

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

Agenda date: May 10, 2011

Prepared by: JB

ITEM/

SUBJECT: Planning Application 09-064. Conditional Use Permit. Parking Exception.
The subject property is a 7,500 square foot lot with three existing commercial spaces. The applicant is requesting approval to allow a medical marijuana dispensary in a portion of the building.

SITE: 745-747 San Pablo Avenue

APPLICANT/OWNER: Rina Houngviengkham and Harry Houngviengkham doing business as "Zo Collective Cafe

ZONING: Solano Commercial

STAFF RECOMMENDATION

Staff recommends that the Planning and Zoning Commission deny the application based on the attached findings.

BACKGROUND/PROJECT DESCRIPTION

The subject property is a 7,500 square foot lot with three existing commercial spaces. The applicant is requesting approval to allow a medical marijuana dispensary in a portion of the building. The proposal does not appear to comply with City requirements for the location of a dispensary. In addition, the property owner has leased the space to another tenant for a restaurant use (see separate public notice). The applicant, however, has not withdrawn their application. Therefore, in order to bring formal closure to the application, a public hearing is being scheduled to in order for the Commission to consider a staff recommendation to deny the application.

City of Albany Municipal Code

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 Spring 2006, the City Council discussed a proposed ordinance and 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 (Attachment 2). The following are the key elements:

- Police Department Background Check - As part of the application process, the Chief of Police conducts a confidential background check on applicants.
- 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.
- 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.
- 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.
- 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.
- Performance Standards - The ordinance includes performance standards required of a 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.
- 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.

State Law

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 2003, the California Medical Marijuana Project Act was approved, which provides guidance on the implementation of Prop 215. In 2008, the California Attorney General's Offices published information on medical marijuana law and guidelines for operation of dispensaries.

Federal Law

The cultivation, distribution and sale of marijuana are violations of Federal law. In 2005, the U.S. Supreme Court established that regardless of state and local regulations, the Federal government could prosecute medical marijuana growers and users under the Controlled Substances Act. In October 2009, however, the US Attorney General's office issued a memorandum to US Attorneys authorizing prosecutors to limit investigations and prosecution of individuals who comply with state and local medical marijuana regulations.

Environmental Analysis

The recommendation to deny the application is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270(a), which exempts projects that are denied by the public agency.

Discussion

The Planning and Zoning Commission most recently reviewed a medical marijuana dispensary application on October 12, 2010 for a facility proposed at 1019 Solano Avenue. The Commission's decision to deny the application was appealed to the City Council. The City Council on January 18, 2011 upheld the Commission's decision. (Several weeks ago, the application for the dispensary at 1019 Solano filed legal action against the City.)

The City Council's January 18, 2011 decision addressed several issues that contribute to the evaluation of the current application. First, the Council utilized a straight-line parcel line to parcel line methodology when measuring the 1,000-foot radius. Secondly, the Council affirmed the Commission's determination that the YMCA on Kains is a youth-oriented facility.

Based on the Council's actions, staff has prepared for the Commission draft findings to deny the application at 745-747 San Pablo. In particular, for this application, the distance from the northwest corner of the subject property to the southeast corner of the Albany Children's Center (owned and operated by the Albany Unified School District) is calculated at 856 feet. Secondly, the distance from the southeast corner of the subject property to the northwest corner of the Albany YMCA at 921 Kains Avenue was calculated at 946 feet.

In addition to location standards, the City has been advised by the property owner that the applicant has terminated their lease of the property. Following termination of the lease, the property owner has granted consent to an application to be filed for a restaurant at 747 San Pablo (separate agenda item)

Potential acceptance of alternative locations for a medical marijuana dispensary.

The draft findings for denial also include a finding that the analysis and methodology applied to this application does not create de facto ban on the potential acceptance of a medical marijuana dispensary within the City of Albany. Dispensaries could be located on between 600 and 660 Cleveland Avenue and between 1001 and 1025 Eastshore Avenue, subject to the

requirements of the Planning and Zoning Code and subject to the Planning and Zoning Commission making appropriate findings and adopting conditions of approval.

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. Draft Findings for Denial
2. Medical Marijuana Dispensary requirements

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ATTACHMENT 1

**DECISION AND ADOPTION OF FINDINGS
BY THE PLANNING AND ZONING COMMISSION
OF THE CITY OF ALBANY, STATE OF CALIFORNIA,
DENYING THE APPLICATION FILED BY
RINA HOUNGVIENGKHAM AND HARRY HOUNGVIENGKHAM
DOING BUSINESS AS “ZO COLLECTIVE CAFÉ”
DENYING THE APPLICATION FOR A
CONDITIONAL USE PERMIT TO ESTABLISH A
MEDICAL MARIJUANA DISPENSARY FOR THE PROPERTY AT
745-747 SAN PABLO AVENUE**

WHEREAS, In 1996, California voters approved Proposition 215 (the Compassionate Use Act), which allowed Californians to obtain marijuana for medical purposes;

WHEREAS, in 2003, the California Medical Marijuana Project Act was approved, which provides guidance on the implementation of Prop 215;

WHEREAS, In Spring 2006, the City Council desired to provide for access to a medical marijuana facility and discussed a proposed ordinance amending the Planning and Zoning Code to authorize and regulate medical marijuana dispensaries in the City;

WHEREAS, prior to taking action on the ordinance, the City Council decided to place an advisory measure on the November 2006 ballot to ask the Albany voters if they favored having the City enact an ordinance that permitted one medical marijuana facility within the City;

WHEREAS, in 2007 following voter approval of the advisory measures, the City Council approved Ordinance #07-01 establishing Planning and Zoning code Section 20.20.110 to regulate medical marijuana dispensaries in the City of Albany (see Attachment 6 of January 10, 2011 staff report);

WHEREAS, the following are the key elements of the ordinance:

1. No more than one medical marijuana dispensary shall be permitted to be located and operational within the limits of the City of Albany at any time.
2. Police Department Background Check - As part of the application process, the Chief of Police conducts a confidential background check on applicants.
3. 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

1 to other uses. In addition, sale of other goods and services, including alcohol and
2 tobacco is not allowed. Further, marijuana is not to be cultivated on site, physicians
3 are not to evaluate patients on site, and patients are not to consume marijuana on the
4 premises.

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6 4. Location Standards – The primary location standard is that the dispensary
7 shall be at least 1,000 feet from any school and from facilities that primarily served
8 youth oriented facilities. In addition, the entrance to a dispensary is not allowed to be
9 located within 95 feet of residential zoning district or 25 feet from the entrance to a
10 multi-family residence.

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

15
16 1. All findings required by Subsection 20.100.030.D for granting a use
17 permit.

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

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22 3. The Chief of Police has determined that the nature of the site of and
23 the immediate area of the site are not expected to present law enforcement
24 problems.

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26 4. All standards for facility location, as stated in this subsection, are met.

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28 5. The site design and floor plan will minimize the potential for crime.

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30 6. All reasonable measures have been incorporated in the plan to control
31 patrons' conduct inside and outside and to avoid public nuisance.

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33 6. Extension of Use Permit - The initial term of the use permit is one
34 year. After the first year, the Commission may consider extension of the use
35 permit at annual intervals.

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37 7. Performance Standards - The ordinance includes performance standards
38 required of a dispensary. Compliance with these performance standards would be one
39 of the considerations the Commission could evaluate if an extension of the use permit
40 is required.

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42 8. Violations - In addition to civil remedies and criminal penalties, the ordinance
43 allows the City to close the dispensary if regulations have been violated or if the
44 Chief of Police determines that the immediate closure of the dispensary is in order to
45 protect the public peace or welfare.

1 **WHEREAS**, the property at 745-747 San Pablo is owned by Faramarz &
2 Jaleh P Pakzad Trustees;

3
4 **WHEREAS**, on October 29, 2009, Steven HOUNGVIENGKHAM and Harry
5 HOUNGVIENGKHAM submitted an application for a medical marijuana dispensary at
6 745-747 San Pablo Avenue;

7
8 **WHEREAS**, on November 19, 2009, the applicant submitted a revised
9 business plan, including replacement of Steven HOUNGVIENGKHAM as President and
10 Treasurer with Rina HOUNGVIENGKHAM.

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12 **WHEREAS**, on ____, the Chief of Police denied the business license
13 background check;

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15 **WHEREAS**, on July 21, 2010, the applicant requested reconsideration of the
16 Chief of Police's decision;

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18 **WHEREAS**, on November 5, 2010, the Chief of Police, based on additional
19 information and advice of legal counsel, approved the business license background
20 check;

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22 **WHEREAS**, on January 19, 2011, the applicant was advised by City staff that
23 the proposed location did not comply with City standards;

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25 **WHEREAS**, as of February 28, 2011, the applicant terminated their lease of
26 the subject property;

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28 **WHEREAS**, on April 11, 2011, the property owner authorized an application
29 with the City of Albany seeking approval for a restaurant at 747 San Pablo;

30
31 **WHEREAS**, on Friday, April 29, 2011, the Community Development
32 Department issued a public notice of an May 10, 2011 public hearing on the
33 application for conditional use permit at 1019 Solano Avenue;

34
35 **WHEREAS**, as of the date of the public hearing, the applicant has not
36 formally withdrawn the application;

37
38 **WHEREAS**, the Planning and Zoning Commission considered all
39 information, testimony and evidence related to the appeal, as presented at the public
40 hearing identified herein, including all supporting reports by City Staff, and all
41 testimony, evidence, correspondence and information provided during the public
42 hearing before the Commission.

43
44 **NOW, THEREFORE, BE IT RESOLVED**, by the Planning and Zoning
45 Commission of the City of Albany, that it adopts findings as follows:
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1 1. The Planning and Zoning Commission hereby denies the Conditional Use
2 Permit for a medical marijuana dispensary located at 745-747 San Pablo Avenue,
3 without prejudice to the applicants, so that the applicants may immediately file
4 another application, should they so choose.

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6 2. The Planning and Zoning Commission hereby relies upon, incorporates and
7 adopts the facts set forth in this Decision, including without limitation the recitals,
8 and finds that those facts and recitals are true and correct.

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10 3. The Planning and Zoning Commission further hereby relies upon,
11 incorporates and adopts the evidence, staff reports and responses to questions,
12 testimony and information provided during the public hearing before the Planning
13 and Zoning Commission, and finds that such evidence, staff reports, testimony and
14 information establish the factual basis for the Planning and Zoning Commission's
15 Decision.

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17 4. The Planning and Zoning Commission hereby finds that this project is exempt
18 from CEQA pursuant to CEQA Guidelines Section 15270(a), which exempts projects
19 that are denied by the public agency.

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21 5. The Planning and Zoning Commission makes the following findings pursuant
22 to the requirements under Planning and Zoning Code Section 20.20.110 for its
23 decision denying the appeal:

24
25 **Requirement:**

26
27 **Planning and Zoning Code Section 20.20 Subpart 110.G.4 (Use Permit**
28 **Application Requirements) states "Evidence of consent by the owner of the**
29 **property on which the dispensary is to be located to file application for a use**
30 **permit."**

31
32 Analysis and Finding: On April 11, 2011, an application for permits to allow a
33 restaurant at 747 San Pablo, signed by the property owner, was received.
34 Subsequently the property owner confirmed that the Zo Collective Café no longer has
35 a leasehold interest in the property.

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37 **Requirement:**

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39 **Planning and Zoning Code Section 20.20 Subpart 110.E.5 states that "No**
40 **medical marijuana dispensary shall be located within a one thousand (1,000)**
41 **foot distance of any of the following:**

42
43 **a. Any other such dispensary, including any dispensary located in an**
44 **adjacent jurisdiction;**

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

3
4 **c. Any municipal parks or playgrounds.**

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6 Analysis and Finding: Utilizing Google Earth, the distance from the northwest corner
7 of the subject property to the southeast corner of the Albany Children’s Center
8 (owned and operated by the Albany Unified School District) is calculated at 856 feet.

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10 **Requirement:**

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12 **Planning and Zoning Code Section 20.20 Subpart 110.E.6 states “No medical**
13 **marijuana dispensary shall be located within a one thousand (1,000) foot**
14 **distance of any of the following businesses, where such businesses were existing**
15 **at the time of approval of a use permit for a medical marijuana dispensary:**

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

22
23 Analysis and Finding: On October 12, 2010, the Executive Director stated in
24 correspondence to the Planning and Zoning Commission that the Albany YMCA at
25 921 Kains Avenue as a youth-oriented facility. In addition, analysis of YMCA
26 programs indicates there are 18 youth-oriented programs available at various times of
27 day and week in the YMCA facility at 921 Kains. Furthermore, childcare is provided
28 for children of adults that are utilizing program or facilities at the YMCA.

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30 Utilizing Google Earth, the distance from the northwest corner of the subject property
31 to the southeast corner of the Albany YMCA at 921 Kains Avenue was calculated at
32 946 feet.

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34 **Other Findings**

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36 ***Potential acceptance of alternative locations for a medical marijuana dispensary.***

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38 Analysis and Finding: The analysis and methodology applied to this application does
39 not create de facto ban on the potential acceptance of a medical marijuana dispensary
40 within the City of Albany. Dispensaries could be located on between 600 and 660
41 Cleveland Avenue and between 1001 and 1025 Eastshore Avenue, subject to the
42 requirements of the Planning and Zoning Code and subject to the Planning and
43 Zoning Commission making appropriate findings and adopting conditions of
44 approval.

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46 5. This Resolution shall take effect immediately upon its adoption.

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6. 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

I HEREBY CERTIFY that the foregoing Decision was duly adopted by the Planning and Zoning Commission of the City of Albany at a public meeting of said Commission held on the 10th day of May, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

PHILLIP MOSS
CHAIR

ATTEST: _____

Jeff Bond
Planning and Zoning commission Secretary

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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;

l. 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)