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ORDINANCE NO. 08-07

AN ORDINANCE OF THE ALBANY CITY COUNCIL EXTENDING AN INTERIM URGENCY ORDINANCE OF THE CITY OF ALBANY RESTRICTING AND/OR PROHIBITING, SUSPENDING AND/OR DENYING ANY PERMITS FOR, OR OTHERWISE RESTRICTING THE APPROVAL OF TOBACCO RELATED ESTABLISHMENTS AND SUSPENDING FOR A PERIOD NOT TO EXCEED FORTY FIVE (45) DAYS, THE ISSUANCE OF PERMITS, APPROVALS, OR OTHER ENTITLEMENTS WHICH WOULD RESULT IN THE OPENING OF ANY TOBACCO RELATED ESTABLISHMENTS WITHIN THE CITY OF ALBANY

WHEREAS, Albany City Charter Section 2.06 and Government Code Section 65858 provide for the adoption as an urgency measure of interim ordinances for certain expressed purposes and by a vote of four-fifths (4/5) majority of the voting City Council members; and

WHEREAS, on May 19, 2008 the City Council adopted Urgency Ordinance No. 08-04 establishing an emergency 45-day moratorium on the issuance of permits, approvals, or other entitlements which would result in the opening of any tobacco related establishments within the City of Albany; and

WHEREAS, the 45-day moratorium will expire on July 3, 2008; and

WHEREAS, the legislative process by which any proposed permanent amendments to the City’s regulations can be adopted requires public hearings before the Planning and Zoning Commission and the City Council, the completion of which cannot occur prior to July 3, 2008; and

WHEREAS, the City of Albany’s Community Development Department is in the process of studying and drafting proposed amendments to the City’s regulations in regards to tobacco establishments for review and approval by the Planning and Zoning Commission and the City Council; and

WHEREAS, a notice of public hearing to consider extending the urgency measure for an additional ten (10) months and fifteen (15) days has been placed in a newspaper of general circulation in Albany and posted in three (3) public places throughout the City; and

WHEREAS, under the Albany Municipal Code, a question has been posed whether tobacco related establishments may be approved; and

WHEREAS, the City Council finds that an extension of the urgency ordinance for ten (10) months and fifteen (15) days would provide adequate time for public review of proposed options to regulate tobacco related establishments, and for Planning and Zoning Commission and City Council consideration and adoption of an appropriate ordinance therefore, while the moratorium remains in effect; and

1
2 **WHEREAS**, Section 65858(a) of the California Government Code permits
3 the City Council to extend this interim urgency ordinance for an initial period of ten
4 (10) months and fifteen (15) days; and
5

6 **WHEREAS**, the City Council held a duly and properly noticed public hearing
7 on July 7, 2008, pursuant to Section 65090 of the California Government Code and
8 applicable City requirements, to take public testimony about the extension of this
9 interim urgency ordinance; and
10

11 **WHEREAS**, the City Council finds that it would be detrimental to the public
12 health, safety and welfare of the City to allow the establishment and approval of any
13 tobacco related establishments until such time as the Planning and Zoning
14 Commission, the City Council, and the public have had an opportunity to determine
15 the appropriate regulation of such facilities within the City of Albany; and
16

17 **WHEREAS**, Government Code §65858 allows, without following the
18 procedures otherwise required prior to the adoption of a zoning ordinance, the City
19 Council to protect the public safety, health and welfare, by adopting as an urgency
20 measure an interim ordinance prohibiting the approval of any application for the
21 approval of a tobacco dispensary facility within the City of Albany.
22

23 **NOW, THEREFORE, THE ALBANY CITY COUNCIL DOES HEREBY**
24 **ORDAIN AS FOLLOWS:**
25

26 **Section 1: Purpose and findings.**

27 Tobacco related establishments are not currently mentioned in the City of
28 Albany Zoning Ordinance. The City of Albany has recently become aware of interest
29 in locating such a use within the city. With the recent adoption of Ordinance #08-03,
30 prohibiting smoking in or around workplaces, recreational areas and other places, the
31 community has shown concern regarding the impacts of smoking within the city.
32 Unregulated locating of tobacco related establishments may be in conflict with the
33 public health, safety and welfare. Thus, in view of the facts set forth in this
34 ordinance, it is necessary to immediately study, hold public hearings, and consider an
35 amendment of the City's Zoning Ordinance and the adoption of restrictions or
36 regulations as they may be recommended to the City Council by the Planning and
37 Zoning Commission. A comprehensive set of restrictions and regulations cannot be
38 enacted without due deliberation, and it will take an indeterminate length of time to
39 create the potential restrictions. It would not be in keeping with the proposed
40 restrictions if, during the period they are being studied and are the subject of public
41 hearings, parties seeking to evade the operation of these restrictions in the form which
42 may be adopted should be permitted to operate in a manner which might progress so
43 far as to defeat in whole or in part the ultimate objective of those restrictions. As a
44 result, it is necessary to, in accordance with Government Code Section 65858, to
45 extend for a period of ten (10) months and fifteen (15) days the 45-day moratorium
46 on the establishment and operation of new tobacco related establishments in the City

1 pending the completion of the City’s study of potential impacts and possible
2 amendments to the City’s Zoning Ordinance.

3
4 **Section 2: Interim Suspension of Permits, Approvals, or Other Entitlements.**

5 Notwithstanding any other provisions of the Albany Municipal Code or any
6 other ordinances or regulations of the City of Albany to the contrary, no permits,
7 licenses, or other applicable entitlements for use, which has as its result the final
8 approval or allowance of tobacco related establishments within the City of Albany,
9 shall be granted or approved by any employee, department or commission of the City
10 for a period of ten (10) months and fifteen (15) days immediately succeeding the
11 effective date of this ordinance, unless appealed or extended by a later enacted
12 ordinance.

13
14 **Section 3: Immediate threat to health, safety and welfare.**

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

20
21 **Section 4: Amendments to Ordinance.**

22 The City Council by ordinance after notice of public hearing, by the
23 affirmative vote of at least four-fifths (4/5) of the voting City Council Members may
24 modify, amend, delete or add to this ordinance upon a finding that such action will
25 implement and enforce the goals, policies, and purposes of this ordinance.

26
27 **Section 5: Waiver.**

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

37
38 **Section 6: Urgency Ordinances; Extension.**

39 This interim urgency ordinance shall by operation of law be of no further
40 force and effect ten (10) months and fifteen (15) days from and after the date of this
41 adoption on July 7, 2008; provided, however, that after notice of public hearing the
42 City Council Members may by a four-fifths (4/5) of the voting City Council Members
43 extend this interim or urgency ordinance for a further period of time up to one (1)
44 year.

1 **Section 7: Urgency Ordinances; Findings.**

2 This ordinance is declared to be an urgency ordinance of the City of Albany
3 for preserving the public health, safety and welfare. The reasons for the urgency in
4 connection with this ordinance are herein set forth and incorporated by reference in
5 the findings contained and set forth hereinabove.
6

7 The City Council further finds and declares that the adoption of this interim
8 ordinance is necessary to protect the public health, safety or welfare of the
9 community in that inquiries to open tobacco related establishments have has been
10 presented to the Community Development Department and at the present time there
11 are no Albany regulatory requirements in effect regarding tobacco related
12 establishments. It is in the best health, safety and welfare interests of the City, to
13 establish an application process that provides the City with information concerning
14 the impacts of tobacco related establishments and regulations that restrict where and
15 how such facilities can be put into service.
16

17 **Section 8: Severability.**

18 If any section, subsection, sentence, clause or phrase of this ordinance is for
19 any reason held to be invalid, such decision shall not affect the validity of the
20 remaining portions of this ordinance. The City Council hereby declares that it would
21 have adopted the ordinance and each section, subsection, sentence, clause or phrase
22 thereof irrespective of the fact that any one or more sections, subsections, sentences,
23 clauses or phrases be declared invalid.
24

25 **Section 9: Urgency Measures; Effective Date.**

26 This ordinance is hereby declared to be an urgency measure and shall be
27 enforced and be in effect immediately upon its adoption.
28

29 **Section 10: Publication.**

30 Within fifteen (15) days after adoption, this ordinance shall be circulated with
31 the names of the members voting for and against the same at least once in a
32 newspaper of general circulation in the City of Albany, and posted in public places
33 within the City.
34

35 **PASSED AND ADOPTED** by the City Council of the City of Albany at its
36 meeting on the 7th day of July, 2008, by the following vote:
37

38 AYES:

39 NOES:

40 ABSENT:

41 ABSTAIN:
42
43
44

Mayor Robert S. Lieber