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.

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

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

WHEREAS, The inordinate number of these enterprises appears to contribute directly to numerous peace, health, safety, and general welfare problems, including drug use, drug sales, drug trafficking, other crimes associated with drug use, loitering, and littering, as well as traffic circulation, parking, and noise problems on public streets and neighborhood lots; and
WHEREAS, The existence of such problems adversely impacts the health, safety, and
welfare of residents of nearby areas, including fear for the safety of children, elderly and
disabled residents, and visitors to San Francisco; and
WHEREAS, Such problems also contribute to the deterioration of the surrounding
neighborhoods, concomitant devaluation of real property, and destruction of community
values and quality of life; and
WHEREAS, Such adverse impacts also discourage more desirable and needed
commercial uses in the area; and
WHEREAS, The proliferation of these enterprises has had, and will continue to have,
detrimental impacts on the Polk Street area; and
WHEREAS, These interim controls are intended and designed to deal with and
ameliorate the problems and conditions associated with the proliferation of establishments
selling Tobacco Paraphernalia in the Polk Neighborhood Commercial District, by requiring
conditional use authorization for such establishments uses during the next year; and
WHEREAS, This Board has considered the impact on the public health, safety, peace,
and general welfare if the interim controls proposed herein were not imposed; and
WHEREAS, This Board has determined that the public interest will be best served by
imposition of these interim controls at this time in order to ensure that the legislative scheme
which may be ultimately adopted is not undermined during the planning and legislative
process for permanent controls; and
WHEREAS, The Planning Department has determined that the actions contemplated in
this Resolution are in compliance with the California Environmental Quality Act (California
Public Resources Code Section 21000 et. seq.). Said determination is on file with the Clerk of
the Board of Supervisors in File No. 090963 and is incorporated herein by reference; now,
therefore, be it

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: Andrea Ruiz-Esquide
Deputy City Attorney
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
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