ORDINANCE NO. 08-04
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, the City of Albany is a Charter City formed under the
Constitution of the State of California; and

WHEREAS, the Charter of the City of Albany, passed by the voters and
approved by the State of California in 1927, allowed for the adoption of a system of
zoning dividing the City into various zones of permitted uses which was later also
allowed for by the State of California by the adoption of the Government Code
sections concerning planning and zoning matters by cities, counties and chartered
cities; and

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

WHEREAS, the City Council finds that the zoning provisions now in effect
do not contain any specific regulatory requirements governing the approval of
tobacco related establishments within the City of Albany; and

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

WHEREAS, Government Code §65858 allows, without following the
procedures otherwise required prior to the adoption of a zoning ordinance, the City
Council to protect the public safety, health and welfare, by adopting as an urgency
measure an interim ordinance prohibiting the approval of any application for the
approval of a tobacco dispensary facility within the City of Albany.
NOW, THEREFORE, THE ALBANY CITY COUNCIL DOES HEREBY
ORDAIN AS FOLLOWS:

Section 1: Purpose and findings.

Tobacco related establishments are not currently mentioned in the City of
Albany Zoning Ordinance. The City of Albany has recently become aware of interest
in locating such a use within the city. With the recent adoption of Ordinance #08-03,
prohibiting smoking in or around workplaces, recreational areas and other places, the
community has shown concern regarding the impacts of smoking within the city.
Unregulated locating of tobacco related establishments may be in conflict with the
public health, safety and welfare. Thus, in view of the facts set forth in this
ordinance, it is necessary to immediately study, hold public hearings, and consider an
amendment of the City’s Zoning Ordinance and the adoption of restrictions or
regulations as they may be recommended to the City Council by the Planning and
Zoning Commission. A comprehensive set of restrictions and regulations cannot be
enacted without due deliberation, and it will take an indeterminate length of time to
create the potential restrictions. It would not be in keeping with the proposed
restrictions if, during the period they are being studied and are the subject of public
hearings, parties seeking to evade the operation of these restrictions in the form which
may be adopted should be permitted to operate in a manner which might progress so
far as to defeat in whole or in part the ultimate objective of those restrictions. As a
result, it is necessary to, in accordance with Government Code Section 65858,
temporarily establish a 45-day moratorium on the establishment and operation of new
tobacco related establishments in the City pending the completion of the City’s study
of potential impacts and possible amendments to the City’s Zoning Ordinance.

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

Notwithstanding any other provisions of the Albany Municipal Code or any
other ordinances or regulations of the City of Albany to the contrary, no permits,
licenses, or other applicable entitlements for use, which has as its result the final
approval or allowance of tobacco related establishments within the City of Albany,
shall be granted or approved by any employee, department or commission of the City
for a period of forty-five days immediately succeeding the effective date of this
ordinance, unless appealed or extended by a later enacted ordinance.

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

Based on the findings herein, this ordinance is adopted pursuant to California
Government Code §65858 and is required to address a current and immediate threat
to the public health, safety and welfare. The City Council has determined that
granting additional land use approvals or building permits for tobacco related
establishments would result in a threat to the public health, safety and welfare.
Section 4: Amendments to Ordinance.

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

Section 5: Waiver.

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

Section 6: Urgency Ordinances: Extension.

This interim urgency ordinance shall by operation of law be of no further force and effect forty five (45) days from and after the date of this adoption on May 19, 2008; provided, however, that after notice of public hearing the City Council Members may by a four-fifths (4/5) of the voting City Council Members extend this interim or urgency ordinance for an initial period of time up to ten (10) months and fifteen (15) days. Thereafter, after hearing a further one (1) year extension is also permitted.

Section 7: Urgency Ordinances: Findings.

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

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

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

Section 9: Urgency Measures: Effective Date.

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

Section 10: Publication.

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

PASSED AND ADOPTED by the City Council of the City of Albany at its meeting on the 19th day of May, 2008, by the following vote:

AYES: 
NOES: 
ABSENT: 
ABSTAIN: 

[Signature]
Mayor Robert S. Lieber
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. 08-04 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 19th day of May 2008 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 Atkinson, Javandel, Okawachi, Wile & Mayor Lieber

NOES: None

ABSENT: None

In witness whereof, I have hereunto set my hand and affixed the official seal of the City of Albany, this 9th day of June 2008.

[Signature]
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.