined in Section 723.1 of the Planning Code, whichever first occurs; and, be it

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

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

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17 By: 
18 Andrea Ruiz-Esquivel
19 Deputy City Attorney
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City and County of San Francisco

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Tails Resolution

File Number: 090963

Date Passed:

Resolution imposing interim zoning controls establishing a requirement for conditional use authorization for Tobacco Paraphernalia Establishments, as defined, and subject to specified exceptions, in the Polk Street Neighborhood Commercial District, 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.

October 6, 2009 Board of Supervisors — ADOPTED

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

File No. 090963

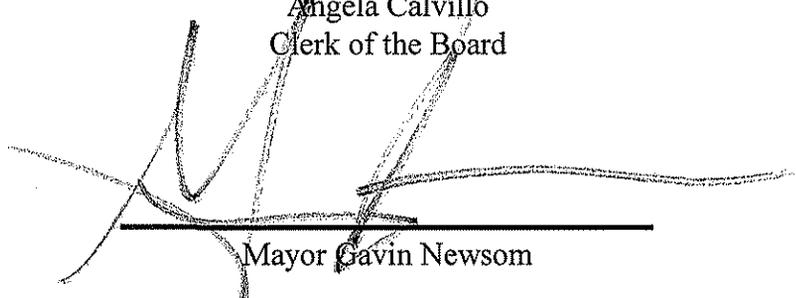
I hereby certify that the foregoing Resolution was ADOPTED on October 6, 2009 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board

10/8/09

Date Approved



Mayor Gavin Newsom