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ORDINANCE NO. 2017-04

AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING THE SMOKING CONTROL ORDINANCE TO EXPRESSLY STATE THAT IT REGULATES MARIJUANA SMOKE, AS WELL AS TOBACCO SMOKE, AND MAKING ADDITIONAL CLARIFYING REVISIONS

WHEREAS, in 2008 the Albany City Council adopted Ordinance No. 08-03, acting regulations governing smoking in workplaces, recreational areas, and other places; and

WHEREAS, Ordinance No. 08-03 is codified in Chapter XVII of the Albany Municipal Code, titled "Smoking Pollution Control" and commonly referred to as the "No-Smoking Ordinance"; and

WHEREAS, Ordinance No. 08-03 was intended to protect the public health and welfare by, among other things, protecting non-smokers from the health hazards posed by second-hand smoke and protecting children using public play areas from the danger of choking on or ingesting tobacco litter; and

WHEREAS, on February 21, 2017 the Albany City Council adopted Ordinance No. 2017-01, amending Chapter XVI to do the following: (a) expand the definition of smoking and tobacco products to include electronic smoking devices and related items, (b) prohibit smoking in new units of a Multi-Family Residence as of the effective date of that Ordinance (March 24, 2017), (c) prohibit smoking in all other units of a Multi-Family Residence as of one year following the effective date of that Ordinance (March 24, 2018), and (d) prohibit smoking in unenclosed areas of bars which commenced operations on or after March 24, 2017; and

WHEREAS, on November 8, 2016 the voters of the State of California passed Proposition 64, the Adult Use of Marijuana Act ("AUMA"), which permits individuals age 21

1 and older to engage in certain marijuana-related activities, including smoking and/or ingesting
2 marijuana products; and

3
4 **WHEREAS**, the AUMA added Section 11362.3(a) to the California Health and Safety
5 Code, which states that nothing in the AUMA shall be construed to permit any person to smoke
6 or ingest marijuana in any public place nor smoke marijuana or marijuana products in a location
7 where smoking tobacco is prohibited; and

8
9 **WHEREAS**, pursuant to Section 113262.3(a), smoking marijuana or marijuana products
10 is already prohibited in all locations where smoking tobacco is prohibited within the City of
11 Albany under the No-Smoking Ordinance; and

12
13 **WHEREAS**, in order to ensure that the Albany Municipal Code is consistent with the
14 language of the AUMA and that it is clear what activities are prohibited under the No-Smoking
15 Ordinance, the definition of “Smoking” to expressly include marijuana and marijuana products.

16 **NOW THEREFORE, THE ALBANY CITY COUNCIL DOES HEREBY ORDAIN AS**
17 **FOLLOWS:**

18 **SECTION 1: CHAPTER XVII OF THE ALBANY MUNICIPAL CODE.**

19 **SECTION 17-1, TITLED “SMOKING POLLUTION CONTROL” IS HEREBY**

20 **AMENDED AS FOLLOWS:**

21
22 A. Section 17-1.2, subdivision r., is amended to read as follows:

23 *Smoking* shall mean inhaling exhaling, burning or carrying any lighted, heated, or
24 ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device or any
25 plant product intended for human inhalation, including, but not limited to, tobacco,
26 tobacco products, marijuana and marijuana products.

27 B. Section 17-1.2 is amended by the addition of the following definition:
28

1 *Marijuana* shall have the same meaning as given to that term in California Health and
2 Safety Code Section 11018.

3
4 C. Section 17-1.5, subdivision e., is amended to read as follows:

5 e. *Disclosure of Smoking Policy in New and Existing Multi-Unit Housing.*

6 1. Every Landlord shall deliver a written notice on or before six months
7 following March 24, 2017 to each Unit of a Multi-Unit Residence and to any
8 prospective tenants, stating the following:

9 (a) All New Units are designated nonsmoking Units and Smoking will be
10 illegal in a Unit, including any associated exclusive-use Enclosed Area or
11 Unenclosed Area, such as, for example, a private balcony, porch, deck or
12 patio, as of March 24, 2017;

13 (b) All Units that are not New Units are designated nonsmoking Units and
14 Smoking will be illegal in a Unit, including any associated exclusive-use
15 Enclosed Area or Unenclosed Area, such as, for example, a private
16 balcony, porch, deck or patio, as of March 24, 2018 as to smoking of
17 tobacco or tobacco products and as of September 1 2017 as to smoking of
18 marijuana or marijuana products;

19 (c) Smoking in all Common Areas, except for specifically designated
20 Smoking areas, will be a violation of this Chapter as of March 24 2017.

21 2. As of September 1 2017, every seller of a Unit in a Multi-Unit Residence shall
22 provide prospective buyers with written notice stating the following:

23 (a) Smoking is prohibited in Units, including any associated exclusive-use
24 Enclosed Area or Unenclosed Area, such as, for example, a private
25 balcony, porch, deck or patio, as of September 1, 2017; and

26 (b) Smoking is prohibited in all Common Areas, except for specifically
27 designated Smoking areas, as of March 24, 2017.

28 3. All sellers of condominium units are required to disclose to prospective
 buyers in writing whether smoking has been permitted in the unit and the
 smoking policies for the complex.

 D. Section 17-1.6 is amended by the addition of a new subdivision g., to read as
 follows:

 g. Any individual smoking marijuana or marijuana products in violation of this
 Chapter shall be subject to the penalties contained herein, except to the extent
 such penalties would conflict with State law.

1
2 **SECTION 2. PUBLICATION AND EFFECTIVE DATE.**

3 This ordinance shall be posted at three public places within the City of Albany and shall
4 become effective thirty days after the date of its posting.
5

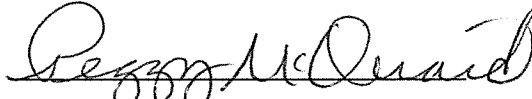
6
7 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on
8 the 5th day of September, 2017, by the following vote:

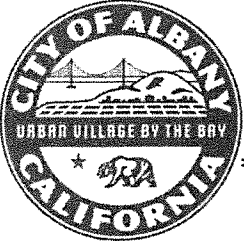
9 AYES: *Council members: Barnes, Maass, Hason, Pich and*
Mayor McQuaid

10 NOES:

11 ABSENT:

12 ABSTAIN:

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15 PEGGY MCQUAID, MAYOR
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City of Albany

1000 San Pablo Avenue • Albany, California 94706
(510) 528-5710 • www.albanyca.org

ORDINANCE NO. 2017-04

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

the 5th day of September, 2017 by the following votes:

AYES: Council Members Barnes, Maass, Nason, Pilch, Mayor McQuaid

NOES: none

ABSTAINED: none

ABSENT: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this

6th day of September, 2017.

Eileen Harrington

Eileen Harrington
DEPUTY CITY CLERK