

1 **Ordinance #09-02**
2 **AN ORDINANCE OF THE ALBANY CITY COUNCIL**
3 **INCORPORATING ARTICLE 5-24 TOBACCO RETAILER**
4 **LICENSING PROGRAM INTO**
5 **CHAPTER 5 OF THE ALBANY MUNICIPAL CODE**
6

7 WHEREAS, the City of Albany, in addition to any other code
8 enforcement powers it may by authorized to exercise, wishes to
9 establish Tobacco Retailer Licensing Program ordinance, and
10

11 WHEREAS, the City is a charter city and may exercise its police
12 and charter powers to protect its citizens and the health and welfare of
13 the community.
14

15 NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS
16 THAT ARTICLE 5-24 TOBACCO RETAILER LICENSING PROGRAM
17 SHALL BE INCORPORATED INTO CHAPTER 5 OF THE ALBANY
18 MUNICIPAL CODE AND WILL READ AS FOLLOWS:
19

20 **Section 1:**

21
22 New Sections 5-24.1, et seq. are enacted to read as follows:
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24
25 **Section 2:**

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27 **5-24 TOBACCO RETAILER LICENSE.**

28
29 **5-24.1 Definitions.**

30
31 As used in this subsection.
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33 Proprietor means a Person with an ownership or managerial interest in a
34 business. An ownership interest shall be deemed to exist when a Person has a ten
35 percent (10%) or greater interest in the stock, assets, or income of a business other
36 than the sole interest of security for debt. A managerial interest shall be deemed to
37 exist when a Person can or does have or share ultimate control over the day-to-day
38 operations of a business.
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40 Tobacco Paraphernalia means cigarette papers or wrappers, pipes, holders of
41 smoking materials of all types, cigarette rolling machines, and any other item
42 designed for the smoking, preparation, storing, or consumption of Tobacco Products.
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44 Tobacco Product means: (1) any substance containing tobacco leaf, including
45 but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing
46 tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any

1 product or formulation of matter containing biologically active amounts of nicotine
2 that is manufactured, sold, offered for sale, or otherwise distributed with the
3 expectation that the product or matter will be introduced into the human body, but
4 does not include any product specifically approved by the United States Food and
5 Drug Administration for use in treating nicotine or tobacco product dependence.
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7 Tobacco Retailer means any Person who sells, offers for sale, or does or offers
8 to exchange for any form of consideration, tobacco, Tobacco Products, or Tobacco
9 Paraphernalia, or who distributes free or low cost samples of Tobacco Products or
10 Tobacco Paraphernalia. "Tobacco Retailing" shall mean the doing of any of these
11 things. This definition is without regard to the quantity of tobacco, Tobacco Products,
12 or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.
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14 **5-24.2 Tobacco Retailer License Required**

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16 a. It shall be unlawful for any Person to act as a Tobacco Retailer
17 without first obtaining and maintaining a valid Tobacco Retailer's license pursuant to
18 this chapter for each location at which that activity is to occur. Tobacco Retailing
19 without a valid Tobacco Retailer's license is a public nuisance.
20

21 b. No license may be issued to authorize tobacco retailing at other
22 than a fixed location. For example, Tobacco Retailing by Persons on foot or from
23 vehicles is prohibited.
24

25 c. The conference of a tobacco retailer license does not exempt
26 any business that is subject to the Smoking Pollution Control provisions within the
27 Albany Municipal Code, Section 17-1.
28

29 d. A Tobacco Retailer or Proprietor without a valid Tobacco
30 Retailer license, including, for example, a person whose license has been revoked:
31

32 1. Shall keep all Tobacco Products and Tobacco Paraphernalia
33 out of public view. The public display of Tobacco Products or Tobacco Paraphernalia
34 in violation of this provision shall constitute Tobacco Retailing without a license
35 under Section 5-24.10
36

37 2. Shall not display any advertisement relating to Tobacco
38 Products or Tobacco Paraphernalia that promotes the sale or distribution of such
39 products from the Tobacco Retailer's location or that could lead a reasonable
40 consumer to believe that such products can be obtained at that location.
41

42 **5-24.3 Application Procedure.**

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44 Application for a Tobacco Retailer's license shall be submitted in the name of
45 each Proprietor proposing to conduct retail tobacco sales and shall be signed by each
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1 Proprietor or an authorized agent thereof. All applications shall be submitted on a
2 form supplied by the Albany Police Department and shall contain the following
3 information:

- 4
- 5 a. The name, address, and telephone number of each Proprietor.
- 6
- 7 b. The business name, address, and telephone number of the single fixed
8 location for which a license is sought.
- 9
- 10 c. Such other information as the Department deems necessary for the
11 administration or enforcement of this chapter.
- 12
- 13

14 **5-24.4 Issuance And Renewal of License**

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16 a. Within thirty (30) days of the Department's receipt of an
17 application for a Tobacco Retailer's license and the license fee required by this
18 chapter, the Department shall issue a license unless substantial evidence demonstrates
19 that one or more of the following bases for denial exists:

- 20
- 21 1. The information presented in the application is incomplete,
22 inaccurate, or false.
- 23
- 24 2. The application seeks authorization for Tobacco Retailing by a
25 proprietor or at a location for which a revocation is in effect pursuant to Section 5-
26 24.10 of this Chapter.
- 27
- 28 3. The application seeks authorization for tobacco retailing that is
29 unlawful pursuant to this code, or that is unlawful pursuant to any other local, State or
30 Federal law.
- 31

32 b. A license shall be valid for one (1) calendar year and must be
33 renewed prior to the expiration of the payment term.

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36 **5-24.5 License Nontransferable.**

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38 A tobacco retailer's license is nontransferable. In the event a person to whom
39 a license has been issued changes business location or sells the business referenced in
40 that person's license, that person must apply for a new license prior to acting as a
41 tobacco retailer at the new location. The transferee of the licensee must apply for a
42 license in the transferee's name before acting as a tobacco retailer. Any license
43 reissued pursuant to this section shall expire on the date the previous license for the
44 business or person would have expired.

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5-24.6 Fees For License.

The fee to issue or to renew a tobacco retailer’s license shall be established by resolution of the City Council. The fee shall reflect the actual cost of processing the license, including inspection of the tobacco retailer’s business premises and implementation and enforcement of the licensing program.

5-24.7 Display Of License.

Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.

5-24.8 Other Requirements And Prohibitions.

a. Positive Identification Required. No Person engaged in Tobacco Retailing shall sell or transfer a Tobacco Product or Tobacco Paraphernalia to another Person who appears to be under the age of twenty-seven (27) years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.

b. Minimum Age for Persons Selling Tobacco. No person who is younger than the minimum age established by state law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.

c. Self-Service Displays Prohibited. No Tobacco Retailer shall display Tobacco Products or Tobacco Paraphernalia by means of a Self-Service Display or engage in Tobacco Retailing by means of a Self-Service Display.

d. Lawful Business Operation. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license has been issued, it shall be a violation of this chapter for a licensee, or any of the licensee’s agents or employees, to:

1. Violate any local, state, or federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

2. Violate any local, state, or federal law regulating exterior, storefront, window or door signage.

5-24.9 Revocation Of License.

1 a. Revocation of License for Violation. In addition to any other
2 penalty authorized by law, a Tobacco Retailer’s license shall be revoked if the
3 Department finds or any court of competent jurisdiction determines, after the licensee
4 is afforded notice and an opportunity to be heard, that the licensee, or any of the
5 licensee’s agents or employees, has violated any of the requirements, conditions, or
6 prohibitions of this chapter or, in a different legal proceeding, has pleaded guilty, “no
7 contest” or its equivalent, or admitted to a violation of any law designated in Section [
8 5-24.8 above.

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10 b. New License after Revocation.

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12 1. After revocation for a first violation of this chapter at a location
13 within any [sixty-month (60)] period, no new license may issue for the location until
14 [ten (10) days] have passed from the date of revocation.

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16 2. After revocation for a second violation of this chapter at a
17 location within any [sixty-month (60)] period, no new license may issue for the
18 location until [thirty (30)] days have passed from the date of revocation. If the
19 violation occurs within twelve (12) months of the first violation the tobacco retailer
20 shall be subject to an administrative fine of two hundred fifty dollars (\$250).

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22 3. After revocation for a third violation of this chapter at a
23 location within any [sixty-month (60)] period, no new license may issue for the
24 location until [ninety (90)] days have passed from the date of revocation. If the
25 violation occurs within twelve (12) months of the second violation the tobacco
26 retailer shall be subject to an administrative fine of five hundred dollars (\$500).

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28 4. After revocation for four or more violations of this chapter at a
29 location within any [sixty-month (60)] period, no new license may issue for the
30 location until [five (5) years] have passed from the date of revocation. In addition,
31 the tobacco retailer shall be subject to an administrative fine of one thousand dollars
32 (\$1,000).

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34 c. Appeal of Revocation. A decision of the Department to revoke
35 a license is appealable to the City Administrator and must be filed with the City Clerk
36 within ten days of mailing of the Department’s decision. If such an appeal is made, it
37 shall stay enforcement of the appealed action. An appeal to the City Administrator is
38 not available for a revocation made pursuant to subsection (d) below.

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40 d. Revocation of License Issued in Error. A Tobacco Retailer’s
41 license shall be revoked if the Department finds, after the licensee is afforded
42 reasonable notice and an opportunity to be heard, that one or more of the bases for
43 denial of a license under Section 5-24.4 existed at the time application was made or at
44 any time before the license issued. The decision by the Department shall be the final
45 decision of the City. The revocation shall be without prejudice to the filing of a new
46 license application.

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5-24.10 Tobacco Retailing Without A License.

In addition to any other penalty authorized by law, if the Police Department finds, based on substantial record evidence, that any Person has engaged in Tobacco Retailing at a location without a valid Tobacco Retailer’s license, either directly or through the Person’s agents or employees, the Person shall be ineligible to apply for or be issued a Tobacco Retailing license for that location as follows:

- a. After a first violation of this chapter at a location within any [sixty-month (60)] period, no new license may issue for the Person at the location until [thirty (30)] days have passed from the date of the violation.
- b. After a second violation of this chapter at a location within any [sixty-month (60)] period, no new license may issue for the Person at the location until [ninety (90)] days have passed from the date of the violation.
- c. After of a third or subsequent violation of this chapter at a location within any [sixty-month (60)] period, no new license may issue for the Person at the location until [five (5)] years have passed from the date of the violation.

5-24.11 Enforcement

- a. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation.
- b. In addition to the administrative enforcement procedures provided by this Chapter, violations of this ordinance may, in the discretion of the City Attorney, be prosecuted as infractions, pursuant to Albany Municipal Code.
- c. Violations of this chapter are hereby declared to be public nuisances.
- d. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the City Attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.
- e. An action for injunction may be brought in a court of competent jurisdiction by any aggrieved person, or any person or entity that will fairly and adequately represent the interests of the class protected by this ordinance.

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Section 3: Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Albany hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 3: Publication

This ordinance shall be published in a newspaper of general circulation in the City of Albany, which said newspaper is designated for that purpose, or it shall be posted in three locations.

Section 4: Effective Date

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