

ATTACHMENT 13 - CONDITIONS OF APPROVAL

If the City Council wishes to reverse the decision of the Planning and Zoning Commission and approve a use permit for a medical marijuana dispensary, it is recommended that the City Council approve the following 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.