

1 NOW, THEREFORE, THE ALBANY CITY COUNCIL DOES HEREBY
2 ORDAIN AS FOLLOWS:
3

4 **Section 1: Purpose and findings.**
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6 Tobacco related establishments are not currently mentioned in the City of
7 Albany Zoning Ordinance. The City of Albany has recently become aware of interest
8 in locating such a use within the city. With the recent adoption of Ordinance #08-03,
9 prohibiting smoking in or around workplaces, recreational areas and other places, the
10 community has shown concern regarding the impacts of smoking within the city.
11 Unregulated locating of tobacco related establishments may be in conflict with the
12 public health, safety and welfare. Thus, in view of the facts set forth in this
13 ordinance, it is necessary to immediately study, hold public hearings, and consider an
14 amendment of the City's Zoning Ordinance and the adoption of restrictions or
15 regulations as they may be recommended to the City Council by the Planning and
16 Zoning Commission. A comprehensive set of restrictions and regulations cannot be
17 enacted without due deliberation, and it will take an indeterminate length of time to
18 create the potential restrictions. It would not be in keeping with the proposed
19 restrictions if, during the period they are being studied and are the subject of public
20 hearings, parties seeking to evade the operation of these restrictions in the form which
21 may be adopted should be permitted to operate in a manner which might progress so
22 far as to defeat in whole or in part the ultimate objective of those restrictions. As a
23 result, it is necessary to, in accordance with Government Code Section 65858,
24 temporarily establish a 45-day moratorium on the establishment and operation of new
25 tobacco related establishments in the City pending the completion of the City's study
26 of potential impacts and possible amendments to the City's Zoning Ordinance.
27

28 **Section 2: Interim Suspension of Permits, Approvals, or Other Entitlements.**
29

30 Notwithstanding any other provisions of the Albany Municipal Code or any
31 other ordinances or regulations of the City of Albany to the contrary, no permits,
32 licenses, or other applicable entitlements for use, which has as its result the final
33 approval or allowance of tobacco related establishments within the City of Albany,
34 shall be granted or approved by any employee, department or commission of the City
35 for a period of forty-five days immediately succeeding the effective date of this
36 ordinance, unless appealed or extended by a later enacted ordinance.
37

38 **Section 3: Immediate threat to health, safety and welfare.**
39

40 Based on the findings herein, this ordinance is adopted pursuant to California
41 Government Code §65858 and is required to address a current and immediate threat
42 to the public health, safety and welfare. The City Council has determined that
43 granting additional land use approvals or building permits for tobacco related
44 establishments would result in a threat to the public health, safety and welfare.
45

1 **Section 4: Amendments to Ordinance.**
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3 The City Council by ordinance after notice of public hearing, by the
4 affirmative vote of at least four-fifths (4/5) of the voting City Council Members may
5 modify, amend, delete or add to this ordinance upon a finding that such action will
6 implement and enforce the goals, policies, and purposes of this ordinance.
7

8 **Section 5: Waiver.**
9

10 The City, on a case by case basis, shall have the authority, upon a showing of
11 good cause by an applicant, to waive the interim prohibition/moratorium imposed by
12 this ordinance and allow for the granting of permits to said applicant pursuant to the
13 Conditional Use Permit process set forth in the Albany Municipal Code. Good cause
14 shall mean a factual and evidentiary showing by the applicant that the interim
15 prohibition/moratorium, if not waived, will deprive the applicant of substantially all
16 reasonable use of his/her property. All such applications for waiver shall be filed with
17 the City Community Development Department. Fees for waiver applications and
18 associated appeals shall be the same as those charged for a Conditional Use Permit.
19

20 **Section 6: Urgency Ordinances; Extension.**
21

22 This interim urgency ordinance shall by operation of law be of no further
23 force and effect forty five (45) days from and after the date of this adoption on May
24 19, 2008; provided, however, that after notice of public hearing the City Council
25 Members may by a four-fifths (4/5) of the voting City Council Members extend this
26 interim or urgency ordinance for an initial period of time up to ten (10) months and
27 fifteen (15) days. Thereafter, after hearing a further one (1) year extension is also
28 permitted.
29

30 **Section 7: Urgency Ordinances; Findings.**
31

32 This ordinance is declared to be an urgency ordinance of the City of Albany
33 for preserving the public health, safety and welfare. The reasons for the urgency in
34 connection with this ordinance are herein set forth and incorporated by reference in
35 the findings contained and set forth hereinabove.
36

37 The City Council further finds and declares that the adoption of this interim
38 ordinance is necessary to protect the public health, safety or welfare of the
39 community in that inquiries to open tobacco related establishments have has been
40 presented to the Community Development Department and at the present time there
41 are no Albany regulatory requirements in effect regarding tobacco related
42 establishments. It is in the best health, safety and welfare interests of the City, to
43 establish an application process that provides the City with information concerning
44 the impacts of tobacco related establishments and regulations that restrict where and
45 how such facilities can be put into service.
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Section 8: Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 9: Urgency Measures; Effective Date.

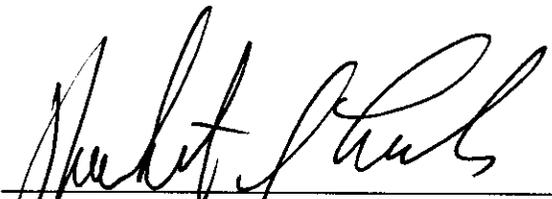
This ordinance is hereby declared to be an urgency measure and shall be enforced and be in effect immediately upon its adoption.

Section 10: Publication.

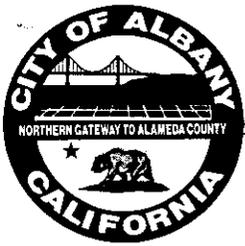
Within fifteen (15) days after adoption, this ordinance shall be circulated with the names of the members voting for and against the same at least once in a newspaper of general circulation in the City of Albany, and posted in public places within the City.

PASSED AND ADOPTED by the City Council of the City of Albany at its meeting on the 19th day of May, 2008, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:



Mayor Robert S. Lieber



City of Albany

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- Friendship Club/ Childcare Program
PH. (510) 524-0135
- Senior Center
PH. (510) 524-9122
FAX (510) 524-8940
- Teen Center
PH. (510) 525-0576

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss
CITY OF ALBANY)

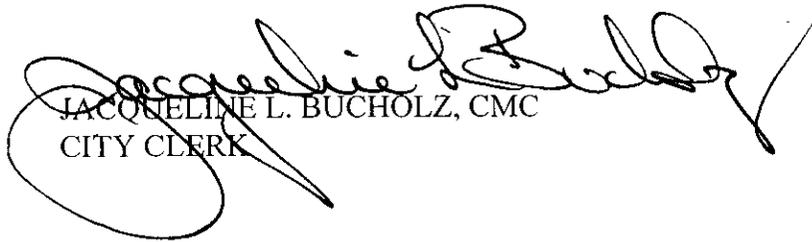
I, JACQUELINE L. BUCHOLZ, City Clerk of the City of Albany, California, do hereby certify that the whole number of members of the City Council of said City of Albany is five and that the foregoing is a true and correct copy of Ordinance No. 08--04 which was passed and adopted by the said City Council, approved and signed by the Mayor of said City, and attested by the City Clerk of said City, all at a regular meeting of the said Council on the 19th day of May 20 08 A.D., and that the same was so passed and adopted by the following votes and duly published or posted according to State law.

AYES: Council Members Atkinson, Javandel, Okawachi, Wile & Mayor Lieber

NOES: None

ABSENT: None

In witness whereof, I have hereunto set my hand and affixed the official seal of the City of Albany, this 9th day of June, 2008.


JACQUELINE L. BUCHOLZ, CMC
CITY CLERK

The City of Albany is dedicated to maintaining its small town ambience, responding to the needs of the community, and providing a safe, healthy environment now and in the future.



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