

1 **Ordinance #09-03**  
2 **AN ORDINANCE OF THE ALBANY CITY COUNCIL INCORPORATING**  
3 **TOBACCO RETAILER LAND USE REGULATIONS INTO CHAPTER 20 OF**  
4 **THE ALBANY MUNICIPAL CODE**  
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6 WHEREAS, the City of Albany, in addition to any other code  
7 enforcement powers it may be authorized to exercise, wishes to  
8 establish Tobacco Retailer Licensing Program ordinance, and  
9

10 WHEREAS, the City is a charter city and may exercise its police  
11 and charter powers to protect its citizens and the health and welfare of  
12 the community.  
13

14 NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS THAT  
15 TOBACCO RETAILER LAND USE REGULATIONS SHALL BE  
16 INCORPORATED INTO CHAPTER 20 OF THE ALBANY MUNICIPAL CODE  
17 AND WILL READ AS FOLLOWS:  
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19  
20 **Section 1**

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22 The text of Chapter 20, "Planning and Zoning", of the Albany Municipal  
23 Code shall hereby be amended to include the changes set forth below:  
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25  
26 **Section 2**

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28 The following definition shall be added to Section 20.08.020, "Definitions (A-  
29 Z)"  
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31 **Significant Tobacco Retailer** means any tobacco retailer that derives  
32 seventy-five percent (75%) or more of gross sales receipts from the sale or exchange  
33 of tobacco products and tobacco paraphernalia.  
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35 The following terms related to tobacco retailers have the following meanings:  
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37 a. Tobacco Product means (1) any substance containing tobacco leaf,  
38 including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff,  
39 chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2)  
40 any product or formulation of matter containing biologically active amounts of  
41 nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the  
42 expectation that the product or matter will be introduced into the human body, but  
43 does not include any product specifically approved by the United States Food and  
44 Drug Administration for use in treating nicotine or tobacco product dependence.  
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b. Tobacco Paraphernalia means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of Tobacco Products.

**Section 3**

The following language shall be added to the existing “Permitted Land Uses by District” table (20.12.040).

	<u>R-1</u>	<u>R-2</u>	<u>R-3</u>	<u>R-4</u>	<u>R- HD</u>	<u>SC</u>	<u>SPC</u>	<u>CM</u> <u>X</u>	<u>PF</u>	<u>WF</u>
<u>Significant Tobacco Retailer</u> <sup>20</sup>	=	=	=	=	=	<u>UP</u>	<u>UP</u>	<u>UP</u>	=	=

20. Refer to Section 20.20.120 for Location and Operation Standards.

**Section 4**

The following language shall be added as a new subsection, 20.20.120 “Tobacco Retail Sales”.

20.20.120 Tobacco Retail Sales (within Regulation of Specific Land Uses)

A. Standards for Facility Location. The following standards shall apply to the physical location of any significant tobacco retailer.

1. No significant tobacco retailer shall have a principal entrance located within seventy-five (75) feet of a parcel of land in an R – Residential zoning district.

2. The principal entry to any establishment shall be located within clear sight of a public street, and shall not be within twenty-five (25) feet of any residential entrance, including the principal entry of any multi-unit residential building.

3. No significant tobacco retailer shall be located within a five hundred (500) foot distance of any of the following:

a. Any schools, child daycare centers, public libraries or public community centers;

b. Any municipal parks or playgrounds.

4. No significant tobacco retailer shall be located within a five hundred (500) foot distance of any of the following businesses, where such businesses were existing at the time of approval of a use permit for a significant tobacco retailer:

1 a. Any “youth-oriented establishment” characterized by either or both of  
2 the following: (1) the establishment advertises in a manner that identifies the  
3 establishment as catering to or providing services primarily intended for minors; or  
4 (2) the individuals who regularly patronize, congregate or assemble at the  
5 establishment are predominantly minors.  
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7 5. Exception to five hundred (500) foot distance specified in paragraph 4,  
8 above: The Planning and Zoning Commission may permit a new youth-oriented  
9 establishment to be located within five hundred (500) feet of an existing significant  
10 tobacco retailer, subject to the following findings:  
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12 a. The subject youth-oriented establishment would not be a permitted use  
13 in a residential district; and  
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15 b. The proximity of the existing significant tobacco retailer would not  
16 have any detrimental effect on the minor patrons of the youth-oriented establishment.  
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18 **B. Operation Standards.**  
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20 1. Tobacco products and/or tobacco paraphernalia shall be secured so  
21 that only store employees have immediate access to the tobacco products and/or  
22 tobacco paraphernalia. Self-service displays are prohibited.  
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24 2. The tobacco retailer shall comply with all applicable local, State, and  
25 Federal laws regarding the advertising, display, or sales of tobacco products.  
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27 3. No person under 18 years of age may distribute, exchange, or sell  
28 tobacco products.  
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30 4. Sampling of tobacco products by individuals less than 18 years of age  
31 shall be prohibited.  
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34 **Section 5: Publication**  
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36 This ordinance shall be published in a newspaper of general circulation in the  
37 City of Albany, which said newspaper is designated for that purpose, or it shall be  
38 posted in three locations.  
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41 **Section 6: Severability**  
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43 If any section, subsection, sentence, clause, or phrase of this ordinance is for  
44 any reason held to be invalid, such decision shall not affect the validity of the  
45 remaining portions of the ordinance, and each section, subsection, sentence, clause, or

1 phrase thereof, irrespective of the fact that any one or more sections, subsections,  
2 sentences, clauses or phrases be declared invalid.

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**Section 7: Effective Date**

This ordinance shall become effective 30 days on or after its final passage and  
adoption.