

**CITY OF ALBANY
PLANNING AND ZONING AGENDA
STAFF REPORT**

Agenda date: October 12, 2010

Prepared by: JB

ITEM/ **6a**
SUBJECT: **Planning Application 09-064. Conditional Use Permit. Parking Exception.**
The subject property is an existing three story commercial building. The applicant is requesting a Conditional Use Permit to allow operation of a medical marijuana dispensary. The dispensary would be located on the ground floor and offices on the second and third floor.

SITE: **1019 Solano Avenue**

APPLICANT/OWNER: **Erik & Bret Van Den Akker**

ZONING: **Solano Commercial**

STAFF RECOMMENDATION

Staff recommends that the Planning and Zoning Commission approve the request for a conditional use permit to allow establishment of a medical marijuana dispensary, subject to the attached findings and conditions of approval, including a one-year term for the conditional use permit.

BACKGROUND/PROJECT DESCRIPTION

The subject property is an existing three story commercial building. The applicant is requesting a Conditional Use Permit to allow operation of a medical marijuana dispensary. The dispensary would be located on the ground floor. Second and third floor areas would be used as office space. There would be no substantive change in the appearance of the building. Operation of the dispensary would be subject to the Medical Marijuana Dispensary requirements contained in the Planning and Zoning Code (Attachment 3).

Background on Medical Marijuana Regulations in Albany'

In 1996, California voters approved Proposition 215 (the Compassionate Use Act), which allowed Californians to obtain marijuana for medical purposes. The vote in Albany was 80% in favor of the proposition.

In 2005, the U.S. Supreme Court established that the Federal government can prosecute medical marijuana growers and users under the Controlled Substances Act, despite attempts by a number of states to allow such use. Thus, there continues to be a conflict between state and federal law.

The issue of medical marijuana first came up in Albany in 2005 in response to an inquiry from a potential dispensary. In order to provide time for the evaluation of the range of options, the City Council adopted a moratorium restricting the approval of the medical marijuana dispensaries and directed that the Planning and Zoning Commission review the issue and draft an ordinance for City Council consideration.

In February 2006, the Commission reviewed two alternative approaches to the regulation of medical marijuana dispensaries: Option A would allow dispensaries through a conditional use permit; Option B would prohibit dispensaries. On a 3 to 2 vote, the Commission recommended that the City Council adopt Option B.

Following Planning and Zoning Commission action, the Council discussed the proposed ordinance on April 3, 2006 and May 15, 2006. The Council ultimately decided to place an advisory measure on the November 2006 ballot, which was approved by the City voters with 54% of the vote. Following the election in 2006, the City Council adopted the current regulations.

In 2008, the California Attorney General's Offices published information on medical marijuana law and guidelines for operation of dispensaries (Attachment 4). In addition, attached is a recent pair of informative articles from the League of California Cities magazine (Attachment 5).

Environmental Analysis

On May 15, 2006, pursuant to CEQA, the Council approved a Negative Declaration for regulation of medical marijuana dispensaries. For this application, staff recommends that the Commission determine that proposed project is categorically exempt from the requirements of CEQA per Section 15301, "Existing Facilities" of the CEQA Guidelines, which exempts projects that involve negligible expansion of an existing use; and Section 15332, "Infill Development Projects" of the CEQA Guidelines, which exempts projects that involve less than five acres and that would not result in any significant effects on traffic, noise, air quality or water quality.

Background on Applications to Date

Over the past several years, staff has received more inquiries about establishment of a medical marijuana dispensary than any other commercial land use. The City's stringent location standards have discouraged dozens of potential applicants that have expressed serious interest in establishing a dispensary.

The subject application is the fourth formal application to have been subject to the police background check (the three other potential applicants have not successfully passed the background check). In recent weeks, an additional application has been received to establish a dispensary at 727 San Pablo, but no action has been taken by staff pending the resolution of the present application. It also should be noted that the applicant initially submitted an application in 2009 for a location on San Pablo Avenue. The location was changed and new application submitted January 28, 2010.

Discussion

In 2006 and 2007, the City Council, with guidance from the Commission, and ultimately the voters, made the policy decision in support of accepting a dispensary in Albany. Thus, the Commission's review should be focused on whether or not the specific features of this particular application and its proposed location are consistent with that policy decision.

Staff has consulted with planners in nearby communities regarding the operation of medical marijuana dispensaries. Many dispensaries have operated in a manner that serves the community and are compatible with their setting. There are, however, serious considerations to the location of a dispensary. The two areas of greatest concern are:

- The potential public nuisance activities associated with patients smoking marijuana in public areas immediately after leaving the dispensary; and
- Regardless of the quality of operation, dispensaries have been targets for serious crimes.

Planning and Zoning Code Requirements

The following are the key elements of the City's Medical Marijuana ordinance:

- Police Department Background Check - As part of the application process, the Chief of Police conducts a confidential background check on applicants.

The applicant passed the background check on July 12, 2010 (Attachment 6).

- Prohibited Activities - The objective of the City's ordinance is to provide a dispensary only. The dispensing of marijuana is not allowed as an accessory activity to other uses. In addition, sale of other goods and services, including alcohol and tobacco is not allowed. Further, marijuana is not to be cultivated on site, physicians are not to evaluate patients on site, and patients are not to consume marijuana on the premises.

The current application calls for ground floor dispensary and offices on the upper levels. A future potential alternative use of the upper levels, not in the current application, would be dispensary patient health services and counseling.

- Location Standards - The primary location standard is that the dispensary shall be at least 1,000 feet from youth oriented facilities. In addition, the entrance to a dispensary is not allowed to be located within 95 feet of residential zoning district or 25 feet from the entrance to a multi-family residence.

Using a handheld GPS and Google Earth, staff estimates the distance from the entrance of the dispensary to the entrance to Ocean View School property is 1,072 feet. The margin of error for the GPS position is approximately 30 feet. The distance from the entrance of the dispensary to the

closest fenced corner of the school grounds is 998 feet. Similarly, staff estimates the distance from the entrance of the dispensary to the entrance to Vista School property is 1,267 feet.

There are multi-family housing on the block, and the entrances are more than 25 feet from the entrance to the proposed dispensary. The nearest residential zoning district is 100 feet directly north of the entrance to the proposed dispensary.

- Application requirements – the City’s ordinance establishes application requirements.

The applicant has prepared a business plan containing application materials (Attachment 7).

- Findings and Conditions of Approval – In addition to conventional conditions of approval for a conditional use permit, the Planning and Zoning Code requires special findings for medical marijuana dispensaries.

Proposed findings and conditions of approval are attached (Attachment 2).

- Extension of Use Permit - The initial term of the use permit is one year. After the first year, the Commission may consider extension of the use permit at annual intervals, for no more than twelve (12) months each, after holding a public hearing and considering reports from the Community Development Director and the Chief of Police regarding the dispensary’s compliance with applicable laws, requirements and conditions. After granting two one-year extensions of a use permit, the Commission has the discretion to extend the interval to two years.

Proposed conditions of approval establish the expiration of the use permit one year after the effective date of the approval of the use permit (e.g., 14 days after action of the Commission).

- Performance Standards - Section K of the ordinance describes performance standards required of the dispensary. Compliance with these performance standards would be one of the considerations the Commission could evaluate if an extension of the use permit is required. Of particular note, the following items are part of performance standards:

✓ *The entrance to the dispensary would remain locked at all times.*

✓ *The area within dispensing space to be used for dispensing marijuana would be limited to one patient at a time.*

✓ *The operator is responsible for educating patients about dispensary standards and providing top the neighborhood a contact person to address complaints*

✓ *The dispensary would provide adequate security at all times.*

✓ *All employees would be required to register with the police department*

- ✓ *Within the limits of medical records confidentiality, the dispensary must maintain records of the operations of the dispensary.*
- **Violations** - In addition to civil remedies and criminal penalties, the ordinance allows the City to close the dispensary if regulations have been violated or if the Chief of Police determines that the immediate closure of the dispensary is in order to protect the public peace or welfare. The violations section of the City's ordinance is reiterated as a condition of approval.

General Plan Land Use Designation

In reviewing the application and the City's land use regulations, staff noticed what appears to be a mapping error on the General Plan land use map (Attachment 8). In this block of Solano Avenue, which is zoned Solano Commercial, a Community Commercial land use designation would be expected in the General Plan. Upon careful examination of the land use map, however, it appears that the vertical cross-hatching that would be expected is missing (the underlying vertical lines indicating parcel boundaries are on the map). Literal interpretation of the absence of cross-hatching would compel a conclusion that this block is intended to be low-density residential, which is inconsistent with historical use and with logical land use planning. Thus, staff recommends that the Commission consider this a mapping error, and proceed with evaluation of the application with the parcel designated as Solano Commercial.

Off-Street Parking

According to City standards, one parking space is required per 400 square feet of neighborhood retail use. In addition, no parking is required for the first 1,500 square feet of ground floor retail area. Thus, with 860 square feet, the proposed ground floor dispensary does not require off-street parking. The second and third floor contain approximately 650 square feet each. As an office use, the upper levels would require three parking spaces. The proposal includes the provision of five off-street parking spaces.

Conclusion

The staff recommendation is based on City Council policy decision in 2007 accepting a potential dispensary. The proposal is modest in scale and is consistent with the Council's intent to serve the needs of Albany citizens seeking access to medical marijuana. The proposed location is one of the few compliant locations that are available to dispensary operators. In addition, the applicants have passed a thorough background check and expressed a commitment to contributing to the community in various ways.

Appeals:

The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council if such appeal is filed within 14 days of the date of action. Appeals may be filed in the Community Development Department by completing the required

form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.

Attachments:

1. Analysis of Compliance with Zoning Requirements
2. Findings and Conditions of Approval
3. Medical Marijuana Dispensary requirements
4. California Attorney General's Office Guidelines
5. League of California Cities Articles
6. Correspondence Regarding Police Department Background Check
7. Application and Business Plan
8. General Plan Land Use Map
9. Correspondence

ATTACHMENT 1 - ANALYSIS OF COMPLIANCE WITH ZONING REQUIREMENTS

20.12 Zoning Districts and Permitted Uses

General Plan: Solano Commercial (see discussion regarding apparent mapping error)
Zoning: SC (Solano Commercial)

20.16 Land Use Classifications

Surrounding	North - R-2	East - SC
Property Use	South - SC	West - SC

20.20.080 Secondary Residential Units.

Not applicable.

20.24.020 Table Of Site Regulations By District.

Not applicable.

20.24.030 Overlay District Regulations.

Not Applicable

20.24.040 Hillside Residential Regulations.

Not applicable.

20.24.050 Floor-Area-Ratio.

Not applicable.

20.24.060 Setback Areas, Encroachments.

Not applicable.

20.24.100 Distances Between Structures.

Not applicable.

20.24.110 Fences, Landscaping, Screening.

Not applicable.

20.24.130 Accessory Buildings.

Not applicable.

20.40 Housing Provisions

Not applicable.

20.44 Non-conforming Uses, Structures and Lot

Not applicable.

20.48 Removal of Trees

Not applicable.

20.52 Flood Damage Prevention Regulations

Not applicable.

20.100.030 Use Permits.

See Discussion.

20.100.040 Variances.

Not applicable.

20.100.010 Common Permit Procedures.

Public notice of this application was provided on October 1, 2010 in the form of mailed notice to property owners and occupants within a 300-foot radius, and posted in three locations.

20.100.050 Design Review.

Not applicable.

ATTACHMENT 2 - FINDINGS

In granting a use permit for a medical marijuana dispensary, the Planning and Zoning Commission shall make all of the following findings:

I. Special Findings for Medical Marijuana Dispensary approval (Per section 20.20.110.H of the AMC)

<i>Required Finding</i>	<i>Explanation</i>
1. All findings required by Subsection 20.100.030.D for granting a use permit.	See II. below
2. The proposed location, design and operation of the dispensary are consistent with applicable State and local laws.	The business plan submitted October 1, 2010 complies with state and local requirements.
3. The Chief of Police has determined that the nature of the site of and the immediate area of the site are not expected to present law enforcement problems.	On July 12, 2010, the Chief of Police approved compliance with the background investigation portion of the Planning and Zoning Code requirements.
4. All standards for facility location, as stated in this subsection, are met.	The dispensary is located in the Solano Commercial zoning district and is more than 1,000 feet from designated youth-oriented facilities, more than 25 feet from entrances to multi-family housing, and more than 95 feet from residential zoning district.
5. The site design and floor plan will minimize the potential for crime.	The proposed plan includes provisions for security and control over medical marijuana inventory.
6. All reasonable measures have been incorporated in the plan to control patrons' conduct inside and outside and to avoid public nuisance.	Staffing levels, dispensing standards, and the establishment of a community relations contact person are adequate to address any potential public nuisance.

II. Findings for Conditional Use Permit approval (Per section 20.100.030.D of the AMC)

Required Finding	Explanation
<p>1. Necessity, Desirability, Compatibility. <i>The project's size, intensity and location of the proposed use will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.</i></p>	<p>The General Plan land designates this area for General Commercial. Additionally, the project meets City zoning standards for location, intensity and type of development. The site is an existing commercial building, currently vacant, and the conversion of use into a medical marijuana dispensary is compatible with the neighborhood.</p>
<p>2. Adverse Impacts. <i>The project's use as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or physically injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:</i></p> <ul style="list-style-type: none"> a. <i>The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;</i> b. <i>The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;</i> c. <i>The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;</i> d. <i>Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;</i> 	<ul style="list-style-type: none"> a. The proposal is in scale and harmony with existing development near the site. It is an already developed site. b. At the proposed hours of operation, on-street parking is generally available in the San Pablo commercial district. c. No noxious or offensive emission such as noise, glare or dust will occur from the granting of conditional use permit. d. It is an existing site without need for additional landscaping, services areas and lighting. Design review approval is not necessary.

<i>Required Finding</i>	<i>Explanation</i>
<p>3. <i>Consistency with Zoning Ordinance, General Plan and Specific Plan.</i> <i>That such use or feature as proposed will comply with the applicable provisions of this Chapter and will be consistent with the policies and standards of the General Plan and any applicable specific plan.</i></p>	<p>The proposed project will not be detrimental to the health, safety, convenience and welfare of those in the area and would not adversely impact property, improvements or potential future development in the area. The proposed business will not create an excessive amount of noise and should have little to no impact on surrounding neighbors.</p>

CONDITIONS OF APPROVAL

GENERAL PROJECT CONDITIONS

GENERAL -1 - Project Approval.

This Conditional Use Permit approval is for Erik Van Den Akker and Bret Van Den Akker, at 1019 San Pablo Avenue, as substantially shown and described on the project plans, except as may be modified by conditions herein. Plans include business plan date received October 1, 2010 as presented to the Planning and Zoning Commission on October 12, 2010. For any condition herein that requires preparation of a Final Plan where the project developer has submitted a conceptual plan, the project developer shall submit final plan(s) in substantial conformance with the conceptual plan, but incorporate the modifications required by the conditions herein for approval by the City.

GENERAL -3 Fees.

The applicant shall pay all City and other related fees applicable to the property, as may be modified by conditions herein. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid prior to issuance of said permit or prior to any City Council final action approval. Notice shall be taken specifically of Plan Check, Engineering, Fire and Inspection Fees. The project developer shall also reimburse the City for direct costs of planning; building and engineering plan check and inspection, as mutually agreed between the City and developer.

GENERAL -4 Appeals.

The Albany Municipal Code provides that any action of the Planning staff may be appealed to the Planning and Zoning Commission, and any action of the Planning and Zoning Commission may be appealed to the City Council as per the procedures described in Section 20.100.080. The City Clerk will then schedule the matter for the next available City Council meeting.

GENERAL -5 Requirement for Building Permit.

Approval granted by the Planning and Zoning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Community Development Department must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.

GENERAL -6 Fire Department Approval.

As part of a building permit application, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.

GENERAL -7 Engineering Approval.

As part of a building permit application, the applicant shall submit written documentation that all requirements of the Public Works Department have, or will be, met to the satisfaction of the City Engineer.

GENERAL -8 Construction Hours.

Construction activity shall be restricted to the hours of 8:00 a.m. to 6:00 p.m. Mondays through Saturdays, and 10:00 a.m. to 6:00 p.m., Sundays and legal holidays, unless otherwise approved in writing by the City Engineer for general construction activity. Failure to comply with construction hours may result in stop work orders or other administrative actions.

GENERAL -9 Modifications to Approved Plans.

The project shall be constructed and operated as approved. Planning staff may approve minor modifications in the project design, but not the permitted land use (per Municipal Code Section 20.12). A change in an item requiring discretionary approval and any other changes deemed appropriate by the Planning staff shall require further Planning and Zoning Commission approval through the Design Review process.

GENERAL -10 Hold Harmless Agreement.

Pursuant to Government Code Section 66474.9, the applicant (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will promptly notify the applicant of any such claim action or proceeding and cooperate fully in the defense.

SPECIAL PROJECT CONDITIONS

SPECIAL- 1. Term of Permit.

The term of a use permit for a medical marijuana dispensary shall be limited to one (1) year from date of approval. An extension may be considered as provided in paragraph J. below.

SPECIAL-2. Compliance with Laws.

The premises occupied by a dispensary shall comply with all applicable local, State and Federal rules, regulations and laws including but not limited to building codes and the Americans with Disabilities Act.

SPECIAL- 3. Limitations on Clientele.

Persons to whom marijuana may be dispensed shall be limited to persons who are residents of Alameda County and who hold Identification Cards issued by any entity whose procedures for validation and issuance have been approved by the Albany Chief of Police.

SPECIAL- 4. Compensation.

A dispensary may receive compensation only for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient, or person with an identification card, to enable that person to use marijuana pursuant to California Health and Safety code §11362.7 et seq., or for payment for out-of-pocket expenses incurred in providing those services, or both. However, any dispensary must pay applicable sales tax on the services and obtain and maintain the applicable seller's or similar permit from the Franchise Tax Board or other regulatory agency.

SPECIAL-5. Staffing Requirements.

A dispensary shall be staffed with at least one (1) person during hours of operation who shall not be responsible for dispensing medical marijuana. It shall be unlawful for the permittee, operator, or other persons in charge of any medical marijuana dispensary to employ, or accept volunteer services from, any person who is not at least eighteen (18) years of age.

SPECIAL-6. Operating Hours.

Specific hours of operation shall be as established by a condition of a use permit, provided that no dispensary shall be permitted to be open at any time between the hours of 7:00 p.m. and 8:00 a.m.

SPECIAL-7. Limitations on Inventory.

The quantities of marijuana that may be stored or maintained on the premises of the dispensary at any time shall not exceed the quantities specified by California Health and Safety Code § 11362.77 for each qualified patient, including any additional quantity authorized according to paragraph (b) of § 11362.77, provided further that the following limitations shall apply:

It shall be a violation of this subsection if at any time the amount of marijuana on the premises exceeds the lesser of:

- a. An amount of marijuana equal to eight (8) ounces per primary caregiver or person with an identification card who has received marijuana from the dispensary during the previous thirty (30) calendar days, or
- b. A total of twenty (20) pounds of marijuana.

SPECIAL-8. Interior Layout.

A dispensary shall have a lobby waiting area at the entrance to receive clients, and a separate and secure designated area for dispensing medical marijuana to qualified patients or designated caregivers. A dispensary shall have a locked safe on premises, with a performance rating of TL-30 or greater, identified as a part of the security plan, for after-hours storage of medical marijuana.

SPECIAL-9. Primary Entrance.

The primary entrance to a dispensary shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets and sidewalks.

SPECIAL-10. Alarm System.

A professionally monitored robbery alarm system shall be installed and maintained in good working condition.

SPECIAL-11. Security Cameras.

Security surveillance cameras shall be installed to monitor the main entrance and exterior of the premises to discourage loitering, crime, illegal or nuisance activities.

SPECIAL-12. Community Relations Contact.

A dispensary shall provide the Chief of Police and the Community Development Director with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the dispensary. The dispensary shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the City or Police Department.

SPECIAL-13. Odors Control.

A dispensary shall have an air treatment system that ensures off-site odors shall not result.

SPECIAL-14. Signage.

Signs on the exterior of the facility shall conform to all applicable regulations of Section 20.32 of this Chapter, except neither the Community Development Director nor the Planning and Zoning Commission shall issue a permit for a temporary sign of any nature. In addition, the following specific regulations shall apply to any medical marijuana dispensary:

a. The building entrance to a dispensary shall be clearly and legibly posted with a notice indicating the following:

1) Smoking, ingesting or consuming marijuana on the premises or in the vicinity of the dispensary is prohibited.

2) Persons under the age of eighteen (18) are precluded from entering the premises unless they are a qualified patient or a primary caregiver and are in the presence of a parent or guardian.

b. Signs on the premises shall not obstruct the entrance or windows.

c. Business identification signage shall be limited to that needed for identification only. Signs shall not contain any textual or graphic that identifies, advertises or lists the services offered.

SPECIAL-15. Performance.

The dispensary shall observe all performance standards for facility operation as enumerated in paragraph K. below.

SPECIAL-16. Inspection by City; Right of Entry by Officials.

Officials of the City, including the Chief of Police and members of his/her department, shall have the right to enter the premises during regular business hours for the purpose of making reasonable inspections to enforce compliance with building, fire, electrical, plumbing or health regulations, and for the purpose of determining that the provisions of this section, and other provisions of law, are being complied with. The Chief of Police and the permittee shall endeavor to develop a protocol to conduct inspections that address medical privacy rights of clientele.

SPECIAL-17. Additional Conditions.

The dispensary shall meet any specific, additional operating procedures and measures as may be imposed as conditions of approval by the Planning and Zoning Commission or the City Council to insure that the operation of the dispensary is consistent with the protection of the health, safety and welfare of the community, qualified patients, and primary caregivers, and will not adversely affect surrounding uses.

PERFORMANCE STANDARDS FOR FACILITY OPERATION.

OPERATIONS-1. Site Management Standards.

The operator of the dispensary shall be responsible for ongoing management of the site and its immediate surroundings according to the following standards:

- a. The entry to the dispensary shall be locked at all times. Only persons with bona fide purposes shall be allowed inside the dispensary.
- b. The dispensing area shall be limited to dispensing personnel and one (1) person with an identification card and primary caregiver at any time.
- c. Restrooms shall be locked and under control of the manager at all times.
- d. The operator shall provide patients with a list of the rules and regulations governing medical marijuana use and consumption within the City and recommendations on sensible marijuana etiquette.
- e. The operator shall make every good faith effort to encourage neighborhood residents to call the dispensary's designated community relations contact person to try to solve operating problems, if any, before any calls or complaints are made to the City.
- f. The operator shall take all reasonable steps to avoid the incidence of nuisances in public areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours.
 - 1) "Reasonable steps" shall include calling the police in a timely manner; and requesting those engaging in objectionable activities to cease those activities, unless personal safety would be threatened in making the request.
 - 2) "Nuisance" includes but is not limited to disturbances of peace, open public consumption of marijuana or alcohol, excessive pedestrian or vehicular traffic, illegal drug activity, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct or police detentions and arrests.
- g. The operator shall clear the sidewalks adjoining the premises daily plus ten (10) feet beyond property lines along the street as well as any parking lots under the control of the operator as needed to control litter, debris and trash.
- h. The operator shall remove all graffiti from the premises and parking lots under the control of the operator within seventy-two (72) hours of its application.

OPERATIONS-2. Security Standards.

The dispensary shall provide adequate security on the premises including lighting and alarms, to insure the safety of persons and to protect the premises from theft. Security video shall be maintained for seventy-two (72) hours.

- a. 24-hour Emergency Contact. A dispensary shall provide the Police Chief with the name, phone number and facsimile number of an emergency contact, accessible twenty-four (24) hours per day, whom one can notify if there are urgent operating problems with the dispensary.
- b. Weapons. No firearms or other weapons shall be permitted on the premises, including any firearm defined in Sections 12001(b), 12001(c), 12001(d), or any weapon or device whose possession is prohibited by Section 12020, 12220, 12280, 12303, 12320, 12321, 12355, or 12520 of the California Penal Code.

OPERATIONS-3. Dispensing Standards.

- a. A dispensary shall dispense medical marijuana to meet monthly medication needs of qualified patients, similar to typical pharmacy operations. The dispensary shall strongly discourage and avoid daily or weekly visits by patients as a routine practice.
- b. A dispensary shall label its products by stating the name of the dispensary and the weight of marijuana. All such labels shall be made in ink, and shall be physically attached to each container of marijuana, sealed inside the container with the marijuana, or both.
- c. Dispensary operations shall not result in the illegal redistribution of medical marijuana obtained from the dispensary, or the use of marijuana in any manner that violates local, State or City laws or regulations.
- d. A dispensary shall provide to the City, if so requested by the Community Development Director, written evidence that the dispensary is not engaged in interstate commerce.

OPERATIONS-4. Personnel Management Standards.

- a. Every owner or operator of a permitted medical marijuana dispensary shall register every employee or volunteer with the Albany Police Department at least thirty (30) days prior to the commencement of the employee's period of employment at the medical marijuana dispensary. Failure to comply with this subsection shall be grounds for suspension or revocation of the permit. The following procedures shall be observed:

1) Each employee or volunteer shall be required to provide two recent passport-quality color photographs and, at the discretion of the Chief of Police, shall be fingerprinted by the Police Department for purposes of identification.

2) Each new employee or volunteer shall provide the following information on a form provided by the Police Department; name, current residence address, and telephone number; date of birth; height, weight, color of eyes, and hair.

3) The owner or operator of a dispensary shall report immediately to the Community Development Department and the Chief of Police any and all changes of address or ownership of the dispensary, and any changes of employees, volunteers or contractors who work in the dispensary, including those have terminated employment with the dispensary.

4) Each employee, volunteer, contractor or other person working at the dispensary site shall be identified at all times by a visibly-displayed photo identification card, containing, at a minimum, the name and position of the person.

b. This information will be considered confidential and will not be released unless pursuant to subpoena issued by a court of competent jurisdiction.

c. The dispensary operator shall provide dispensary staff with appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with State and local law.

OPERATIONS-5. Record Maintenance.

a. City requirements for record maintenance shall not violate State laws regarding patient confidentiality.

b. Each operator of a dispensary shall maintain a current register of the names of all employees, including volunteers, currently employed by the dispensary, and shall disclose such registration for inspection by any City officer or official for purposes of determining compliance with the requirements of this subsection.

c. A dispensary shall maintain records of all persons with an identification card, and primary caregivers, using only the identification card number issued by the County or other entity approved by the Chief of Police, as a protection of the confidentiality of the cardholders.

d. Information on prior years operations shall be provided annually, as required in this Chapter. The operator shall adjust the operations as necessary to address issues.

e. Each dispensary shall allow the Chief of Police, or his designee, to have access to the dispensary's books, records, accounts, and all data relevant to its permitted activities for the purpose of conducting an audit or examination to determine compliance with this Code and applicable law. Books, records, accounts and any and all relevant data will be produced no later than twenty-four (24) hours after receipt of the written request(s) by the Chief of Police.

VIOLATIONS.

VIOLATIONS -1. Scope of Liability for Violations. Whenever in this subsection any act or omission is made unlawful, it shall include causing, permitting, aiding, abetting, suffering or concealing the fact of the act or omission.

VIOLATIONS -2. Remedies for Enforcement of Violations. Remedies include but are not limited to:

a. **Criminal Penalties.** Any person who violates, causes, or permits another person to violate any provision of this subsection is subject to prosecution for a misdemeanor offense, and upon conviction thereof, shall be punished.

b. **Civil Injunction.** The violation of any provision of this subsection shall be, and hereby is, declared to be contrary to the public interest and shall, at the discretion of the City, create a cause of action for injunctive relief.

c. **Administrative Remedies.** In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this subsection may be subject to administrative remedies as set forth by City ordinance. Administrative remedies shall include the ability of the Chief of Police to order the immediate closure of the dispensary, pending a hearing before the City Council, if evidence is discovered that would lead a reasonable person to conclude that any of the following conditions exists:

1) The provisions of the Medical Marijuana Dispensary Regulations are being, or have been, violated;

2) Any condition is discovered that would warrant the denial of the issuance of such conditional use permit or business license in the first instance;

3) The Chief of Police (or designee) determines that the immediate closure of the dispensary is in order to protect the public peace or welfare.

d. **Abatement.** Any use or condition caused, or permitted to exist, in violation of any provision of this subsection shall be, and hereby is, declared a public nuisance and may be summarily abated by the City.

e. Revocation or Nonrenewal of the Permit. The terms of the use permit will be enforced as proved by Section 20-36 of this Chapter, which subsection contains a process for the consideration of the revocation of a use permit for reasons that include, among other things, failure to comply with the terms and conditions of the use permit, or for any grounds that would warrant denial of the issuance of a use permit in the first instance.

3. Remedies Cumulative. All remedies prescribed under this chapter shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

4. Separate Offense for Each Day. Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

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20.20.110 Medical Marijuana Dispensaries.

A. Purpose. The purpose and intent of this subsection to regulate medical marijuana dispensaries in order to promote the health, safety, morals, and general welfare of the residents and businesses within the city.

B. Findings. The City Council adopts this Subsection 20.20.110 based upon the following findings:

1. The voters of the State of California approved Proposition 215 (codified as California Health and Safety Code §§ 11362.5 et seq., and entitled "The Compassionate Use Act of 1996").

2. The intent of Proposition 215 was to enable persons who are in need of marijuana for specified medical purposes to obtain and use it under limited, specified circumstances.

3. The State enacted Senate Bill 420 in October 2003 (commencing with California Health and Safety Code § 11362.7), relating to controlled substances, to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations laws consistent with SB 420.

4. To protect the public health, safety, and welfare, it is the desire of the City Council to modify the Municipal Code to be consistent with SB 420, regarding the location and operation of Medical Marijuana Dispensaries.

5. It is the City Council's intention that nothing in this subsection shall be deemed to conflict with Federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841, nor to otherwise permit any activity that is prohibited under that Act or other applicable Federal or State law.

6. It is the City Council's intention that nothing in this subsection shall be construed to allow persons to engage in conduct that endangers others or causes a public nuisance, allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal.

7. In a Bulletin to All California Law Enforcement Agencies, dated June 22, 2005 the Attorney General has stated that, through the Compassionate Use Act, California has an express policy decriminalizing the medically approved use of marijuana, which policy must necessarily govern the exercise of discretionary arrest powers by California peace officers and counsels against effecting arrests and seizures under Federal law when the use, possession, or cultivation of the marijuana appears legal within the meaning of California's Compassionate Use Act.

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8. Pursuant to California Health and Safety Code §§ 11362.7 et seq., the State Department of Health shall be responsible for establishing and maintaining a voluntary identification card program.

9. California Health and Safety Code § 11362.71(b) requires every county health department, or its designee, to implement a procedure to accept and process applications from those seeking to join the identification program in the manner set forth in California Health and Safety Code §§ 11362.71 et seq.

10. The adoption and implementation of this subsection will not have a significant effect on the environment, because City regulations, which have been established previously, or are established by this subsection, are adequate to insure there will be no significant impacts. An initial study did not reveal any potentially significant impacts, which cannot be avoided under previously existing regulations or additional regulations, contained herein. This subsection establishes standards for the location and operation of medical marijuana dispensaries in accordance with State law, and shall be subject to on-going oversight by the Chief of Police, the Community Development Director, and the Planning and Zoning Commission, with potential appeal to the City Council.

C. Business License Investigation Required. Prior to filing an application for a use permit for a medical marijuana dispensary, the applicant must provide information to the Chief of Police for a business license investigation and pay the business license investigation fee as set forth in the Master Fee Schedule, no part of which shall be refundable. If the applicant is a corporation, the complete identification information of each of the officers and directors of such corporation and of each stockholder owning more than ten (10%) percent of the stock of the corporation shall be set forth as described in paragraph C.1.a. If the applicant is a partnership, the complete identification information of each of the partners, including limited partners, shall be set forth as described in paragraph C.1, below:

1. Any applicant for such a permit shall furnish the following information:
 - a. Applicant(s) Name. The full name (including any current or prior aliases, or other legal names the applicant is or has been known by, including maiden names), date of birth, social security number, present residence address, and telephone number of the applicant;
 - b. Applicant(s) Mailing Address. The address to which notice of action on the application is to be mailed;
 - c. Previous Addresses. Previous residence addresses for the past five (5) years immediately prior to the present address of the applicant;
 - d. Verification of Age. Written proof that the applicant is over the age of eighteen (18) years of age;

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e. Physical Description. Applicant's height, weight, color of eyes and hair;

f. Photographs. Two (2) passport quality color photographs for identification purposes;

g. Nothing herein contained shall be construed to deny to the Police Department the right to take the fingerprints and additional photographs of the applicant.

h. Employment History. All business, occupation, or employment of the applicant for the five (5) years immediately preceding the date of the application;

i. Tax History. The business tax history of the applicant with respect to any medical marijuana dispensary, including whether such person, in previously operating in this or another city, county or state under license has had a business license revoked or suspended, the reason therefor, and the business or activity or occupation subsequent to such action of suspension or revocation;

j. The names and telephone numbers of the person or persons to be regularly engaged in the operation of the proposed dispensary, whether an employee, volunteer or contractor. The application shall also identify those persons, including telephone numbers (i.e., emergency contact), having management and supervisory responsibilities for the proposed dispensary. Every person listed as owner, manager, supervisor or employee must submit fingerprints and other necessary information for a background check to the Albany Police Department, and be photographed for identification purposes. In addition, any new employees, independent contractors, other persons and/or volunteers who will work at the proposed medical marijuana dispensary must submit their complete identification information to the police department no less than thirty (30) days prior to the start of their employment;

k. Authorization for the Chief of Police or his designee to seek verification of the information contained in the application;

1. Applicant's Certification. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

2. The Chief of Police shall commence the background investigation of any applicant immediately upon its filing and shall complete such review within sixty (60) days. Where the Chief of Police determines that good cause exists as to why such review cannot be completed within sixty (60) days, the Chief may allow for no more than two (2) extensions of thirty (30) days each.

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3. Within ten (10) business days after the filing of an application, the Chief of Police shall reject any application and so notify the applicant, if the application has been improperly completed or if it is incomplete.

4. Effect of Incomplete Filing. Upon notification that an application submittal is incomplete, the applicant shall be granted an extension of time to submit all materials required to complete the application within ten (10) days. If the application remains incomplete in excess of ten (10) days the application shall be deemed withdrawn and a new application submittal shall be required in order to proceed with the subject request. The time period for granting or denying a permit shall be stayed during the period in which the applicant is granted an extension of time.

5. The Chief of Police shall be responsible for verifying factual information in the application, including names, addresses and other information on the applicant operator and its employees of the proposed dispensary.

6. Upon completion of the background investigation, the Chief of Police shall reject any permit that meets any of the following criteria:

a. The proposed dispensary does not comply with requirements of this Chapter.

b. The applicant has knowingly made a false statement of material fact or has knowingly omitted one (1) or more material facts from the application.

c. The operation of the proposed dispensary at the proposed location is prohibited by any State or local law or regulation.

d. The applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant has been convicted of a felony, or of a misdemeanor involving moral turpitude, or has engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

e. The applicant has violated any local or State law, statute, rule or regulation respecting the distribution, possession, or consumption of marijuana.

f. The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

g. The applicant or the operator listed in the application is less than eighteen (18) years of age.

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7. In the event of denial, notifications and reasons for denial shall be set forth in writing and shall be sent to the applicant by means of registered or certified mail or hand delivery.

8. In the event of acceptance, notification will be set forth in writing and sent to the applicant by means of registered or certified mail or hand delivery. A copy of the notice shall be sent to the Community Development Department.

D. Prohibited Activities. The following activities are prohibited from being associated with a medical marijuana dispensary. The term "premises" as used herein shall include the building or building space occupied by the dispensary, as well as any accessory structures, parking areas, or other surroundings within two hundred (200) feet of any entrance to the dispensary.

1. A medical marijuana dispensary will not be permitted as an accessory use to any other permitted use.

2. The commercial sale of any product, good, or service is prohibited. The term "commercial sale" does not include the provision of medical marijuana, or devices directly related to the administration of medical marijuana, on terms and conditions that are consistent with this subsection and applicable law.

3. No dispensary shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell or furnish alcoholic beverages, or to operate a business that sells or furnishes alcoholic beverages.

4. The display, sale or use on the premises of alcohol, or tobacco is prohibited.

5. No marijuana shall be smoked, ingested or otherwise consumed on the premises of a dispensary. The term "premises" as used herein shall include the building or building space occupied by the dispensary, as well as any accessory structures, parking areas, or other surroundings within two hundred (200) feet of any entrance to the dispensary.

6. Notwithstanding California Health and Safety Code § 11362.77, no living marijuana plants maybe cultivated or maintained on the premises of any medical marijuana dispensary.

7. Patients who are patrons of the dispensary shall not medicate in public places, including any street or sidewalk, within the City of Albany.

8. No dispensary shall utilize the services of an attending physician on the premises to evaluate patients and provide a recommendation for medical marijuana.

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9. Dispensary sales to any person attempting to obtain a doctor's recommendation onsite by telephone, facsimile, electronic mail or other communication methods are strictly prohibited.

10. Any off-site sale of marijuana, including but not limited to sale via internet, or delivery of marijuana to any location outside of the dispensary, is prohibited.

E. Standards for Facility Location. The following standards shall apply to the physical location of any medical marijuana dispensary:

1. No more than one (1) medical marijuana dispensary shall be permitted to be located and operational within the limits of the City of Albany at any time.

2. A permitted medical marijuana dispensary shall be limited to a single, fixed location, within a building.

3. No dispensary shall have a principal entrance located within ninety-five (95) feet of a parcel of land in an R – Residential zoning district.

4. The principal entry to any dispensary 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.

5. No medical marijuana dispensary shall be located within a one thousand (1,000) foot distance of any of the following:

a. Any other such dispensary, including any dispensary located in an adjacent jurisdiction;

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

c. Any municipal parks or playgrounds.

6. No medical marijuana dispensary shall be located within a one thousand (1,000) foot distance of any of the following businesses, where such businesses were existing at the time of approval of a use permit for a medical marijuana dispensary:

a. Any smoke-shop which sells paraphernalia for consuming drug or tobacco products.

b. Any "youth-oriented establishment" characterized by either or both of the following: (1) the establishment advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors; or (2) the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

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7. Exception to one thousand (1,000) foot distance specified in paragraph 6, above: The Planning and Zoning Commission may permit a new youth-oriented establishment to be located within one thousand (1,000) feet of an existing medical marijuana dispensary, subject to the following findings:

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

b. *The proximity of the existing medical marijuana dispensary would not have any detrimental effect on the minor patrons of the youth-oriented establishment.*

F. Use Permit and Business License Required. Upon approval of a business license investigation report all of the following steps are required to be completed prior to initiating operation of a medical marijuana dispensary:

1. The applicant shall apply for a conditional use permit. All use permit applications for a medical marijuana dispensary shall be accompanied by a fee for a major use permit as set forth in the Master Fee Schedule, no part of which shall be refundable.

2. Upon receipt of a use permit application the Community Development Department shall process the application and forward it to the Fire Department, which within a period of thirty (30) days from the date of application shall review records or make an inspection of the premises proposed to be used as a medical marijuana dispensary, and shall make a written recommendation to the Community Development Department concerning compliance with the respective requirements.

3. The Planning and Zoning Commission shall schedule and conduct a public hearing on the use permit application, under Subsection 20.100.030 and may grant the permit provided that applicant meets the findings required by Subsection 20.100.030.D and the findings required for a medical marijuana dispensary listed in paragraph H. below.

4. Upon approval of a use permit, the applicant shall be required to obtain a business license prior to commencing operation of the dispensary.

G. Use Permit Application Requirements. An application for a use permit shall be submitted on a standard application form provided by the Community Development Department, and shall include the following materials and information at a minimum:

1. A report from the Chief of Police approving a business license investigation report, as required in paragraph C. above.

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2. A statement of qualifications, on the part of the applicant and any employees involved in transactions relating to the dispensing of medical marijuana.

3. A statement of the need for a medical marijuana dispensary to be located within the City limits of Albany.

4. Evidence of consent by the owner of the property on which the dispensary is to be located to file application for a use permit.

5. A site plan, drawn to accurate scale, showing the location and function of all buildings on the site; parking areas with delineation of spaces; landscaped areas; adjacent rights-of-way, including sidewalks and street frontage; and the locations and functions of buildings on abutting properties.

6. A floor plan of the building delineating separate areas for a waiting room, dispensing area, and storage area, and the use of any other spaces within the building, or in any accessory buildings on the site.

7. Plans and descriptions of a security system, including lighting, alarm and locking systems.

8. Plans for signage, showing locations, dimensions, materials, colors and content of all exterior signs, including identification signs and required informational signs.

9. A narrative description of proposed operations, including the following:

a. Number of persons expected to be employed on the site, including any volunteer staff, and the functions to be performed by each person.

b. Anticipated numbers of persons to be served by the dispensary.

c. How the operation of the dispensary will comply with the performance standards listed in paragraph K. below for dispensing, security, site management, personnel management, and records maintenance.

H. Findings Required for Use Permit. In granting a use permit for a medical marijuana dispensary, the Planning and Zoning Commission shall make all of the following findings:

1. *All findings required by Subsection 20.100.030.D for granting a use permit.*

2. *The proposed location, design and operation of the dispensary are consistent with applicable State and local laws.*

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3. *The Chief of Police has determined that the nature of the site of and the immediate area of the site are not expected to present law enforcement problems.*
4. *All standards for facility location, as stated in this subsection, are met.*
5. *The site design and floor plan will minimize the potential for crime.*
6. *All reasonable measures have been incorporated in the plan to control patrons' conduct inside and outside and to avoid public nuisance.*

I. Standard Conditions of Use Permit.

1. **Term of Permit.** The term of a use permit for a medical marijuana dispensary shall be limited to one (1) year. An extension may be considered as provided in paragraph J. below.
2. **Compliance with Laws.** The premises occupied by a dispensary shall comply with all applicable local, State and Federal rules, regulations and laws including but not limited to building codes and the Americans with Disabilities Act.
3. **Limitations on Clientele.** Persons to whom marijuana may be dispensed shall be limited to persons who are residents of Alameda County and who hold Identification Cards issued by any entity whose procedures for validation and issuance have been approved by the Albany Chief of Police.
4. **Compensation.** A dispensary may receive compensation only for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient, or person with an identification card, to enable that person to use marijuana pursuant to California Health and Safety code §11362.7 et seq., or for payment for out-of-pocket expenses incurred in providing those services, or both. However, any dispensary must pay applicable sales tax on the services and obtain and maintain the applicable seller's or similar permit from the Franchise Tax Board or other regulatory agency.
5. **Staffing Requirements.** A dispensary shall be staffed with at least one (1) person during hours of operation who shall not be responsible for dispensing medical marijuana. It shall be unlawful for the permittee, operator, or other persons in charge of any medical marijuana dispensary to employ, or accept volunteer services from, any person who is not at least eighteen (18) years of age.
6. **Operating Hours.** Specific hours of operation shall be as established by a condition of a use permit, provided that no dispensary shall be permitted to be open at any time between the hours of 7:00 p.m. and 8:00 a.m.
7. **Limitations on Inventory.** The quantities of marijuana that may be stored or maintained on the premises of the dispensary at any time shall not exceed the

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quantities specified by California Health and Safety Code § 11362.77 for each qualified patient, including any additional quantity authorized according to paragraph (b) of § 11362.77, provided further that the following limitations shall apply:

It shall be a violation of this subsection if at any time the amount of marijuana on the premises exceeds the lesser of:

a. An amount of marijuana equal to eight (8) ounces per primary caregiver or person with an identification card who has received marijuana from the dispensary during the previous thirty (30) calendar days, or

b. A total of twenty (20) pounds of marijuana.

8. **Interior Layout.** A dispensary shall have a lobby waiting area at the entrance to receive clients, and a separate and secure designated area for dispensing medical marijuana to qualified patients or designated caregivers. A dispensary shall have a locked safe on premises, with a performance rating of TL-30 or greater, identified as a part of the security plan, for after-hours storage of medical marijuana.

9. **Primary Entrance.** The primary entrance to a dispensary shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets and sidewalks.

10. **Alarm System.** A professionally monitored robbery alarm system shall be installed and maintained in good working condition.

11. **Security Cameras.** Security surveillance cameras shall be installed to monitor the main entrance and exterior of the premises to discourage loitering, crime, illegal or nuisance activities.

12. **Community Relations Contact.** A dispensary shall provide the Chief of Police and the Community Development Director with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the dispensary. The dispensary shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the City or Police Department.

13. **Odors Control.** A dispensary shall have an air treatment system that ensures off-site odors shall not result.

14. **Signage.** Signs on the exterior of the facility shall conform to all applicable regulations of Section 20.32 of this Chapter, except neither the Community Development Director nor the Planning and Zoning Commission shall issue a permit for a temporary sign of any nature. In addition, the following specific regulations shall apply to any medical marijuana dispensary:

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a. The building entrance to a dispensary shall be clearly and legibly posted with a notice indicating the following:

1) Smoking, ingesting or consuming marijuana on the premises or in the vicinity of the dispensary is prohibited.

2) Persons under the age of eighteen (18) are precluded from entering the premises unless they are a qualified patient or a primary caregiver and are in the presence of a parent or guardian.

b. Signs on the premises shall not obstruct the entrance or windows.

c. Business identification signage shall be limited to that needed for identification only. Signs shall not contain any textual or graphic that identifies, advertises or lists the services offered.

15. **Performance.** The dispensary shall observe all performance standards for facility operation as enumerated in paragraph K. below.

16. **Inspection by City; Right of Entry by Officials.** Officials of the City, including the Chief of Police and members of his/her department, shall have the right to enter the premises during regular business hours for the purpose of making reasonable inspections to enforce compliance with building, fire, electrical, plumbing or health regulations, and for the purpose of determining that the provisions of this section, and other provisions of law, are being complied with. The Chief of Police and the permittee shall endeavor to develop a protocol to conduct inspections that address medical privacy rights of clientele.

17. **Additional Conditions.** The dispensary shall meet any specific, additional operating procedures and measures as may be imposed as conditions of approval by the Planning and Zoning Commission or the City Council to insure that the operation of the dispensary is consistent with the protection of the health, safety and welfare of the community, qualified patients, and primary caregivers, and will not adversely affect surrounding uses.

J. Extension of Use Permit. Upon filing of an application for an extension of a valid use permit, the Planning and Zoning Commission may consider extension of the use permit at annual intervals, for no more than twelve (12) months each, after holding a public hearing and considering reports from the Community Development Director and the Chief of Police regarding the dispensary's compliance with applicable laws, requirements and conditions. After granting two (2) 12-month extensions of a use permit, the Planning and Zoning Commission shall have the discretion to extend the interval to twenty-four (24) months. Upon application for an extension of a use permit, the Chief of Police may require current background investigations, with fingerprinting, of dispensary owners, managers and other personnel, with costs of such investigations to be borne by the applicant.

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K. Performance Standards for Facility Operation.

1. **Site Management Standards.** The operator of the dispensary shall be responsible for ongoing management of the site and its immediate surroundings according to the following standards:

a. The entry to the dispensary shall be locked at all times. Only persons with bona fide purposes shall be allowed inside the dispensary.

b. The dispensing area shall be limited to dispensing personnel and one (1) person with an identification card and primary caregiver at any time.

c. Restrooms shall be locked and under control of the manager at all times.

d. The operator shall provide patients with a list of the rules and regulations governing medical marijuana use and consumption within the City and recommendations on sensible marijuana etiquette.

e. The operator shall make every good faith effort to encourage neighborhood residents to call the dispensary's designated community relations contact person to try to solve operating problems, if any, before any calls or complaints are made to the City.

f. The operator shall take all reasonable steps to avoid the incidence of nuisances in public areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours.

1) "Reasonable steps" shall include calling the police in a timely manner; and requesting those engaging in objectionable activities to cease those activities, unless personal safety would be threatened in making the request.

2) "Nuisance" includes but is not limited to disturbances of peace, open public consumption of marijuana or alcohol, excessive pedestrian or vehicular traffic, illegal drug activity, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct or police detentions and arrests.

g. The operator shall clear the sidewalks adjoining the premises daily plus ten (10) feet beyond property lines along the street as well as any parking lots under the control of the operator as needed to control litter, debris and trash.

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h. The operator shall remove all graffiti from the premises and parking lots under the control of the operator within seventy-two (72) hours of its application.

2. **Security Standards.** The dispensary shall provide adequate security on the premises including lighting and alarms, to insure the safety of persons and to protect the premises from theft. Security video shall be maintained for seventy-two (72) hours.

a. 24-hour Emergency Contact. A dispensary shall provide the Police Chief with the name, phone number and facsimile number of an emergency contact, accessible twenty-four (24) hours per day, whom one can notify if there are urgent operating problems with the dispensary.

b. Weapons. No firearms or other weapons shall be permitted on the premises, including any firearm defined in Sections 12001(b), 12001(c), 12001(d), or any weapon or device whose possession is prohibited by Section 12020, 12220, 12280, 12303, 12320, 12321, 12355, or 12520 of the California Penal Code.

3. **Dispensing Standards.**

a. A dispensary shall dispense medical marijuana to meet monthly medication needs of qualified patients, similar to typical pharmacy operations. The dispensary shall strongly discourage and avoid daily or weekly visits by patients as a routine practice.

b. A dispensary shall label its products by stating the name of the dispensary and the weight of marijuana. All such labels shall be made in ink, and shall be physically attached to each container of marijuana, sealed inside the container with the marijuana, or both.

c. Dispensary operations shall not result in the illegal redistribution of medical marijuana obtained from the dispensary, or the use of marijuana in any manner that violates local, State or City laws or regulations.

d. A dispensary shall provide to the City, if so requested by the Community Development Director, written evidence that the dispensary is not engaged in interstate commerce.

4. **Personnel Management Standards.**

a. Every owner or operator of a permitted medical marijuana dispensary shall register every employee or volunteer with the Albany Police Department at least thirty (30) days prior to the commencement of the employee's period of employment at the medical marijuana dispensary. Failure to comply

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with this subsection shall be grounds for suspension or revocation of the permit. The following procedures shall be observed:

1) Each employee or volunteer shall be required to provide two recent passport-quality color photographs and, at the discretion of the Chief of Police, shall be fingerprinted by the Police Department for purposes of identification.

2) Each new employee or volunteer shall provide the following information on a form provided by the Police Department; name, current residence address, and telephone number; date of birth; height, weight, color of eyes, and hair.

3) The owner or operator of a dispensary shall report immediately to the Community Development Department and the Chief of Police any and all changes of address or ownership of the dispensary, and any changes of employees, volunteers or contractors who work in the dispensary, including those have terminated employment with the dispensary.

4) Each employee, volunteer, contractor or other person working at the dispensary site shall be identified at all times by a visibly-displayed photo identification card, containing, at a minimum, the name and position of the person.

b. This information will be considered confidential and will not be released unless pursuant to subpoena issued by a court of competent jurisdiction.

c. The dispensary operator shall provide dispensary staff with appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with State and local law.

5. **Record Maintenance.**

a. City requirements for record maintenance shall not violate State laws regarding patient confidentiality.

b. Each operator of a dispensary shall maintain a current register of the names of all employees, including volunteers, currently employed by the dispensary, and shall disclose such registration for inspection by any City officer or official for purposes of determining compliance with the requirements of this subsection.

c. A dispensary shall maintain records of all persons with an identification card, and primary caregivers, using only the identification card

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number issued by the County or other entity approved by the Chief of Police, as a protection of the confidentiality of the cardholders.

d. Information on prior years operations shall be provided annually, as required in this Chapter. The operator shall adjust the operations as necessary to address issues.

e. Each dispensary shall allow the Chief of Police, or his designee, to have access to the dispensary's books, records, accounts, and all data relevant to its permitted activities for the purpose of conducting an audit or examination to determine compliance with this Code and applicable law. Books, records, accounts and any and all relevant data will be produced no later than twenty-four (24) hours after receipt of the written request(s) by the Chief of Police.

L. Violations.

1. **Scope of Liability for Violations.** Whenever in this subsection any act or omission is made unlawful, it shall include causing, permitting, aiding, abetting, suffering or concealing the fact of the act or omission.

2. **Remedies for Enforcement of Violations.** Remedies include but are not limited to:

a. **Criminal Penalties.** Any person who violates, causes, or permits another person to violate any provision of this subsection is subject to prosecution for a misdemeanor offense, and upon conviction thereof, shall be punished.

b. **Civil Injunction.** The violation of any provision of this subsection shall be, and hereby is, declared to be contrary to the public interest and shall, at the discretion of the City, create a cause of action for injunctive relief.

c. **Administrative Remedies.** In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this subsection may be subject to administrative remedies as set forth by City ordinance. Administrative remedies shall include the ability of the Chief of Police to order the immediate closure of the dispensary, pending a hearing before the City Council, if evidence is discovered that would lead a reasonable person to conclude that any of the following conditions exists:

1) The provisions of the Medical Marijuana Dispensary Regulations are being, or have been, violated;

2) Any condition is discovered that would warrant the denial of the issuance of such conditional use permit or business license in the first instance;

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3) The Chief of Police (or designee) determines that the immediate closure of the dispensary is in order to protect the public peace or welfare.

d. **Abatement.** Any use or condition caused, or permitted to exist, in violation of any provision of this subsection shall be, and hereby is, declared a public nuisance and may be summarily abated by the City.

e. **Revocation or Nonrenewal of the Permit.** The terms of the use permit will be enforced as proved by Section 20-36 of this Chapter, which subsection contains a process for the consideration of the revocation of a use permit for reasons that include, among other things, failure to comply with the terms and conditions of the use permit, or for any grounds that would warrant denial of the issuance of a use permit in the first instance.

3. **Remedies Cumulative.** All remedies prescribed under this chapter shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

4. **Separate Offense for Each Day.** Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

M. No Mandatory Duty of Care. This subsection is not intended to and shall not be construed as or given effect in a manner that imposes on the City of Albany or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

N. Liability. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City of Albany.

(Ord. No. 07-01 §4)



**GUIDELINES FOR THE SECURITY AND NON-DIVERSION
OF MARIJUANA GROWN FOR MEDICAL USE**
August 2008

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt “guidelines to ensure the security and nondiversion of marijuana grown for medical use.” (Health & Saf. Code, § 11362.81(d).¹) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

B. Proposition 215 - The Compassionate Use Act of 1996.

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician’s recommendation. (§ 11362.5.) Proposition 215 was enacted to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana,” and to “ensure that patients and their primary caregivers who obtain and use marijuana for

¹ Unless otherwise noted, all statutory references are to the Health & Safety Code.

medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (§ 11362.5(b)(1)(A)-(B).)

The Act further states that “Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician.” (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the “quantity transported and the method, timing and distance of the transportation are reasonably related to the patient’s current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

C. Senate Bill 420 - The Medical Marijuana Program Act.

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder’s status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

D. Taxability of Medical Marijuana Transactions.

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit. (<http://www.boe.ca.gov/news/pdf/medseller2007.pdf>.) According to the Notice, having a Seller’s Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a

June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (<http://www.boe.ca.gov/news/pdf/173.pdf>.)

E. Medical Board of California.

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

(http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html.)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or www.mbc.ca.gov), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

F. The Federal Controlled Substances Act.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California's decision to remove the use and cultivation of physician-recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

II. DEFINITIONS

A. **Physician's Recommendation:** Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. **Primary Caregiver:** A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of marijuana does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) ["A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution" for possessing or transporting marijuana].)

C. **Qualified Patient:** A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 11362.5(b)(1)(A).)

D. **Recommending Physician:** A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

1. **Physician Recommendation:** Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)

2. **State of California Medical Marijuana Identification Card:** Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online (www.calmmp.ca.gov). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

3. **Proof of Qualified Patient Status:** Although verbal recommendations are technically permitted under Proposition 215, patients should obtain and carry written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

4. **Possession Guidelines:**

a) **MMP:**² Qualified patients and primary caregivers who possess a state-issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, if “a qualified patient or primary caregiver has a doctor’s recommendation that this quantity does not meet the qualified patient’s medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient’s needs.” (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess

² On May 22, 2008, California’s Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute’s possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*.

medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

c) **Proposition 215:** Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is “reasonably related to [their] current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

B. Enforcement Guidelines.

1. **Location of Use:** Medical marijuana may not be smoked (a) where smoking is prohibited by law, (b) at or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79.)

2. **Use of Medical Marijuana in the Workplace or at Correctional Facilities:** The medical use of marijuana need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785(a); *Ross v. RagingWire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for marijuana use].)

3. **Criminal Defendants, Probationers, and Parolees:** Criminal defendants and probationers may request court approval to use medical marijuana while they are released on bail or probation. The court's decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medical marijuana may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

4. **State of California Medical Marijuana Identification Cardholders:** When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing DPH's card verification website (<http://www.calmmmp.ca.gov>); and

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized. Under the MMP, “no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana.” (§ 11362.71(e).) Further, a “state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer

has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.” (§ 11362.78.)

5. **Non-Cardholders:** When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person’s medical-use claim:

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician’s name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person’s medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person’s claim of having a verbal physician’s recommendation that cannot be readily verified with the physician at the time of detention.

6. **Exceeding Possession Guidelines:** If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. **Return of Seized Medical Marijuana:** If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 369, 386, 391.)

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under California law, medical marijuana patients and primary caregivers may “associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes.” (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

A. Business Forms: Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. **Statutory Cooperatives:** A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a “cooperative” (or “co-op”) unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are “democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons.” (*Id.* at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities “since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.” (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. **Collectives:** California law does not define collectives, but the dictionary defines them as “a business, farm, etc., jointly owned and operated by the members of a group.” (*Random House Unabridged Dictionary*; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

B. Guidelines for the Lawful Operation of a Cooperative or Collective:

Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. **Non-Profit Operation:** Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) [“nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit”]).

2. **Business Licenses, Sales Tax, and Seller’s Permits:** The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller’s Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.

3. **Membership Application and Verification:** When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:

a) Verify the individual’s status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician’s identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient’s recommendation. Copies should be made of the physician’s recommendation or identification card, if any;

b) Have the individual agree not to distribute marijuana to non-members;

c) Have the individual agree not to use the marijuana for other than medical purposes;

d) Maintain membership records on-site or have them reasonably available;

e) Track when members’ medical marijuana recommendation and/or identification cards expire; and

f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

4. **Collectives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana:** Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to non-medical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

5. **Distribution and Sales to Non-Members are Prohibited:** State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. **Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:

- a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b) Provided in exchange for services rendered to the entity;
- c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
- d) Any combination of the above.

7. **Possession and Cultivation Guidelines:** If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

- a) Operating a location for cultivation;
- b) Transporting the group's medical marijuana; and
- c) Operating a location for distribution to members of the collective or cooperative.

8. **Security:** Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. **Enforcement Guidelines:** Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. **Storefront Dispensaries:** Although medical marijuana “dispensaries” have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§ 11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful. (*Peron, supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. **Indicia of Unlawful Operation:** When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.



Addressing the Issue of Medical

In recent years perhaps no other legal issue has affected California's cities as much as medical marijuana. Cities have experienced a proliferation of dispensaries and other types of storefront medical marijuana distribution operations. While some cities allow dispensaries to provide medical marijuana, other cities have enacted outright bans on their use.

Although the possession, use and cultivation of marijuana is illegal under both state and federal laws, California law allows an individual to use marijuana for certain medicinal purposes and creates a narrow affirmative defense to state criminal prosecution. In other words, when a person is arrested for marijuana possession, he can avoid being found guilty by asserting the defense that he is entitled to possess marijuana for medical purposes because he has complied with state law. In 1996, California voters approved Proposition 215, an initiative called the Compassionate Use Act (CUA) that allows people to use marijuana under certain circumstances for medical reasons. The CUA was intended to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and

The Legal Basis for Banning Medical Marijuana Dispensaries

by Sonia Carvalho and Jeff Dunn

Cities traditionally exercise nearly exclusive control over land use. They regularly invoke their land-use authority to limit or prohibit the location of various types of businesses and operations within their communities. They do so under their basic police powers, which permit them to adopt laws protecting health, safety and welfare. In instances where the state has not pre-empted local law-making authority, a city is free to regulate. Medical marijuana dispensaries are not expressly mentioned in either the Compassionate Use Act (CUA) or in the Medical Marijuana Program Act (MMP); and in the recent *City of Claremont v. Kruse* case the court's decision confirmed that these laws do not pre-empt a city's enactment or enforcement of land use, zoning or business license laws as they apply to medical marijuana dispensaries.

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ATTACHMENT

5

Marijuana Dispensaries

has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine or any other illness for which marijuana provides relief."

To further implement the CUA, the Legislature passed the Medical Marijuana Program Act (MMP) in January 2004. The MMP created, among other things, a voluntary program for issuing government identification cards to qualified patients and their defined primary caregivers, and it created rules and regulations pertaining to the operation of cooperatives and collectives. One of the MMP's more interesting aspects is that it explicitly articulates that it does not pre-empt a city's local land-use authority; it is primarily this section of the MMP that has sparked the ongoing debate over how a city may regulate dispensaries.

The two articles presented here examine the legal standards and practices under which cities may enact local laws either to ban or regulate medical marijuana dispensaries.

About Legal Notes

This column is provided as general information and not as legal advice. The law is constantly evolving, and attorneys can and do disagree about what the law requires. Local agencies interested in determining how the law applies in a particular situation should consult their local agency attorneys.

The Legal Basis for Allowing Medical Marijuana Operations

by Michael Jenkins and Lauren Feldman

This article addresses how cities that support patients' access to medical marijuana can use an effectively drafted ordinance to permit properly run cooperatives or collectives, regulate them and keep them from proliferating.

California cities may adopt ordinances that do not conflict with state or federal laws. Marijuana is a controlled substance that may not be cultivated, possessed or used under federal law. The U.S. Supreme Court determined that strict compliance with California's medical

marijuana program will not insulate a marijuana user or supplier from federal prosecution. Nonetheless, the current U.S. Justice Department has indicated that dispensaries operating in accord with California law will not be a priority for federal prosecution.

In California, marijuana can be used legally for personal medical use. Two panels of the California Court of Appeal found in recent years that California's medical marijuana program is not pre-empted by federal law; they concluded that the state's

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decriminalization of medical marijuana does not conflict with federal law because it does not purport to “legalize” marijuana or immunize marijuana possession or use from federal prosecution. Rather, California has decided not to punish certain marijuana offenses when used for medicinal purposes. Until a court determines otherwise California’s program does not conflict with federal law, and a local ordinance sanctioning medical marijuana collectives meets the requirement to be consistent with federal law.

A local ordinance regulating cooperatives and collectives is also consistent with state law. The Legislature stated a clear intent to enhance medical marijuana access through collective and cooperative cultivation projects, indicating the law contemplates collective distribution. Nothing in state law prohibits collectives from maintain-

ing a place of business, and each city must determine how to regulate this use to ensure collectives operate within the narrow parameters of state law. Consequently, an ordinance permitting a use that is contemplated under state law and implements a state policy by making medical marijuana more accessible to seriously ill patients should be considered a proper exercise of a city’s legislative authority.

The California Court of Appeal has determined that the state’s authorization of cooperatives and collectives is intended to facilitate the transfer of medical marijuana to qualified patients. The court also found that storefront dispensaries that qualify as “cooperatives” or “collectives” and otherwise comply with state law, as interpreted by the attorney general, may operate legally.

The attorney general published guidelines to clarify how a legitimate cooperative or collective is operated. The guidelines:

- Limit lawful distribution activities to true agricultural co-ops and collectives that provide crops to their members;
- Prohibit collectives and cooperatives from profiting from the sale of marijuana;
- Allow members to be reimbursed for certain services (including cultivation), provided that the reimbursement is limited to the amount to cover overhead costs and operating expenses;
- Allow members to reimburse the collective for marijuana that has been allocated to them. Marijuana may be provided free to members, provided in exchange for services, allocated based on fees for reimbursement only, or any combination of these; and
- Declare that distribution of medical marijuana is subject to sales tax and requires a seller’s permit from the State Board of Equalization.

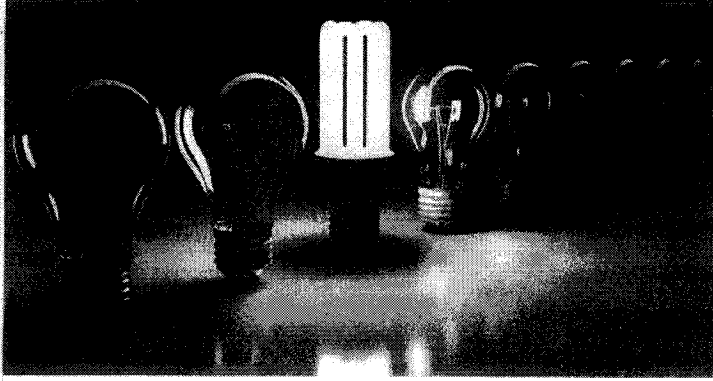
Unlike an agricultural cooperative, a “collective” is not defined under state law, but it similarly facilitates agricultural collaboration between members. A co-op, by definition, files articles of incorporation and must abide by certain rules for its organization, elections and distribution of earnings. A co-op’s earnings must be used for the general welfare of its members or be distributed equally in the form of cash, property, services or credit. Both co-ops and collectives are formed for the benefit of their members and must require membership applications and verification of status as a caregiver or qualified patient; they must also refuse membership to those who divert marijuana for non-medical use. Collectives and co-ops should acquire marijuana from and allocate it to only constituent members.

Storefront dispensaries that deviate from these guidelines are likely outside the scope of state law and may not be permitted at the local level.

continued on page 20

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When a city's zoning code does not allow marijuana dispensaries or collectives, and it expressly states that any condition caused or permitted to exist in violation of its provisions constitutes a public nuisance, the city can ban the use. Accordingly, the city may enjoin the nuisance by

filing a civil abatement action. Despite claims that the state's medical marijuana laws prevent cities from regulating marijuana dispensaries, the California Court of Appeal's thorough analysis of state pre-emption law in *Krusse* concluded that cities retain their police power to regulate

and, if necessary, restrict the operation of dispensaries.

The courts have recognized that the CUA and the MMP create only narrow exceptions to criminal drug possession penalties. Numerous judicial decisions have confirmed that California voters approved limited defenses to possession of marijuana and did not intend to allow large-scale commercial operations. Most important to the theory that cities retain the right to ban dispensaries is the 2005 *People v. Urziceanu* decision, in which the court of appeal noted that the CUA "creates a narrow defense to crimes, not a constitutional right to obtain marijuana."

J O B O P P O R T U N I T I E S

Housing Authority of the County of Santa Clara DIRECTOR OF ADMINISTRATIVE SERVICES "Leaders in Making a Difference"



Headquartered in downtown San José, the Housing Authority of the County of Santa Clara is seeking an experienced Director of Administrative Services (new position).

The Director of Administrative Services will partner with other members of the management team (Deputy Executive Director, Directors of Finance, Housing Programs and Real Estate Services) and assist in making strategic decisions for the Authority. Reporting to the Executive Director, the Director of Administrative Services will oversee the day-to-day operations of the Authority through subordinate directors in the areas of General Services, Human Resources and Information Technology (23 staff).

The ideal candidate will be an experienced operations professional who possesses outstanding organizational skills with the proven ability to assess business practices and provide for sound policies and procedures to improve the productivity of the agency. Candidates who possess a history of performing in a creative and collegial manner will complement the HACSC management team. Eight years of increasingly responsible operational/administrative management experience, and a Bachelor's degree are required; Master's degree desirable.

Salary negotiable DQG; attractive benefits package includes CalPERS retirement. To be considered, please submit resume, cover letter with current salary information and six professional references by Friday, May 28, 2010.

For more information,
contact Stuart Satow

241 Lathrop Way
Sacramento, CA 95815
Tel: 916 / 263-1401
Fax: 916 / 561-7205
E-mail: resumes@cps.ca.gov

www.cps.ca.gov/search

HACSC Website: www.hacsc.org



Two Methods for Banning Marijuana Dispensaries

Some dispensary operators have obtained business permits under false pretenses, applying for city land-use and business permits under the guise of pharmacies or other permissible uses. In other cases operators outright refused to comply with city laws requiring business permits. Operators like these have been ordered by the courts to cease business based on the regulations that the cities had in place.

There are two primary methods cities use to ban dispensaries:

1. Adopt a business license provision that says licenses will be issued only to those operating in compliance with state and federal laws and
2. Prohibit dispensaries in all land-use zones.

Nearly 200 California cities have either banned pot collectives or have enforced moratoriums, according to Americans for Safe Access. The medical cannabis advocacy group reports on its website that 34 cities in California have specific ordinances that allow for medical marijuana cooperatives.

Pending Litigation

The City of Anaheim enacted an ordinance in 2007 banning all marijuana distribution facilities consisting of three or more people who otherwise qualified

CITY OF SEASIDE

The City of Seaside (pop. 34,200) is a full-service City that is a culturally and ethnically diverse ocean-side community located on the beautiful Monterey Bay, in the Sunbelt of the Monterey Peninsula. Seaside is a growing city and home to California State University, Monterey Bay.

CHIEF OF POLICE

The Seaside Police Department consists of 37 personnel (44 sworn and 13 civilian) with a 2009/2010 budget of nearly \$9.5M. The department is comprised of two bureaus: Field Operations and Support Services and department priorities include community policing, crime prevention, and drug and gang intervention measures.

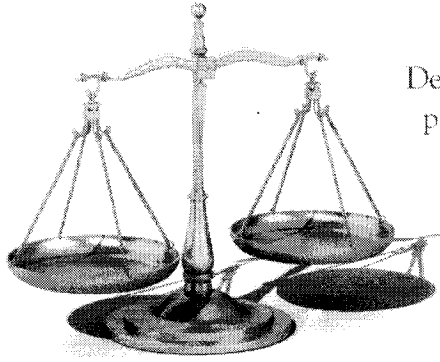
The new Chief will be a proven leader and creative problem solver who brings a strong sense of community and excellent management, communication, and leadership skills to the department. Candidates must possess a minimum of seven years experience in law enforcement including at least three years at a command or management staff level equivalent to that of a permanent police lieutenant. A BS/BA in a related field is required an MS/MA is highly desired. The current salary for this position is \$140,924 annually (City pays PERS contribution and reports EPMC as compensation). To apply, submit cover letter, resume, salary and five work related references (email preferred) to Paul Kimura by June 11, 2010. A formal job announcement is available at <http://www.averyassoc.net/jobs>.



William Avery & Associates
Management Consultants

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Los Gatos, CA 95030

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Fax: 408.399.4423
email: jobs@averyassoc.net
www.averyassoc.net



Despite claims that the state's medical marijuana laws prevent cities from regulating marijuana dispensaries, the California Court of Appeal's thorough analysis of state pre-emption law in *Kruse* concluded that cities retain their police power to regulate and, if necessary, restrict the operation of dispensaries.

as patients or caregivers under California's MMP and CUA. The ban imposed a criminal penalty.

A collective called the Qualified Patients Association filed a lawsuit challenging the ban. The collective argued that local governments' ability to ban marijuana collectives is pre-empted by the California medical marijuana law. The collective argued that local governments may regulate but not ban marijuana distribution facilities.

The trial court disagreed, concluding there was no pre-emption and that Anaheim could use its police powers to ban marijuana distribution facilities and impose a criminal penalty for violating the ban. The collective has appealed and the matter is pending in the Fourth District Court of Appeal.

Unresolved Issues

While some cities have adopted ordinances permitting marijuana dispensaries under certain rules and regulations, the question of whether cities can authorize such uses by ordinance remains unclear. Government Code section 37100 states that a city's "legislative body may pass ordinances not in conflict with the Constitution and laws of the state or the United States." As all use of marijuana is illegal under federal law, cities may lack the authority to adopt enforceable ordinances permitting marijuana dispensaries under any rules or regulations. ■

Looking for Footnotes?

A fully footnoted version of this article is available online at www.westerncity.com/articles.

J O B O P P O R T U N I T I E S

City Manager, City of South Lake Tahoe, CA

The City of South Lake Tahoe, California (population 23,609) is situated in one of the most unique settings in the world, at the edge of an alpine lake of great beauty and environmental value. By virtue of this location, with Lake Tahoe recreation and world-renowned skiing facilities, the City has become a popular year-round destination resort. City departments include Community Development, Public Works, Police, Fire, Redevelopment & Housing, Parks & Recreation, City Clerk, City Attorney, Finance, and City Manager's office which includes Human Resources/Risk Management. City Manager also serves as the Executive Director of the South Tahoe Redevelopment Agency. The City seeks a proactive, visionary, team-oriented and resourceful City Manager who has exceptional financial management skills. He/She should be an excellent communicator, effective consensus-builder and skilled negotiator. B.A. in public administration, business administration or related field required; M.A. desirable. Salary will be determined based on qualifications and experience. If you are interested in this outstanding opportunity, please apply on line at www.bobmurrayassoc.com. Please contact **Mr. Bob Murray** at (916) 784-9080 should you have any questions. **Closing date is May 17, 2010.**



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fax 916-784-1985
www.bobmurrayassoc.com

Assistant City Administrator

CITY OF LOMPOC, CALIFORNIA

"The City of Arts and Flowers"



The City of Lompoc (pop. 43,000) is seeking candidates for Assistant City Administrator. Requires bachelors in Public Admin, Poli Sci, or related field AND minimum of five years of increasingly responsible managerial and project management experience in a public agency. The position is recognized as the chief executive position in the absence of the City Administrator. The City of Lompoc is a full service city with approximately 640 full and part-time personnel.

Lompoc is located 55 miles north of Santa Barbara on the PCH. Lompoc's residents have chosen this community for a variety of reasons, including its small town atmosphere and excellent community services for families. City's recreational facilities include an indoor aquatic center, fishing pond, fitness trail, campgrounds, and State Historical Park.

The City offers a compensation package that includes a 2.7% @ 55 CalPERS retirement plan. A brochure containing further details on this outstanding opportunity is available at www.cityoflompop.com or call Human Resources at (805) 875-8208.

Final Filing Deadline: June 11, 2010. Equal Opportunity Employer

Regulating Medical Marijuana Collectives and Cooperatives

The most obvious methods for regulating the distribution of medical marijuana are through a zoning ordinance or regulatory business license ordinance — or a combination of both. Some cities require

that collectives obtain a conditional use permit. West Hollywood recently rejected this approach. The city wanted a mechanism to examine an operator's criminal background and did not want the use to run indefinitely with the land. Consequently, the city's medical marijuana

collectives are a permitted use in certain commercial zoning districts subject to distancing requirements from sensitive uses and other collectives, with a cap of four facilities operating at one time.

West Hollywood consulted with existing collective operators when drafting the operating requirements contained in its regulatory business license ordinance. The requirements include criminal background checks, compliance with the attorney general's standards for collectives (such as cash management practices), security requirements, limitations on operating hours, and a requirement that marijuana cannot be consumed onsite. Collectives may not occupy a space larger than 4,000 square feet, may not issue doctor recommendations onsite and are subject to limitations on the source of the collective's marijuana. The city holds bimonthly meetings with law enforcement and collective operators to address any negative impacts associated with the operations.

On the other hand, the cities of Arcata, Santa Cruz and Malibu effectively regulate collectives by requiring a use permit and imposing strict distancing requirements and operating standards. Arcata additionally subjects each collective to an annual performance review.

Most cities that permit collectives have determined that the distancing requirement and a cap on the number of facilities are the most effective ways to prevent an overconcentration of this use. The combination of the effective regulatory mechanism and the working relationship with collective operators has also proven to meet the goals of supporting access to medical marijuana while controlling negative impacts and the proliferation of collectives in a city. ■

J O B O P P O R T U N I T I E S

X Victor Valley CALIFORNIA

Victorville • Hesperia • Apple Valley • Adelanto • San Bernardino County

Victor Valley Economic Development Authority REQUEST FOR PROPOSAL

Economic Development Marketing

The Victor Valley Economic Development Authority is seeking an economic development/marketing firm to continue the current success of its regional marketing program. The Victor Valley is located in the Inland Empire North region of Southern California, and includes the cities of Adelanto, Apple Valley, Hesperia, Victorville and portions of San Bernardino County. At 85,000 acres, it represents the largest redevelopment project area in California. The area includes many assets, for which the marketing program needs to promote.

For more information or to receive the RFP, please contact us at (800) 747-5840 or development@applevalley.org.

Finance Director Superior Court of California, County of San Mateo

The Court holds jurisdiction over one of the most physically attractive and culturally diverse counties in the state. The Court operates in four different locations with approximately 300 employees and a \$60 million budget. The Finance Department provides key administrative support for the organization and the Court is looking for an exceptional finance professional with strong supervisory and communications skills to oversee budget development and analysis, including interpreting financial information for high level executives and governing bodies preferably from a court, government or non-profit setting. Bachelor's Degree in accounting, auditing, economics, business or public administration or related field required. Master's preferred. Salary range is \$109,490 to \$136,264 DOQ with excellent benefits.

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Peckham & McKenney
apply@peckhamandmckenney.com

Call Phil McKinney at (886) 912-1013 for more information or to request a brochure that describes in greater detail this tremendous opportunity. The brochure is also available on our web site at www.peckhamandmckenney.com.

Filing deadline is May 28, 2010.

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&
MCKENNEY**
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Albany Police Department

1000 SAN PABLO AVE. • ALBANY, CALIFORNIA 94706-2295

MICHAEL MCQUISTON
Chief of Police

July 12, 2010

(510) 525-7300
FAX (510) 525-1360

Mr. Erik Van Den Akker ✓
3020 El Cerrito Plaza #531
El Cerrito, CA 94530

Mr. Bret Van Den Akker
3020 El Cerrito Plaza #531
El Cerrito, CA 94530

Re: Marijuana Dispensary Application – VitalGen Collective

Dear Applicants:

I have revisited my previous rejection of your application to operate a marijuana dispensary within the city of Albany and, based on additional information and advice of legal counsel, your application is hereby **approved** for purposes of compliance with the Business License Background Investigation required under Albany Municipal Code 20.20.110.

This is not a permit to conduct marijuana dispensary activity in the City of Albany.

You are still required to obtain Planning and Zoning Commission approval of your proposal, which, if granted, will result in issuance of a use permit and business license. You must contact Mr. Jeff Bond, City of Albany Planning and Building Manager, to complete the administrative approval and permit process. **Failure to do so may result in criminal prosecution if you conduct any marijuana dispensary activity in the City of Albany.**

You may reach Jeff Bond at 510-528-5760.

Sincerely,

Michael McQuiston
Chief of Police

cc: ~~Jeff Bond, CD&ER~~
Robert Zweben, City Attorney

ATTACHMENT

6



Date Received: 1/28/2010

Planning Application No.: 09-064

Fee Paid: n/a revised location



City of Albany



PLANNING APPLICATION FORM (GENERAL PROJECTS)

<p>For PLANNING & ZONING COMMISSION action:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Conditional Use Permit* <input type="checkbox"/> Design Review (residential, residential additions, commercial, office and multi-family*,) <input type="checkbox"/> General Plan Amendment from _____ to _____ <input type="checkbox"/> Parcel Map/ Tentative Map/ Vesting Tentative Map, Lot Line Relocation <input type="checkbox"/> Parking Exceptions/Reductions <input type="checkbox"/> Precise Development Plan <input type="checkbox"/> Second Unit Use Permit * <input type="checkbox"/> Variance * <input type="checkbox"/> Zone Change from _____ to _____ <input type="checkbox"/> Other: 	<p>For ADMINISTRATIVE action:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Admin. Lot Line Relocation <input type="checkbox"/> Home Occupations <input type="checkbox"/> Sign Review <input type="checkbox"/> Other: <p style="text-align: center;">CITY OF ALBANY</p> <p style="text-align: center;">JAN 28 2010</p> <p style="text-align: center;">COMMUNITY DEVELOPMENT DEPARTMENT</p>
--	--

* Please complete the appropriate Supplemental Questionnaire.

The City of Albany Municipal Code has certain requirements for Planning Applications. Your answering the following questions will help staff assess how to process your application. Thus, we may have additional questions based on your responses below. Additionally, after your application is accepted for processing, staff and Planning and Zoning Commissioners will likely make at least one field visit to your house and neighborhood.

Job Site Address: <u>727 SAN PABLO AVE</u>		Zone: _____
Property Owner(s) Name: <u>T. DOSHO SHEPERAW</u>	Phone: <u>510-528-0400</u> Fax:	Email: <u>FDS</u> <u>@DOSHO.COM</u>
Mailing Address: <u>1019 SOLANO AVE</u>	City: <u>ALBANY</u>	State/Zip: <u>CA 94706</u>
Applicant(s) Name (contact person): <u>Bret von den Akker</u> <u>ERIK 1/05/09</u>	Phone: <u>510 355-7743</u> Fax:	Email: <u>bvda@yahoo.com</u>
Mailing Address: <u>3020 El Carrizo Plaza #531</u>	City: <u>El Carrizo</u>	State/Zip: <u>Ca 94530</u>

ATTACHMENT 7

PROJECT DESCRIPTION (Please use back of sheet or attach extra sheets, if necessary): Medical Cannabis Dispensary

GENERAL INFORMATION (Please fill out this section if you are asking for approval of a project that will require construction):

Item	Existing	Proposed
Lot size (square feet)		
Size of structure(s) or commercial space (square feet)		
Height and No. of stories		
Lot coverage ¹		
Floor Area Ratio (FAR) ²		
Impervious Area ³		
Slope Density ⁴		
No. of dwelling units		
Parking ⁵ Number of off-street spaces <u>5</u>		
Number of spaces in garage <u>5</u>		
Size of spaces <u>2,500 sq ft</u>		

¹ Lot Coverage applies to all zoning districts. It is defined as the land area covered by all the structures on a site, including all projections, except portions of uncovered decks, porches or landings, balconies, or stairways that are less than six feet above grade and are not enclosed by walls on more than two sides; eaves, trellises and similar structures that do not have solid roofs.

² Floor Area Ratio (FAR) is defined as the proportion of building floor area per area of the parcel of land upon which the building rests. See the informational handout "How to Calculate Floor Area Ratio" for details on what is included and excluded.

³ Impervious Area includes the total square footage of building footprint(s), driveway(s), patio(s), parking lots, walkway(s), and any other impervious surfaces.

⁴ Slope Density requirements apply in the HD Zoning District pursuant to Measure K. See handout on how to measure slope density in this area.

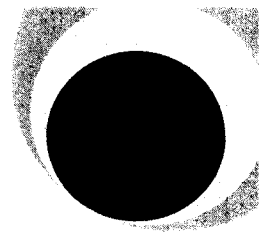
⁵ Minimum parking requirements were enacted under Measure D. This Measure requires that all residential development must have a minimum of two off-street parking spaces. Some exceptions may apply to your project, see residential development handout.

Restrictions: Are there any deed restrictions, easements, etc. that affect the property, and, if so, what are they? In some instances, you may be required to provide a title report.

[Signature]
 Signature of Property Owner
11/05/09
 Date

[Signature]
 Signature of Applicant
11/05/09
 Date

Community Development Department staff is available between 8:30 a.m. and 7:00 p.m. on Mondays, 8:30 a.m. through 5:00 p.m. on Tuesdays through Thursdays, and 8:30 a.m. to 12:30 p.m. on Fridays at 979 San Pablo Avenue, 2nd Floor, Albany, CA 94706; TEL: (510) 528-5760.

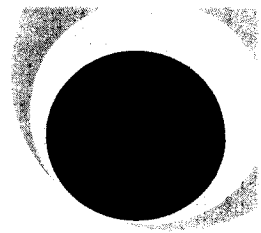


Business Plan
VitalGen Incorporated
City of Albany
Alameda, California

CITY OF ALBANY

OCT 01 2010

COMMUNITY DEVELOPMENT
DEPARTMENT



Confidentiality Agreement

The undersigned reader acknowledges that the information provided by VitalGen Incorporated in this business plan is confidential; therefore, reader agrees not to disclose it without the express written permission of an authorized director of VitalGen Incorporated.

It is acknowledged by reader that information to be furnished in this business plan is in all respects confidential in nature, other than information which is in the public domain through other means and that any disclosure or use of same by reader may cause serious harm or damage to the aforementioned person.

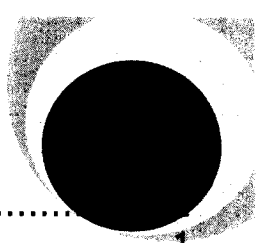
Upon request, this document is to be immediately returned to an authorized director of VitalGen Incorporated.

Signature

Name (typed or printed)

Date

This is a business plan. It does not imply an offering of securities.



1.0 Executive Summary 1

 1.1 Organization Summary 1

2.0 Products and Services 2

3.0 Statement of the Need for a Medical Marijuana Dispensary in the City of
Albany 3

4.0 Strategy and Implementation Summary 4

 4.0a Fundraising Strategy..... 4

 4.0b Milestones 5

 Table 1: Milestones 5

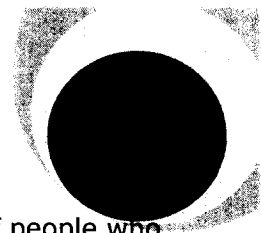
5.0 Management Statement of Qualifications 5

 5.0a Staff, Co-Founder(s) and Board of Director(s) Statement of Qualifications 5

 Table 2: Anticipated site volume 6

 5.0b Operations and Projections 6

 5.0c Operational Narrative 7



1.0 Executive Summary

VitalGen Incorporated is a not for profit organization. It is estimated that the number of people who need services from *VitalGen Incorporated* will significantly increase during the next five years.

Our services will improve the ability of patients to maintain their quality of life and achieve their health goals of self-sufficiency.

1.1 Organization Summary

VitalGen Incorporated is a collective that will serve all of the City of Albany, Alameda County, California. Our goal is to alleviate suffering in the City of Albany, Alameda County, by soliciting, collecting, and packaging medical cannabis for distribution through the collective that will serve our target population group(s).

1.1a Mission Statement

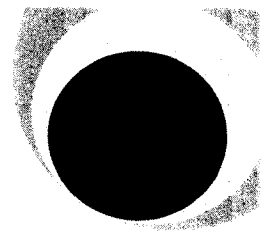
Our mission is to:

- alleviate suffering individuals by providing medical cannabis as prescribed by their physicians.
- promote the unity and balance of the mind-body-soul in the healing process.
- honor the trust provided by our fellow citizens by conforming and enforcing all applicable laws of the progressive, visionary City of Albany, and the Great State of California.
- protect the safety, tranquility, and cleanliness of our immediate neighborhood, by maintaining standard sanitary and operative procedures.
- protect medical cannabis patients by providing a controlled, safe and affordable alternative to the dangerous circumstances of the illegal drug market.
- create an extraordinary environment of medical care, by maintaining the trust and comfort of our patients.

1.1b Company Objectives

Our objectives are to:

- establish a network of local doctors and other health organizations in Alameda County;
- collect and effectively distribute medical cannabis to eligible patients;
- acquire start-up funding through corporate and private charities;
- raise additional funds by fundraising activity to support neighborhood needs for enhancement and maintenance.



2.0 Products and Services

VitalGen Incorporated will be funded from a variety of sources, public and private. It is anticipated that funding will increase by 15% over the next three years.

2.0a Patient Services

Free services will be established and provided within two years of opening, as follows:

- Yoga
- Meditation and hypnotherapy
- Holistic Medicine
- Nutritional Counseling
- Complete Disabled Access
 - Disabled access service counter
 - Disabled access restroom

2.0b Other Services

Patient Center:

- Workshops on participation in the political and social medical cannabis movement(s).

Legal Center:

- Workshops on patients' rights for access to safe medicine.

Care Center:

- Care packages may be provided to patients unable to afford their medicine.

2.0c Architectural Plans – see detailed plans under separate tab

Summary:

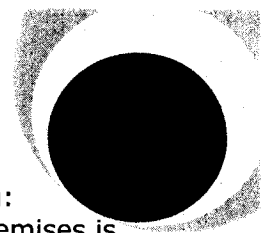
- Proper areas for services will be defined
- Handicapped access will be established
- Odors control system will be established to ensure there are no off-site odors at all times

2.0d Security Plans – see detailed plans under separate tab

Summary:

- 24-hr indoor and outdoor audio/video surveillance and recording cameras
- Motion detectors
- Alarms
- Interior and exterior safety personnel

2.0e Signage and Identification Plans – see detailed plans under separate tab



Summary:

- The building entrance will consist of clear signs that state the following:
 - the smoking, ingesting and consuming the marijuana on the premises is strictly prohibited
 - persons under 18 years of age are not allowed at any time on the premises unless they are in the presence of a parent or a guardian and are a qualified patient / caregiver
- No signs will contain texts or graphics that identifies, advertises or lists the services offered
- No signs will obstruct the entrance or windows on the premises

NOTE: The Board of Directors will be responsible for ongoing review of the program and expenditures to be able to make adjustments, as necessary, to assure the program solvency.

3.0 Statement of the Need for a Medical Marijuana Dispensary in the City of Albany

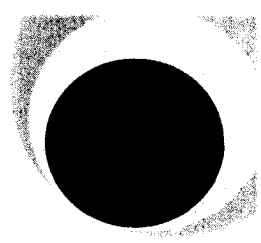
Market analysis indicates growth of population(s) in need of our services in Alameda and the City of Albany, respectively, in the next five years. This growth means that new businesses providing such services will increase as well. Currently, there is no dispensary located within the City limits of Albany. This is an indicator that at least one dispensary is needed to fill the gap of the lack of a local facility and serve the growing demand for alternative treatment. We plan to launch a small to moderate size facility that we feel will be suitable to the size and needs of the local patient / member population.

Our marketing Plan and Strategy will be focused on maintaining the reputation, reliability, safety and quality of our services in accordance with all applicable local and state laws and regulations.

Legal Considerations:

California State:

- Prop. 215 - Compassionate Use Act of 1996
 - Establishes the right for patients and primary caregivers to possess and grow cannabis.
- S.B. 420 -Medical Marijuana Program Act (2003)
 - Recognizes the right of patients and caregivers to associate collectively or cooperatively.
 - Protects patients and caregivers from arrest.
- Attorney General's Guidelines (2008)
 - Set guidelines for the lawful operation of a medical cannabis collective, including:
 - Non-Profit Operation
 - Business Licenses, Sales Tax, and Seller's Permits



- Membership Application and Verification

County Local:

- Albany Measure D Passes (2006)
 - "Do you support the establishment of a single medical marijuana facility in the City of Albany, to be subject to regulations that the City Council will incorporate into the municipal code prior to consideration of any permit for such a dispensary?"
- Albany Regulates Medical Cannabis Facilities (2007)
 - Requires criminal and business background check for all employees of the medical cannabis facility
 - Established permitted zones for operation
 - Disallows growing of cannabis in a medical cannabis facility
 - No alcohol is allowed to be sold in a medical cannabis facility
 - No use of cannabis is allowed in the medical cannabis facility

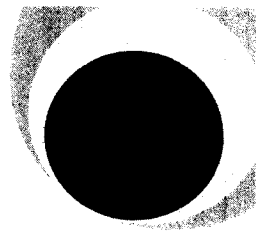
Federal U.S.:

- Attorney General of the United States of America- Eric Holder
 - "The Justice Department will no longer raid medical marijuana clubs that are established legally under state law." February 2009
- Justice Department Memorandum (Oct 2009)
 - "As a general matter, pursuit of these priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana."

4.0 Strategy and Implementation Summary

4.0a Fundraising Strategy

Fundraising events will be facilitated to ensure the continuity of our not for profit and donation based revenue, as well as to raise awareness and benefit to the community.



4.0b Milestones

Table 1: Milestones

<i>Milestones</i>	<i>5-year projection</i>	
	Start Date	End Date
Establish ALL Patient Services	11/29/2010	12/29/2012
Establish Legal Services	11/29/2010	06/30/2012
Establish Care Center	11/29/2010	01/31/2012
Establish Marketing Strategy	11/29/2010	06/30/2011
Establish Fundraising Strategy	11/29/2010	06/30/2011
Fundraising	11/29/2010	12/29/2015
Community Service	11/29/2010	12/29/2015

5.0 Management Statement of Qualifications

5.0a Staff, Co-Founder(s) and Board of Director(s) Statement of Qualifications:

Bret van den Akker, M.S., Candidate Ph.D. (Nuclear Engineering) - U.C. Berkeley Department of Nuclear Engineering

- Berkeley and Albany Community resident for the last fifteen years
- Experience working in secure facilities (such as LBL) and with sensitive materials (such as radioactive materials)
- Experience with shipping, receiving, packaging and monitoring accountability and utilization of various types of substances and chemical compounds, including radioactive substances, under a controlled environment
- Vast experience with the management and disposal / dissolution of materials following environmentally safe methods and federal regulations

Erik van den Akker, M.A., Candidate Ph.D. in Clinical Psychology

- Deputy Research Manager at the University of California San Diego, Department of Neuropsychiatry and Behavioral Medicine
- Over fifteen years of experience in biotech and pharmaceutical industry in the clinical research setting for research in the pain / chronic pain and psychological disorders area(s)
- Thorough knowledge of patient populations with Central Nervous System (CNS) and psychiatric / psychological disorders
- Extensive clinical research experience with emphasis on patients with neurological disorders and chronic pain, including direct patient management and monitoring in clinical studies of Paxil CR (depression), Diclofenac (pain/inflammation) and Levodopa (Parkinson's disease)
- Vast experience with the dispensing and accountability of medications under orders and protocols, as per doctor's prescription, hospital policies and procedures for the treatment of neurological disorders
- Extensive experience with the development of patient dosing and medication regime instructions and diaries for the recording of side effects
- Experience with the development, maintenance, filing and archiving of patient records including psychological evaluation records and treatment progress reports

- Extensive experience with the recruitment, pre-screening (phone and face-to-face) and retention of patients in ongoing clinical treatment programs of neurological disorders
- Extensive experience with the development, initial administration and management of patients' Informed Consent Forms and California Bill of Rights documents
- Extensive experience with the development and management of daily patient schedules and scheduling of follow-up appointments

5.0b Operations and Projections

The Management Team will consist of the Board of Directors:

- Bret van den Akker - Co-Founder and Director
- Erik van den Akker - Co-Founder and Director

The current operational staff will consist of the following positions (specific duties detailed under separate tab):

- Security Personnel (1)
- Patient Intake Specialist (1)
- Customer Service Specialist (2)
- Dispensing Specialist (1)

NOTE: Performance Standards will be maintained and adhered to, as per paragraph K of Ordinance # 07-01 of the Albany City Council. Additional staff may / will be assigned as the operations are established and a monthly assessment of patient / member accrual is made. One staff member will always be on premises and will not be responsible for the dispensing of medical cannabis. A detailed monthly personnel plan will be maintained to indicate current staff and modifications made as necessary as well as to maintain current training and standard procedure(s) records.

Hours of Operation (planned and to be further established):

- Monday through Sunday from 08:00 AM to 07:00 PM

Anticipated Number of Patients / Members:

Table 2: Anticipated site volume

Milestones	Start-up	6-month projection
	Start Date	End Date
First 50 patients	12/01/2010	01/29/2010
First 100 patients	01/29/2010	03/01/2010
First 200-250 patients	03/01/2010	05/31/2010
Total patients per month projection	41-42	

5.0c Operational Narrative

- It is expected that there will be a total of five to seven persons on-site during the operational hours of the facility, with approximately four staff members inside the dispensary at one time. The management staff will occupy the office space located on a separate floor above the facility.
 - Patient Intake Specialist (1) – will be responsible for patient intake, membership database log-in and tracking, and prescription verification.
 - Security Personnel (1) – will be responsible for verifying that people entering the dispensary are in possession of a doctor’s recommendation and/or other appropriate paperwork as well as those they are of appropriate age to enter the facility.
 - Customer Service Specialist (2) - will be responsible for assisting patients select amongst the variety of medicines available and providing any pertinent details as needed.
 - Dispensing Specialist (1) - will be responsible for accepting payment and dispensing medicine only
 - Management (2) - will be responsible for the oversight of the operations and for dealing with unforeseen circumstances that may present themselves. Additionally, management will be leading all community outreach efforts at VitalGen Incorporated.

- Dispensing standards:
 - In order to encourage patients to obtain monthly (as opposed to daily or weekly) prescription amounts, VitalGen Incorporated will offer an incentivized pricing schedule for the medicine.
 - VitalGen Incorporated shall make use of a barcode labeling system for dispensing (this will assist in inventory control). All medicine dispensed will be affixed with a sticker indicating the name of the dispensary and the amount of medicine dispensed.
 - It shall be a condition of membership to VitalGen Incorporated that medicine shall and must not be redistributed to anyone. Additionally, VitalGen Incorporated shall prohibit the dispensing of excessive amounts of medicine at one time.
 - Upon request, VitalGen Incorporated will provide the city with written evidence that the dispensary is not engaged in interstate commerce of medical cannabis at any time.

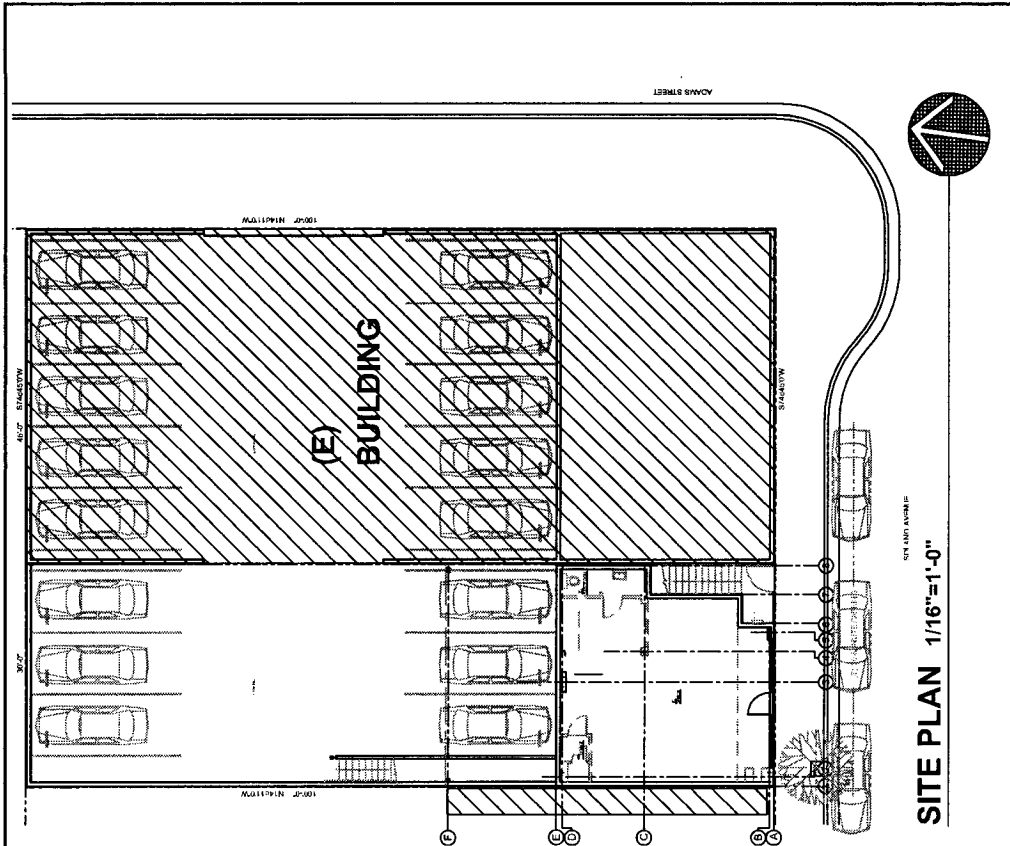
- Security
 - VitalGen Incorporated has contracted with ADT for security services. These services include an advanced security package exceeding standards currently being used in pharmacies. This includes, but is not limited to: door contacts, motion detectors, cameras, security doors, controlled entry/exit points (with magnetic locking and tracking systems). The security video will be maintained for a minimum of 72hs. Additionally, VitalGen Incorporated will hire security personnel whose duties will include checking that each patient that enters the premises is in possession of the appropriate credentials and/or documentation.

VitalGen Incorporated Business Plan, Version 3.1

- Erik van den Akker will be the 24-hour emergency contact. His information has been submitted to the Chief of Police.
- No weapons or firearms will be allowed on the premises at any time.
- The operators of the dispensary will be responsible for the ongoing management of the site and its immediate surroundings.
 - The dispensing area will consist of one security window (similar to that which could be found at a bank). Only dispensing personnel will occupy the secured dispensing area. Only one patient will be dispensed medication at a time.
 - The restroom shall be locked and under control of the management at all times.
 - VitalGen Incorporated will provide patients with a list of the rules and regulations governing medical cannabis use and consumption within the City of Albany and recommendations on sensible cannabis etiquette.
- To date, VitalGen Incorporated has attempted to contact each resident within three hundred (300) feet of the dispensary via USPS mail in order to provide to provide them with information regarding the operation of the dispensary, and to provide them with contact information should the public wish to have input, make suggestions or pose questions or concerns.
- VitalGen Incorporated will also hire security personnel to monitor the exterior of dispensary during the hours of operation.
- VitalGen Incorporated staff members will take every reasonable step to avoid incidences of any nuisance in public areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours. These reasonable steps shall include calling the police in a timely manner, and requesting those engaging in objectionable activities to cease those activities.
- Personnel Management
 - VitalGen Incorporated will register each employee or volunteer with the Albany Police Department thirty days prior to the commencement of the employee's period of employment.
 - Each employee or volunteer will be required to submit two passport-quality photographs and may be fingerprinted by the Police Department for purposes of identification.
 - Each employee or volunteer will be required to disclose to the Police Department: name, current residence address, and telephone number; date of birth, height, weight, color of eyes, and hair.
 - VitalGen Incorporated will report immediately to the Community Development Department and the Chief of Police any and all changes of

address or ownership of the dispensary, and any changes of employees, volunteers or contractors who work in the dispensary, including those that have terminated employment with the dispensary.

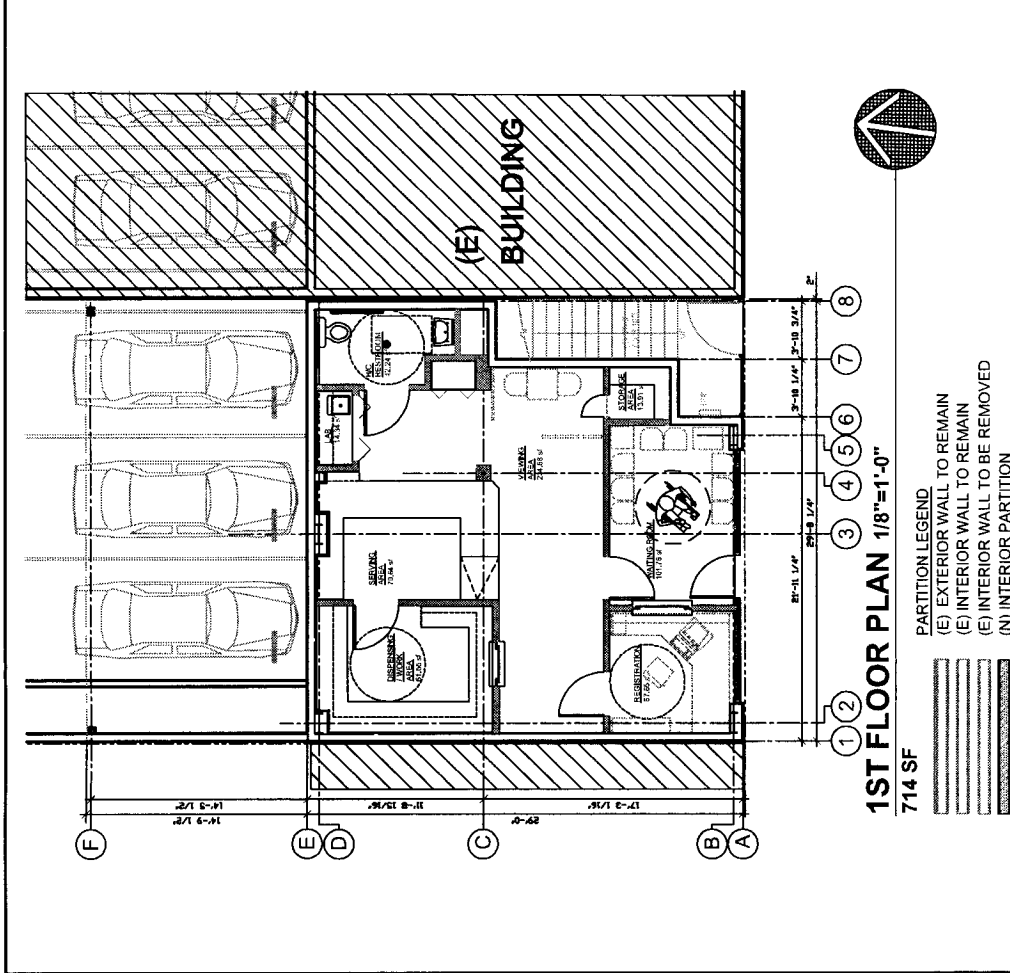
- Each employee, volunteer, contractor or other person working at the dispensary site shall be identified at all times by a visibly-displayed photo identification card, containing, at a minimum, the name and position of the person.
- VitalGen Incorporated is in the process of developing a comprehensive training program for each of its staff positions. VitalGen Incorporated will work on a continual basis to provide the staff with appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with State and local law.
- Record Maintenance
 - VitalGen Incorporated will be in adherence with State laws regarding patient confidentiality.
 - VitalGen Incorporated will maintain a current register of the names of all employees, including volunteers, currently employed by the dispensary, and shall disclose such registration for inspection by any City officer or official for purposes of determining compliance with the requirement of Albany City law.
 - VitalGen Incorporated will implement patient database software to maintain a registry of all current and former members. VitalGen Incorporated will assign an alphanumeric identification to each member and will identify members through this designation only as a protection of the confidentiality of the member.
 - Information on prior year's operation maybe provided annually as required. VitalGen Incorporated will adjust its operations as necessary to address issues.
 - VitalGen Incorporated may allow the Chief of Police, or his designee, to have access to the Corporation's books, records, accounts, and all data relevant to its permitted activities for the purpose of conducting an audit or examination to determine compliance with applicable law. These records will be made available no later than twenty-four (24) hours after the receipt of the written request by the Chief of Police.



SHEET NO.
AA-1

DATE
09/06/2010
SCALE
AS NOTED

SITE PLAN & 1ST FLOOR TENANT IMPROVEMENT

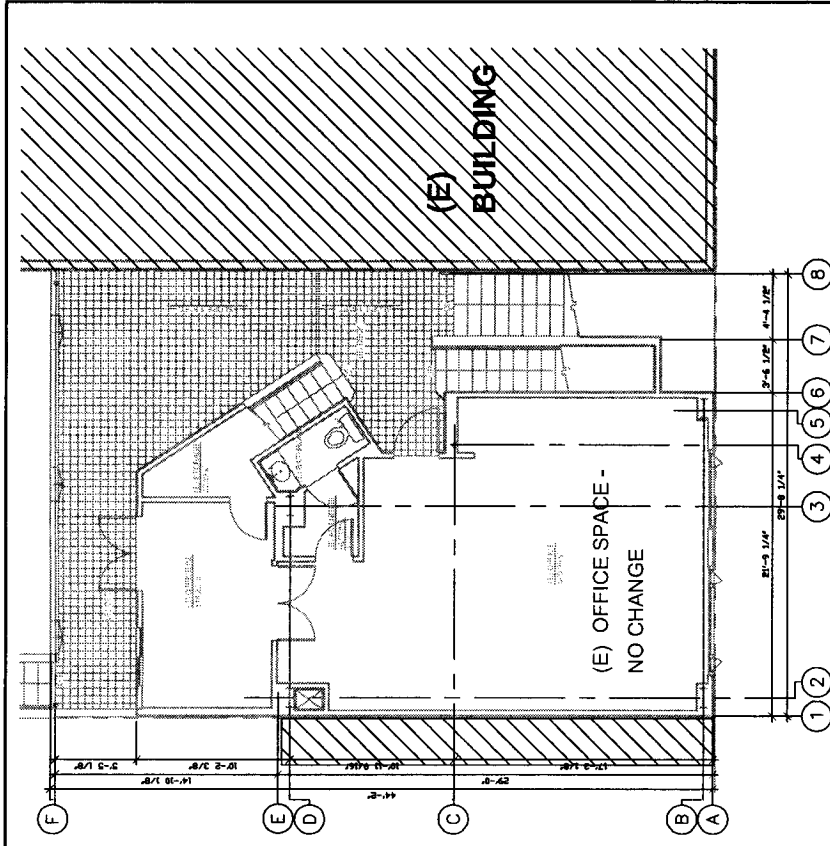


VITAL GEN, INC.
1019 SOLANO AVENUE, ALBANY, CA
BRET VAN DEN AKKER, DIRECTOR
ERIK VAN DEN AKKER, DIRECTOR

ARCHITECTURE
PLANNING
INTERIORS
JOHN W. COWEE, JR.
ARCHITECT C-8199
509 RAMONA AVE.
ALBANY, CA 94706
T 510-525-9630
F 510-525-9630

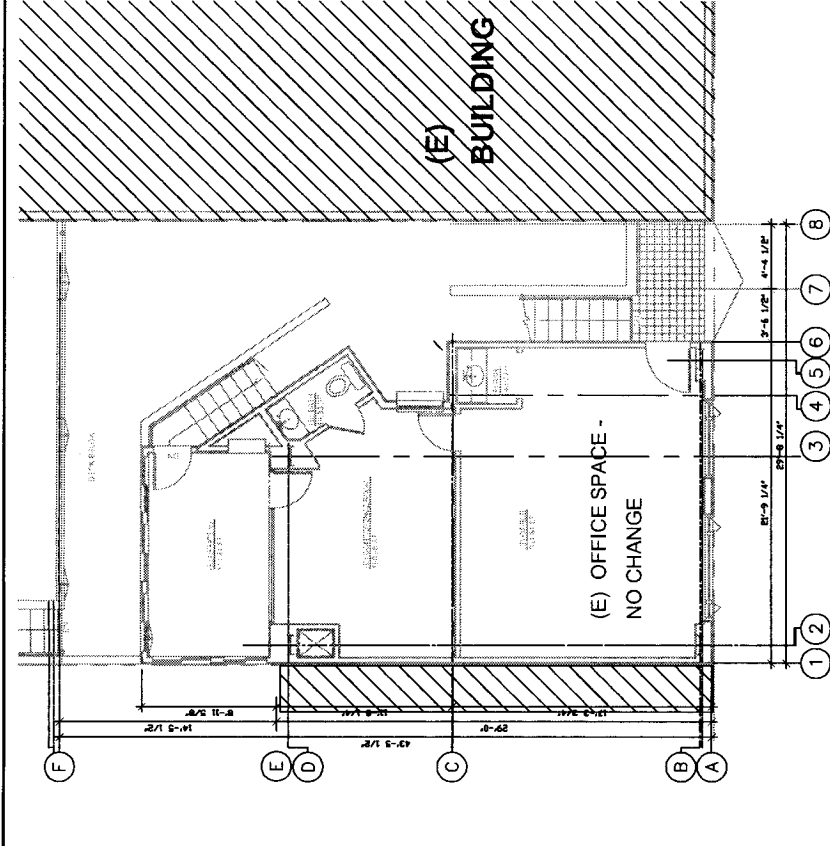
ARCHITECTURAL CONCEPTS

- PARTITION LEGEND**
- (E) EXTERIOR WALL TO REMAIN
 - (E) INTERIOR WALL TO REMAIN
 - (E) INTERIOR WALL TO BE REMOVED
 - (N) INTERIOR PARTITION



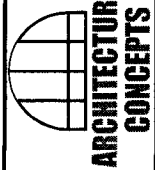
(E) 2ND FLOOR PLAN 1/8"=1'-0"
726 SF

- PARTITION LEGEND**
- (E) EXTERIOR WALL TO REMAIN
 - (E) INTERIOR WALL TO REMAIN
 - (E) INTERIOR WALL TO BE REMOVED
 - (N) INTERIOR PARTITION



(E) 3RD FLOOR PLAN 1/8"=1'-0"
688 SF

- PARTITION LEGEND**
- (E) EXTERIOR WALL TO REMAIN
 - (E) INTERIOR WALL TO REMAIN
 - (E) INTERIOR WALL TO BE REMOVED
 - (N) INTERIOR PARTITION



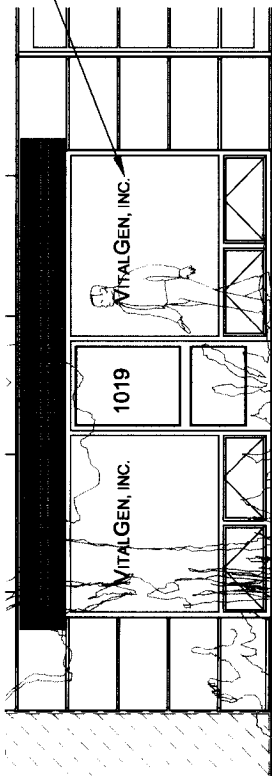
ARCHITECTURE
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VITAL GEN, INC.
1019 SOLANO AVENUE, ALBANY, CA
BRET VAN DEN AKKER, DIRECTOR
ERIK VAN DEN AKKER, DIRECTOR

**(E) 2ND & 3RD
FLOOR PLANS**

DATE
09/06/2010
SCALE
AS NOTED

SHEET NO.
AA-2

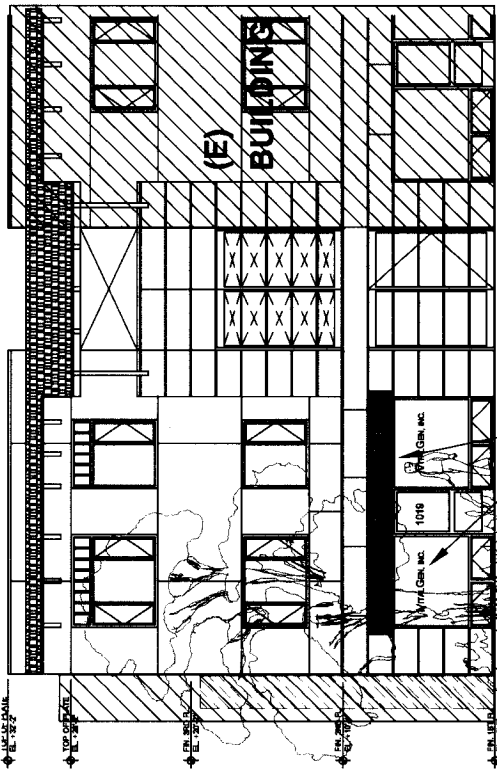


PROPOSED SIGNAGE

(N) SIGNAGE PER CITY ORDINANCE
6" TALL LETTERS & NUMBERS, 4"
LOWER LETTERS STENCILED TO
GLASS. 4.25 SF TOTAL SIGNAGE
AREA



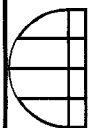
(N) 18'-0" WIDE x 3'-0" DEEP CANOPY



(N) 18'-0" WIDE x 3'-0" DEEP CANOPY
(N) SIGNAGE PER CITY ORDINANCE

PROPOSED EXTERIOR ELEVATION 1/8"=1'-0"

(E) EXTERIOR ELEVATION NOT TO SCALE



**ARCHITECTURAL
CONCEPTS**

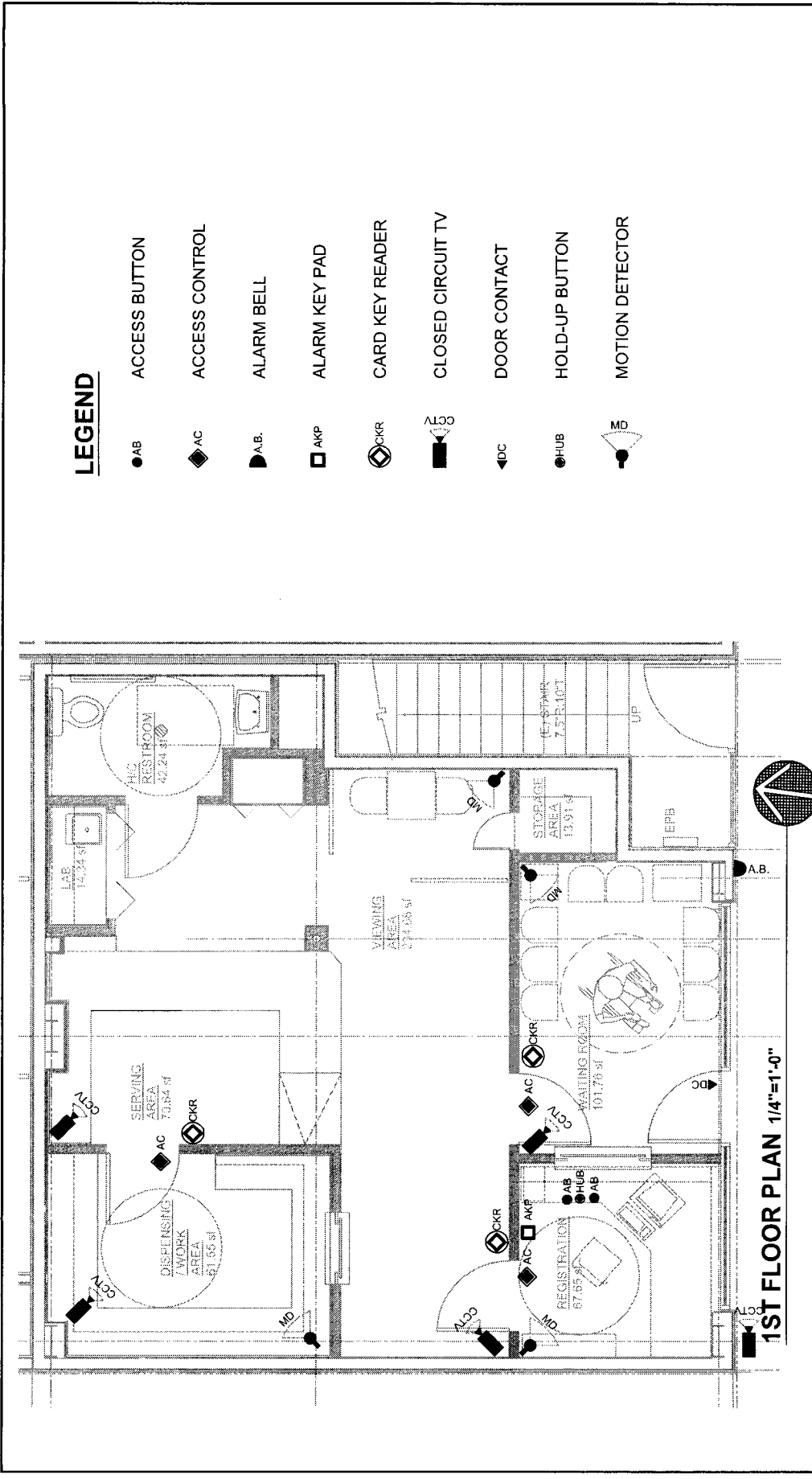
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VITAL GEN, INC.
1019 SOLANO AVENUE, ALBANY, CA
BRET VAN DEN AKKER, DIRECTOR
ERIK VAN DEN AKKER, DIRECTOR

**(E) & PROPOSED
EXTERIOR
ELEVATIONS**

DATE 09/06/2010
SCALE AS NOTED

SHEET NO.
AA-3



1ST FLOOR PLAN 1/4"=1'-0"

LEGEND

- AB ACCESS BUTTON
- ◆ AC ACCESS CONTROL
- ▲ A.B. ALARM BELL
- AKP ALARM KEY PAD
- ⊙ CKR CARD KEY READER
- Ⓜ CCTV CLOSED CIRCUIT TV
- ◀ DC DOOR CONTACT
- HUB HOLD-UP BUTTON
- MD MOTION DETECTOR



ARCHITECTURE
 PLANNING
 INTERIORS
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VITAL GEN, INC.
 1019 SOLANO AVENUE, ALBANY, CA
 BRET VAN DEN AKKER, DIRECTOR
 ERIK VAN DEN AKKER, DIRECTOR

**1ST FLOOR
 SECURITY PLAN**

DATE 09/26/2010
 SCALE AS NOTED

SHEET NO.
AA-4

Curriculum Vitae

Bret Patrick van den Akker
phone: (510) 295-4313
email : bpvda@vitalgen.org

Education

University of California at Berkeley
Berkeley, California

2006-present	Candidate Ph.D.	Nuclear Engineering
2010	M.S.	Nuclear Engineering
2003	B.A.	Physics

Work Experience

- Graduate Student Researcher (University of California at Berkeley) 2009 - Present
Safety Assessment of the Long-term Storage of Spent Nuclear Fuel from Proposed Gen IV Nuclear Reactor
- Graduate Student Researcher (University of California at San Francisco) 2007-2009
Reconstruction Algorithms for SPECT Imaging
Tumor Studies in Murine Models
- Graduate Student Research Asst. (Lawrence Berkeley National Laboratory) 2004-2006
Research Assistance as Needed on Staff Research Projects
- Intern Research Assistant Summer 2004
Research Assistance and Development of Prototype Atmospheric Pressure Plasma Torch for Silicon Wafer Processing
- Senior Research Technician (Lawrence Berkeley National Laboratory) 2003-2004
Research Assistance and Development of Plasma Based High Flux Compact Neutron Generator
- Research Assistant (Lawrence Berkeley National Laboratory) 2001-2003
Research Assistance and Development of Maskless Micro-ion beam Reduction Lithography (MMRL) Technique and Workstation

Specific Experience

Safety Assessment of the Long-term Geological Disposition of Deep-Burn Spent Fuel (DBSF): Project goal is to assess the suitability of DBSF for long-term geological storage and to determine the efficacy of the Deep-Burn fuel cycle in transmuting its fuel for the purposes of electricity generation, reducing the subsequent radiotoxicity of the spent fuel, and nuclear non-proliferation.

- Research is ongoing.

MMRL: Project goal is to produce low cost/high throughput sub- 50nm line width lithography device for use on silicon wafers

- Design and optimize 10x, 20x, and 50x demagnification electrostatic lenses for use with patterned ion beams for lithography using MUNRO and IGUN software packages
- Operate workstation and analyze lithographic images with optical microscope and scanning electron microscope (SEM) for accurate quantification of image line width
- Maintain workstation in operating condition, including making routine repairs, monitoring of vacuum conditions, ensuring gas bottle supply and proper storage of gas cylinders, etc.
- Collection and analyzation of data and preparation of slides for presentation at group meetings and conferences

Neutron Generator: Project goal is to produce a compact high flux neutron generator for use in cargo screening and other homeland security applications

- Characterization of ion source in terms of ion current, atomic species distribution, plasma density, etc.
- Operation of test stand
- Maintain workstation in operating condition, including making routine repairs, monitoring of vacuum conditions, ensuring gas bottle supply and proper storage of gas cylinders, etc
- Collection and analyzation of data
- Analyzation of design of extraction electrode using IGUN and PBGUNS software packages
- Provide feedback and suggestions at weekly meetings

Plasma Torch: Project goal is to produce working prototype of an atmospheric pressure plasma torch for use in high-throughput silicon wafer processing

- Operate workstation and collection/analyzation of data
- Provide feedback on the operation of plasma torch for consideration of design change
- Design and build matching network for use with RF power supply and RF driven atmospheric plasma torch
- Repair, modify, and maintain test stand in operational condition

Skills

- Safety assessment of geological repositories for long-term storage of spent nuclear fuel
- MUNRO, PBGUNS, IGUN software packages
- Extensive experience in maintaining scientific workstations in operational and presentable condition (including routine repairs, modifications, and housekeeping)
- Extensive experience with vacuum conditions (including some UHV experience)
- Extensive experience with RF driven plasmas

- Extensive experience with high voltage power supplies and interlocked safeguards
- Experience characterizing plasma sources
- Experience designing and building matching networks for use with RF power supplies and RF driven plasmas
- Familiarity with semi-clean room conditions
- MS Word, Excel, and PowerPoint

Publications

- V. V. Ngo, **B. van den Akker**, K. N. Leung, I. Noh, and S. B. Wilde, Abstracts of the 46th Electron, Ion and Photon Beam Technology and Nanofabrication Conference, Anaheim, CA, 28–31 May 2002, p. 67
- V. V. Ngo, **B. van den Akker**, K. N. Leung, Isaac Noh, K. L. Scott, and S. Wilde, Demonstrations of electronic pattern switching and 10× pattern demagnification in a maskless microion-beam reduction lithography system, J. Vac. Sci. Technol. B Volume 21, Issue 6, pp. 2297-2303 (November 2003)
- Q. Ji, X. Jianga, L. Jia, Y. Chena, **B. van den Akker** and K.-N. Leung, Novel Ion Beam Tools for Nanofabrication ,Technical Proceedings of the 2005 NSTI Nanotechnology Conference and Trade Show, Volume 2
- Y. Chen, L. Ji, **B. van den Akker**, Q. Ji, Ion beam imprinting system, Proc. SPIE, Vol. 5751, 548 (2005)

Hobbies and Interests

Martial Arts:

- Hapkido (Korean Self-Defense Martial Art: 1st Degree Black Belt Awarded August 2006 - Active for 11+ years)
- Judo (Japanese Martial Art and Olympic Sport - Active for 6+ years: 1st Degree Black Belt December 2010 *anticipated*)
- Brazilian Jiu Jitsu (Brazilian Self-Defense Martial Art Active for 4+years)

Curriculum Vitae

Erik van den Akker
phone: (858) 354-5101
email: efvda@yahoo.com

Education

Alliant International University /
California School of Professional Psychology
San Diego, California

2008-present	Candidate Ph.D.	Psychology (Clinical) <i>APA-accredited</i>
2006	M.A.	Psychology (Clinical)
2005	B.A.	Psychology, Magna cum Laude
1995	A.A.	Chemistry major

Professional Societies

2008 Member of American Psychological Association

Clinical Experience

University of California San Diego / Department of Psychiatry and Behavioral
Medicine

Deputy Program Manager (Clinical Trials)

2008 to Present

Director: David Feifel, M.D., Ph.D.

- Serve at the full operational level as internal monitor (CRA), study coordinator (SC) and rater for a wide variety of clinical drug trials
- Act as the primary liaison between FDA, IRB, pharmaceutical company sponsors and the research team
- Generate regulatory updates (IB, IND) and IRB submission/re-submission packets for new and ongoing clinical studies
- Write study specific informed consents(s)
- Write internal work instructions and SOPs; mentor, oversee performance and daily assignment of 1 graduate student/intern
- Administer informed consent to eligible patients in clinical trials for major depression, schizophrenia, bipolar disorder, ADHD, Anxiety
- Ensure compliance with FDA guidelines/regulations and IRB SOP for all assigned studies
- Manage all aspects of complex clinical trials including following patients throughout the trials, including but not limited to reviewing all study related documents and creating advertising for recruitment of research participants
- Conduct diagnostic interviews and complete clinical rating scales of subjects enrolled in the Neuropsychiatry and Behavioral Medicine Clinical Trials Program
- Screen patients against protocol inclusion/exclusion criteria for potential study

participation

- Conduct comprehensive personality/neuropsychological testing and report writing for:
 - Neuropsychiatry and Behavioral Medicine Clinical Trials Program
 - UCSD ADHD Clinic
 - Epilepsy Service
 - Transplant Service
 - Pain Service
 - Oncology Service
 - PACE Program

- Participate in weekly and/or bi-weekly individual/group supervision

North Central Mental Health Clinic

Clinical Psychology Intern

2007 – 2008

Supervisor: Charlie Hoar, Ph.D.

- Intake and diagnostic evaluations of clients
- Individual psychotherapy recommendations
- Administer test batteries
- Profiling and report writing based on cognitive/psychological assessment results
- Provide psychological and behavioral medicine specialized treatments to patients with acute psychological disorders and/or chronic illnesses
- Design and lead group therapy sessions for patients with personality disorders, chronic pain and improvement of quality of life
- Conduct individualized psychotherapy sessions

University of California San Diego / Department of Psychiatry and Behavioral Medicine

Clinical Psychology Intern (Clinical Trials)

2006 – 2007

Supervisor: David Feifel, M.D., Ph.D.

- Generate IRB submission/re-submission packets for new and ongoing clinical studies
- Administer informed consent to eligible patients in clinical trials for major depression, schizophrenia, bipolar disorder, ADHD, Anxiety
- Screen patients against protocol inclusion/exclusion criteria for potential study participation
- Conduct comprehensive personality/neuropsychological testing and report writing on psychiatric outpatients
- Conduct diagnostic interviews and testing of subjects enrolled in clinical trials

Psychological Assessments Administered

- SCID, HAM-A, HAM-D
- WISC III/IV

- Rorschach
- NEO-PI-R
- WAIS III
- TAT
- Woodcock -Johnson
- K-ABC
- RATC
- Wechsler Memory Scales
- KAIT
- K-BIT
- WRAT-III
- Bender-Gestalt
- VMI
- Stanford- Binet
- MMPI-A
- Benton Visual Retention
- MMPI-2
- BDI/BAI
- Full Psychological Battery & Written Report
- Partial Psychological Battery & Written Report

Biotechnology Research Experience

Skyepharma, San Diego, California

Associate / Medical Writer, 2002 – present

- Responsible for writing and editing Clinical Development documents, including but not limited to clinical protocols, Investigator's Brochures, clinical study reports, subject consent forms, integrated safety and efficacy summaries, presentation materials, and publications to medical journals.
- Collaborate with Regulatory Affairs and other departments to prepare clinical sections for annual IND updates, IND submissions, and regulatory submissions.

Projects/Indications: Depression, Pain

Clinical Manufacturing Team Leader, 2000 – 2002

- Responsible for the generation, revision and implementation of company manufacturing SOPs & BPRs, as well as validation protocols, and training team members on such
- Conduct team training on ongoing basis and oversee the maintenance of controlled environmental areas, in strict adherence to company SOPs and cGMPs
- Generate exception, discrepancies and variance reports
- Responsible for the generation and maintenance of manufacturing and quality control documents/records, and modifying document control requirements
- Assisting in document integration for IND/NDA submission(s)

- Assisting Validation Department with the addition of new equipment for clinical manufacturing use (i.e., IQ/OQ/PQ)
- Responsible for purchasing and installation of equipment for manufacturing use: i.e., FATs, installation in adherence to floor plans, etc.

BBCS Consulting Services, Rancho Bernardo, California

Validation Consultant, 2000 – 2001 (consultant)

- Various contract validation projects for local biotech companies
- Observing client sites and equipment
- Generation and execution of validation protocols for phase I, II and III equipment
- Responsible for annual/bi-annual re-validation of process equipment
- Responsible for equipment troubleshooting
- Generation of SOPs for the newly validated equipment
- Recommends vendor/resources as needed

Alliance Pharmaceutical Corp., San Diego, California

Manufacturing Operator II/Team Lead, 1998 – 2000

- Assisted in the conduct of FDA phase III clinical trials of ultrasound contrasting agent
- Participated in the maintenance of controlled environmental areas in strict adherence to company SOPs and cGMPs
- Responsible for the implementation of company manufacturing SOPs
- Responsible for the re-validation of WFI/RODI/Clean Steam Systems
- Assisted in overall planning of clinical trial material(s) in collaboration with clinical department for phase III trials
- Assisted in regulatory authority inspection(s) follow-up process
- Fully responsible for document tracking and filing for the department (including training records, deviations and discrepancies)
- Responsible for the generation and maintenance of the BPR database

Nanogen, San Diego, California

Senior Research Associate, 1995 – 1997

- Assisted in the development of experimental microchips programmed to perform various DNA assays
- Assisting in set-up of multistep syntheses
- Prepared buffer solutions
- Collected and analyzed scientific data
- Assisted in the generation and revision of technical protocols
- Assisted in the accumulation and preparation of status reports

Skills

- Lotus, Access, MSOffice 2007
- PC Docs
- Document Databases
- Adobe, Adobe PhotoShop
- File Maker Pro
- SAS datasets
- SharePoint
- Medical terminology and interpretation
- Japanese spoken (beginning to intermediate)
- ELISA
- HPLC
- Spectroscopy/GC

REFERENCES AVAILABLE UPON REQUEST

VitalGen Incorporated

WE ARE SOLICITING INPUT AND QUESTIONS: WELLNESS CLINIC ON SOLANO AVENUE



WHO are we?

Valuable
Integrity
Towards
A
Lifestyle of
Good health
Energy and
Nutrition



WHAT are our objectives?

- establish a network of local doctors and other health organizations to collect and effectively distribute medical cannabis to eligible members / patients;
- protect the safety, tranquility, and cleanliness of our immediate neighborhood;
- honor the trust provided by our fellow citizens by conforming and enforcing all applicable laws of the progressive, visionary City of Albany, and the Great State of California;
- organize fundraising activity to support neighborhood needs for enhancement and maintenance;
- promote the unity and balance of the mind-
body-spirit in the healing process.

Phone: 510-295-4313

Fax: 510-295-4313

Mailing Address:

3020 El Cerrito Plaza, Suite 531
El Cerrito, California 94530

Web Site:

www.vitalgen.org

Email:

info@vitalgen.org

**WE ARE PLANNING TO OFFER
THESE SERVICES TO OUR MEMBERS**



- Chiropractor
- Acupuncture
- Deep Tissue Treatment
- Shiatsu
- Health Speakers
- Massage Therapy
- Meditation Class
- Yoga Class
- Nutritionist / Counseling
- Holistic Health

**HERE ARE SOME FACTS FOR YOUR
CONVENIENCE**

The patient, who needs medical cannabis for treatment, does not always appear dramatically ill.

The chemotherapy victim, who loses hair and needs the medical cannabis to stimulate appetite and tolerate nausea, has obvious signs of illness. However, more often, the outward appearance of an individual who suffers from chronic pain conditions appears normal and well.

From acute to chronic conditions, it is the norm for patients to present their best face to the outside world, even though they may quietly carry a lifetime of wear and tear.

Alternative medication can be just as important a tool for tolerating daily pains as tolerating the extreme side effects of other more aggressive pharmaceutical interventions.

LAND USE DESIGNATIONS

- Residential Low Density (1-17, Av. 12 du/acre)
- Residential Medium Density (18-34, Av. 27 du/acre)
- Residential High Density (35-63, Av. 39 du/acre)
- Planned Development (6 du/acre)
- Planned Development (9 du/acre)
- COMMERCIAL**
- General (FAR: 0.95)
- Community (FAR: 1.25)
- Planned Residential/Commercial (63 dwelling units/acre, FAR: 1.5)
- Commercial Recreation (FAR: 0.5)
- INDUSTRIAL**
- Commercial/Service/Light Industrial (FAR: 0.5)

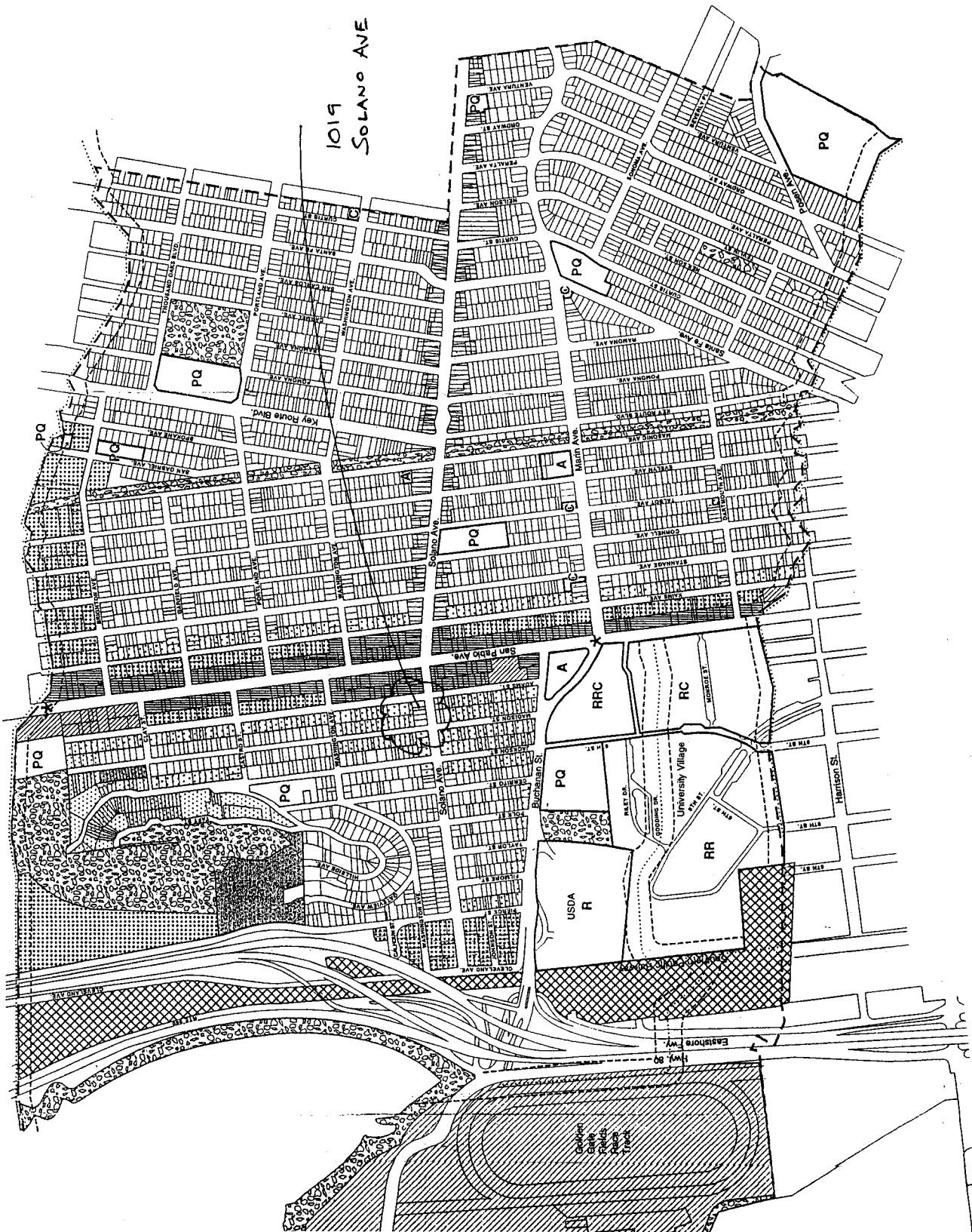
- OPEN SPACE
- Park and Recreation
- Creek Conservation Zone

- INSTITUTIONAL**
- Public/Quasi Public
- Research
- Residential/Recreational/Commercial (18-34, Av. 27 du/acre: Far 0.95)
- Residential/Commercial
- City Property
- Churches
- Gateway

CITY OF ALBANY

Land Use Plan Map

1990 - 2010



July 22, 2010

1558 Solano Ave.
Albany, CA 94707

City of Albany Community Development
Planning Division
1000 San Pablo Avenue
Albany, CA 94706

CITY OF ALBANY

JUL 30 2010

COMMUNITY DEVELOPMENT
DEPARTMENT

Re: Van Den Akker Conditional Use Permit Application for 1021 Solano Ave.

Mr. Jeff Bond,

It has come to my attention that the Planning Department is currently reviewing an application for a Conditional Use Permit to operate a medical cannabis facility at 1021 Solano Ave. I have also had the opportunity to review this application. Unfortunately, I am concerned about the intentions of the applicants and would like to submit my comments to the public record.

First, the application is not complete. They did not include detailed floor plans, site plans, and sign descriptions. The required security plans and description are provided, however they are inadequate. The application does not describe the procedures they will use to protect patients and the community. They simply listed several security measures like metal detectors and cameras. I think we need to know more about how the applicants intend to make sure their facility is safe.

In addition, the applicants did not include the required operational narrative describing the number of employees and their functions, the expected number of patients, and how the operations will comply with the city ordinance. Somehow it is expected that they will operate with only four employees onsite. Further, the application does not include a copy of their member agreement or collective rules and regulations. While they are not required, they could go a long way in demonstrating the type of facility the applicants intend to operate and could help provide the information asked for in the operational narrative.

These oversights cause me concern that the applicants are not aware of the extensive planning, thought, and consideration that goes into developing a professional and compassionate medical cannabis facility. While they have impressive credentials and education, I do not believe they have the proper experience and information required to best serve the needs of patients.

The applicants, Eric and Bret Van den Akker are both PhD candidates. Bret is a candidate for a PhD in nuclear engineering and while this is quite remarkable, it is not relevant to medical cannabis except that he has handled sensitive materials. Eric is a candidate for a PhD in Clinical Psychology. Though he may be qualified to help patients as a therapist, I do not see how this gives him the ability to operate a business that distributes medical

ATTACHMENT 9

cannabis. Neither of these two men has demonstrated any experience with medical cannabis. They do not have a history of volunteering or helping medical cannabis patients. They have no education directly related to medical cannabis science or cultivation.

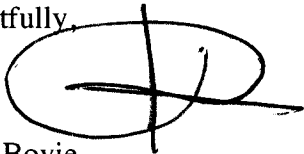
Providing medical grade cannabis is not like operating a farmer's market that distributes apples and pears. There are decades of research on the plant, the active compounds, the variety of strains of cannabis, and the varying effects they have on patients. It could take years for someone to gain the requisite knowledge to provide sick people with this medicine. These applicants have not shown they are prepared to serve patients at this level.

However, I am pleased that their application includes plans for free patient services and a patient center where legal and other information will be provided. However, on the application where it asks how many people will assemble for instructional classes they put N/A. This is inconsistent with their business plan. I am not sure if they really intend to provide these services to patients. I think we need clarification on what these applicants really plan to do with their facility.

The City of Albany should choose the applicants that are best able to serve the needs of patients. This should include people that have a demonstrated history of helping patients, a knowledge of medical cannabis, business experience, and compassionate motives.

Please take these comments under consideration.

Respectfully,

A handwritten signature in black ink, consisting of a large, stylized 'X' with a vertical line through it, enclosed in an oval shape.

Xavier Bovie

Jeff Bond

From: Greyson Vega [jgreysonvega@gmail.com]
Sent: Sunday, October 03, 2010 1:39 PM
To: Jeff Bond
Subject: Conditional Use Permit for Medical Marijuana Dispensary at 1019 Solano Avenue - Planning Commission Mtg. on 10/12/2010

Mr. Bond,

It has come to my attention that on the Planning & Zoning Commission meeting scheduled for 10/12/10 a proposal for a Medical Marijuana Dispensary is on the agenda. The notification sent via the USPS states that more information regarding this application, proposal to please contact the Community Development Department. I did go to the City of Albany website and could find no email link, listing for the Community Development Department. I am contacting you because you are the Director of the Planning Department and this item goes before the Planning and Zoning Commission.

I would very much like more information regarding this application before the meeting on Oct. 12th. I am a resident of Albany and I reside on Adams Street. I am employed full time as and because of my working hours, and a orthopedic physical limitation, I am concerned that I may not physically be able to make it down to the City of Albany offices to review "more information" regarding this application for a Conditional Use Permit for a Medical Marijuana Dispensary in a timely fashion.

I am requesting that a copy of the information that is available for review at the City of Albany Community Development Department be sent to me via email. I would like to have a few business days to review this information before the schedule Planning Commission meeting. I am unsure as to why the City of Albany does not scan and post this document and others of City's official web site.

Thank you for your assistance in this matter.

Respectfully,

Greyson Vega

Jeff Bond

From: mamood Muktari [mamoodmuktari@yahoo.com]
Sent: Monday, October 04, 2010 10:40 PM
To: Jeff Bond
Subject: RE: Merijuana dispensary

Dear Mr. Bond,

I am writing in regards to the planned opening of the 1st Merijuana dispensary on Solano Ave. The location is right next door to my property at 1009-1017 Solano Ave. My tenants are very upset and distraught about this business opening next to where they live. According to the article in Albany Patch, the owners of the business sent letters informing the neighbors within 300 feet of their establishment of their intent. However, not one of my tenants have received such letter. This location is not that far from Albany schools and I am astonished that a conservative city such as Albany would allow such business to open in residential area. I know that there is a hearing on October 12th which I will be attending. But I would like to know what would it take to stop this business from opening at this location? If enough neighbors sign a petition, would that make any difference? Please let me know.

Mahmood Mokhtari

Jeff Bond

From: john corvasce [giannicorvasce@yahoo.com]
Sent: Monday, October 04, 2010 11:32 PM
To: Jeff Bond
Subject: dope dispensory

Mr. Bond, My name is John and I live on the 1000 block of Solano which as you know is next door to the proposed pot club. I have lived here with my 6 year old daughter over two years and the first I ever heard of this plan was today through the Albany Patch. At no time was a letter sent to anyone I know of by this "business" stating their intention to sell DOPE 7 days a week 13 hours a day on our block. I am sure I dont just speak for myself when I say this type of activity belongs in an industrial area not a block from an elementary school. Maybe there could be a methadone clinic in the space next door and a gun shop where the deli used to be. This is ALBANY not Richmond and as such this does not belong here. And to have it sneak past us says loud and clear that Albany is now for sale. Its so slimey I want to take a shower. I will be spending the next several days letting ALL my neighbors know exactly whats going on here and where and when to go to let it be known that this is complete BULLSHIT.

Jeff Bond

From: Amanda Mahan [amandamahan@gmail.com]
Sent: Wednesday, October 06, 2010 10:44 PM
To: Jeff Bond
Subject: Albany Pot Club - poor location - please say NO

I am very concerned about the pot club being situated so close to Ocean View Elementary School.

First of all, this is a school mandated drug-free zone.

Secondly, as someone who lives on Jackson, I can tell you the street is already extremely noisy and busy. This will obviously be the conduit for people coming to the club off the highway, creating further congestion. The intersection at Buchanan and Jackson is dangerous enough - there are constantly accidents and fender benders as is. We don't need more congestion near the school. I can barely get out of my driveway on most days due to through speeding traffic, and cannot even drive down the street during school drop off/ pick up. This is also where the police cars and fire engines frequently drive through to reach their destinations.

Placing a pot club in this already highly congested area is a POOR decision that I hope you will change. There is no where to park as is, and 3 parking spots for 250 patients is not going to cut it. Lower Solano has never been thriving and what we need are more family friendly restaurants and coffee houses, not a medical marijuana dispensary. I will absolutely consider moving out of Albany if this goes through.

PLEASE RECONSIDER THE LOCATION.

Thank you,
Amanda Mahan