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Ordinance #09-03
AN ORDINANCE OF THE ALBANY CITY COUNCIL INCORPORATING
TOBACCO RETAILER LAND USE REGULATIONS INTO CHAPTER 20 OF
THE ALBANY MUNICIPAL CODE

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

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

NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS THAT TOBACCO RETAILER LAND USE REGULATIONS SHALL BE INCORPORATED INTO CHAPTER 20 OF THE ALBANY MUNICIPAL CODE AND WILL READ AS FOLLOWS:

Section 1

The text of Chapter 20, "Planning and Zoning", of the Albany Municipal Code shall hereby be amended to include the changes set forth below:

Section 2

The following definition shall be added to Section 20.08.020, "Definitions (A-Z)"

Significant Tobacco Retailer means any tobacco retailer that derives seventy-five percent (75%) or more of gross sales receipts from the sale or exchange of tobacco products and tobacco paraphernalia.

The following terms related to tobacco retailers have the following meanings:

- a. Tobacco Product means (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and 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 X</u> | <u>PF</u> | <u>WF</u> |
|---------------------------------------------------|------------|------------|------------|------------|------------------|-----------|------------|-----------------|-----------|-----------|
| <u>Significant Tobacco Retailer</u> ²⁰ | = | = | = | = | = | <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.
6

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:
11

12 a. The subject youth-oriented establishment would not be a permitted use
13 in a residential district; and
14

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.
17

18 **B. Operation Standards.**
19

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.
23

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.
26

27 3. No person under 18 years of age may distribute, exchange, or sell
28 tobacco products.
29

30 4. Sampling of tobacco products by individuals less than 18 years of age
31 shall be prohibited.
32
33

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.
39
40

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

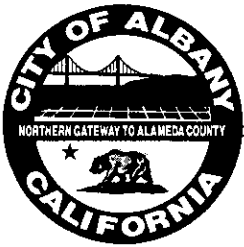
1 phrase thereof, irrespective of the fact that any one or more sections, subsections,
2 sentences, clauses or phrases be declared invalid.

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Section 7: Effective Date

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

A handwritten signature in cursive script that reads "Marge Atkinson". The signature is written in black ink and is positioned in the lower right quadrant of the page.



City of Albany

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- Environmental Resources
- Maintenance
- Planning

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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. 09-03 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 2nd day of February 20 09 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 Javandel, Lieber, Thomsen, Wile & Mayor Atkinson

NOES: None

ABSENT: None

In witness whereof, I have hereunto set my hand and affixed the official seal of the City of Albany, this 4th day of February, 20 09.


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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