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ORDINANCE NO. 2019-05

**AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING CHAPTER 5 OF
THE ALBANY MUNICIPAL CODE, SECTION 5-24, TOBACCO RETAILER LICENSE
TO ESTABLISH MINIMUM PACKAGE SIZES AND MINIMUM PRICES FOR
CERTAIN TOBACCO PRODUCTS**

WHEREAS, tobacco use remains a leading cause of preventable death in the United States, and tobacco use can cause or contribute to many forms of cancer, as well as heart disease and respiratory diseases, among other health disorders; and

WHEREAS, 90% of adult smokers begin smoking before the age of 21; adolescence is the period when smoking behaviors are typically developed, making it particularly important to discourage tobacco use during this critical period of human development; and

WHEREAS, although adult cigar use has declined, cigar use by young men and teenage boys has continued to increase; and

WHEREAS, cigar products are often sold in small packs with product names designed to be attractive to young people, and many of these small packs are available at low price points, and with discounts or coupons, which adds an additional appeal for price-sensitive underage youth who often have limited disposable income; and

WHEREAS, establishing minimum package sizes for cigar products and minimum pricing for cigarettes and cigar products will make it less convenient for underage youth to purchase such products and start on the pathway to lifelong addiction.

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1 NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS AS
2 FOLLOWS:
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4 SECTION 1: CHAPTER 5 OF THE ALBANY MUNICIPAL CODE, SECTION
5 5-24 TITLED "TOBACCO RETAILER LICENSE" IS HEREBY AMENDED AS
6 FOLLOWS:
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9 **5-24 TOBACCO RETAILER LICENSE.**

10 **5-24.1 Definitions.**

11 As used in this subsection.

12
13 Cigar shall mean any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.

14 Cigarette shall mean: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described herein.

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17 *Characterizing Flavor* shall mean a taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice, provided, however, that a tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.

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21 Consumer shall mean a person who purchases a tobacco product for consumption and not for sale to another.

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23 Coupon shall mean any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

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25 *Department* shall mean the City of Albany Police Department or other City Department designated by the City Manager as responsible for administering and enforcing this Ordinance.

26
27 *Flavored Tobacco Product* shall mean any tobacco product that imparts a characterizing flavor. This includes cigars, little cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco,

1 dipping tobacco, bidis, blunts, and electronic cigarettes or electronic smoking devices containing
2 nicotine.

3 Full Retail Price shall mean the price listed for a tobacco product on its packaging or on
4 any related shelving, advertising, or display where the tobacco product is sold or offered for sale,
5 plus all applicable taxes and fees if such taxes and fees are not included in the listed price.

6 *Labeling* shall mean written, printed, or graphic matter upon any tobacco product or any
7 of its packaging, or accompanying such tobacco product.

8 Little Cigar shall mean any roll of tobacco other than a cigarette wrapped entirely or in
9 part in tobacco or any substance containing tobacco and weighing no more than three pounds per
10 thousand. "Little Cigar" includes, but is not limited to, tobacco products known or labeled as
11 small cigar, little cigar, or cigarillo.

12 *Manufacturer* shall mean any person, including any repacker or relabeler, who
13 manufactures, fabricates, assembles, processes, or labels a tobacco product, or imports a finished
14 tobacco product for sale or distribution into the United States.

15 *Package or packaging* shall mean a pack, box, carton, or container of any kind or, if no
16 other container, any wrapping (including cellophane) in which a tobacco product is sold or
17 offered for sale to a consumer.

18 *Proprietor* shall mean a person with an ownership or managerial interest in a business.
19 An ownership interest shall be deemed to exist when a person has a ten (10%) percent or greater
20 interest in the stock, assets, or income of a business other than the sole interest of security for
21 debt. A managerial interest shall be deemed to exist when a person can or does have or share
22 ultimate control over the day-to-day operations of a business.

23 *Self-service display* shall mean the open display or storage of tobacco product or tobacco
24 paraphernalia in a manner that is physically accessible in any way to the general public without
25 the assistance of the retailer or employee of the retailer and a direct person-to-person transfer
26 between the purchaser and the retailer or employee of the retailer. A vending machine is a form
27 of self-service display.

28 *Tobacco paraphernalia* shall Any item designed or marketed for the consumption, use or
preparation of tobacco products.

Tobacco product shall mean: (1) any product containing, made, or derived from tobacco
or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed,
dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to,
cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff; and (2) any electronic
device that delivers nicotine or other substances to the person inhaling from the device,
including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or
electronic hookah. (3) Notwithstanding any provision of subsections (1) and (2) to the contrary,
"Tobacco Product" includes any component, part, or accessory intended or reasonably expected

1 to be used with a Tobacco Product, whether or not sold separately. "Tobacco Product" does not
2 include drugs, devices, or combination products authorized for sale by the United States Food
3 and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic
4 Act.

5 *Tobacco retailer* shall mean any person who sells, offers for sale, or does or offers to
6 exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia, or
7 who distributes free or low cost samples of tobacco products or tobacco paraphernalia. "Tobacco
8 retailing" shall mean the doing of any of these things. This definition is without regard to the
9 quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged,
10 or offered for exchange.

11 (Ord. #09-02, §2)

12 **5-24.8 Other Requirements and Prohibitions.**

13 a. *Positive Identification Required.* No person engaged in tobacco retailing shall sell
14 or transfer a tobacco product or tobacco paraphernalia to another person who appears to be under
15 the age of twenty-seven (27) years without first examining the identification of the recipient to
16 confirm that the recipient is at least the minimum age under State law to purchase and possess
17 the tobacco product or tobacco paraphernalia.

18 b. *Minimum Age for Persons Selling Tobacco.* No person who is younger than the
19 minimum age established by State law for the purchase or possession of tobacco products shall
20 engage in tobacco retailing.

21 c. *Self-service Displays Prohibited.* No tobacco retailer shall display tobacco
22 products or tobacco paraphernalia by means of a self-service display or engage in tobacco
23 retailing by means of a self-service display.

24 d. *Lawful Business Operation.* In the course of tobacco retailing or in the operation
25 of the business or maintenance of the location for which a license has been issued, it shall be a
26 violation of this section for a licensee, or any of the licensee's agents or employees, to:

27 1. Violate any local, State, or Federal law applicable to tobacco products,
28 tobacco paraphernalia, or tobacco retailing.

29 2. Violate any local, State, or Federal law regulating exterior, storefront,
30 window or door signage.

(Ord. #09-02, §2)

31 e. *Flavored Tobacco Product Sales Prohibited.* No tobacco retailer, nor any of the
32 retailer's agents or employees, shall sell or offer for sale, or possess with intent to sell or offer for
33 sale, any flavored tobacco product.

34 f. *Presumptions for Flavored Tobacco Products.* There shall be a rebuttable
35 presumption that a tobacco product is a flavored tobacco product if a tobacco retailer,
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1 manufacturer, or any employee or agent of a tobacco retailer or manufacturer has: (1) made a
2 public statement or claim that the tobacco product imparts a characterizing flavor; (2) used text
3 and/or images on the tobacco product's labeling or packaging to explicitly or implicitly indicate
4 that the tobacco product imparts a characterizing flavor; or (3) taken action directed to
5 consumers that would be reasonably expected to cause consumers to believe the tobacco product
6 imparts a characterizing flavor.

7 g. *Packaging and Labeling.* No tobacco retailer shall sell any tobacco product to
8 any consumer unless such product: (1) is sold in the original manufacturer's packaging intended
9 for sale to consumers; and (2) conforms to all applicable federal labeling requirements.

10 h. *Display of Price.* The price of each tobacco product offered for sale shall be
11 clearly and conspicuously displayed to indicate the price of the product.

12 i. *Prohibition of Tobacco Coupons and Discounts.* No tobacco retailer shall:

- 13 1. Honor or redeem, or offer to honor or redeem, a coupon to allow a
14 consumer to purchase a tobacco product for less than the full retail price;
- 15 2. Sell any tobacco product to a consumer through a multiple-package
16 discount or otherwise provide any such product to a consumer for less than the
17 full retail price in consideration for the purchase of any tobacco product or
18 any other item; or
- 19 3. Provide any free or discounted item to a consumer in consideration for the
20 purchase of any tobacco product.

21 j. *Minimum Package Size for Little Cigars and Cigars.* No retailer shall sell to a
22 consumer:

- 23 1. Any little cigar unless it is sold in a package of at least twenty little cigars;
24 or
- 25 2. Any cigar unless it is sold in a package of at least six cigars; provided,
26 however, that this subsection shall not apply to a cigar that has a price of at
27 least \$8.00 per cigar, including all applicable fees and taxes.

28 k. *Minimum Prices for Cigarettes, Little Cigars and Cigars.* No tobacco retailer
shall sell to a consumer:

1. Cigarettes at a price that is less than \$8.00 per package of twenty
cigarettes, including all applicable fees and taxes;
2. Little cigars at a price that is less than \$8.00 per package of little cigars,
including all applicable fees and taxes;
3. Single Cigars at a price that is less than \$8.00 per cigar, including all
applicable fees and taxes.
4. The minimum prices established in this section shall be adjusted annually
(percent change in the annual average, not seasonally adjusted) by increments
of \$.25 in proportion with the Consumer Price Index, all urban consumers for

1 all items for the San Francisco-Oakland-Hayward statistical area as reported
2 by the United States Bureau of Labor Statistics or any successor to that Index.

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4 **SECTION 2: CONSTRUCTION AND SEVERABILITY.**

5 It is the intent of the City Council of the City of Albany to supplement applicable State
6 and Federal law and not to duplicate or contradict such law, and this Ordinance shall be
7 construed consistently with that intention. If any provision of this Ordinance, or its applicability
8 to any person or circumstance, is for any reason held to be invalid or unenforceable, such
9 invalidity or unenforceability shall not affect the validity or enforceability of the remainder of
10 this Ordinance, or its applicability to any person or circumstance. The City Council of the City
11 of Albany hereby declares that it would have adopted each provision of this Ordinance,
irrespective of the fact that any one or more provisions might be declared invalid or
unenforceable.

12 **SECTION 3: PUBLICATION AND EFFECTIVE DATE.**

13 This ordinance shall be posted at three public places within the City of Albany and shall
14 become effective six months after the date of its posting. The City Council finds and determines
15 that six months is a sufficient amount of time for tobacco retailers to sell their existing
16 inventories of tobacco products which do not meet the minimum package size and minimum
17 prices specified herein and come into compliance with this Ordinance.

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19 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on
the 20th day of May, 2019, by the following vote:

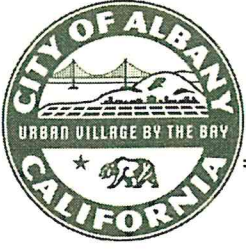
20 AYES: *Council Members: Barnes, maas, Vice Mayor McQuaid, Pikh*

21 NOES:

22 ABSENT: *Mayor Nason*

23 ABSTAIN:

24 
25 ROCHELLE NASON, MAYOR



City of Albany

1000 San Pablo Avenue • Albany, California 94706
(510) 528-5710 • www.albanyca.org

ORDINANCE NO. 2019-05

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,
the 20th day of May, 2019 by the following votes:

AYES: Council Members Barnes, Maass, McQuaid, Pilch

NOES: none

ABSTAINED: none

ABSENT: Mayor Nason

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this
21st day of May, 2019.

Eileen Harrington
DEPUTY CITY CLERK