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**ORDINANCE NO. 2017-07**

**AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING SECTION 20.20.110  
“MEDICAL MARIJUANA DISPENSARIES” OF THE ALBANY MUNICIPAL CODE**

**WHEREAS**, the City Council adopted an Urgency Ordinance on November 7, 2011 repealing and replacing Chapter 20.20.110 of the Albany Municipal Code (“Medical Marijuana Dispensaries”) and adopted regulations prohibiting medical marijuana dispensaries in the City of Albany; and

**WHEREAS**, the Medical Marijuana Regulation and Safety Act was approved by the State of California on October 9, 2015; and

**WHEREAS**, Proposition 64 “Adult Use of Marijuana Act” was approved by voters in California on November 8, 2016 and legalizes the use of recreational marijuana in California; and

**WHEREAS**, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) was signed by Governor Brown on June 27, 2017; and

**WHEREAS**, State licensing for recreational marijuana dispensaries will commence January 1, 2018; and

**WHEREAS**, it is advisable for the City to consider amendments to the Planning and Zoning Code related to marijuana prior to December 31, 2017; and

**WHEREAS**, Planning and Zoning Code Section 20.100.070.B.2 prescribes that the City Council initiate potential amendments to the Planning and Zoning Code by approval of a Resolution of Intention; and

1           **WHEREAS**, the City Council adopted Resolution 2017-16 on June 5, 2017, a Resolution of  
2 Intention to amend Section 20.20.110 “Medical Marijuana Regulations” of the Albany Municipal  
3 Code by a 5-0 vote directing the Commission to extend the prohibition of medical marijuana  
4 dispensaries and expand the prohibition to include recreational marijuana dispensaries and  
5 commercial cultivation; and  
6

7  
8           **WHEREAS**, a public hearing notice for Planning & Zoning Commission review was  
9 published in the West County Times and posted in three public places pursuant to California  
10 Government Code Section 65090 on September 1, 2017 for the public hearing held on  
11 September 13, 2017 and the matter was continued to a date certain of October 25, 2017; and  
12

13           **WHEREAS**, the Planning & Zoning Commission held a public hearing to discuss  
14 marijuana regulations on September 13, 2017 and October 25, 2017; and  
15

16           **WHEREAS**, the Planning & Zoning Commission held a public hearing and considered  
17 all public comments received, the presentation by City staff, the staff report, and all other  
18 pertinent documents regarding the proposed request and adopted Resolution 2017-06 forwarding  
19 a recommendation to City Council with draft amendments;  
20

21           **WHEREAS**, a public hearing notice for City Council review was published in the West  
22 County Times and posted in three public places pursuant to California Government Code Section  
23 65090 on November 10, 2017 for the public hearing held on November 20, 2017; and  
24

25           **WHEREAS**, the Albany City Council held a public hearing to discuss marijuana  
26 regulations on November 20, 2017; and  
27  
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1           **WHEREAS**, the Albany City Council held a public hearing and considered all public  
2 comments received, the presentation by City staff, the staff report, and all other pertinent  
3 documents regarding the proposed request;  
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5           **NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS AS**  
6 **FOLLOWS:**  
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8 **SECTION 1: CHAPTER XX OF THE ALBANY MUNICIPAL CODE, SECTION 20.08**  
9 **TITLED “DEFINITIONS” IS HEREBY AMENDED AS FOLLOWS:**  
10

11 **SECTION 20.08 “DEFINITIONS”**  
12

13 **Medical Cannabis Dispensary** means any association, business, facility, use, establishment,  
14 location, delivery service, cooperative, collective, or provider, whether fixed or mobile, that  
15 possesses, cultivates, distributes, or makes available medical cannabis to three (3) or more of the  
16 following: a primary caregiver, a qualified patient, or a patient with an identification card or a  
17 patient with a prescription or recommendation from a medical doctor. A dispensary shall not  
18 include the following uses, as long as the location of such uses is otherwise regulated by this  
Code or applicable law:

- 19           1.     A clinic licensed pursuant to Chapter 1, Division 2 of the Health and Safety  
20           Code;
- 21           2.     A healthcare facility licensed pursuant to Chapter 3.01 of Division 2 of the  
22           Health and Safety Code;
- 23           3.     A residential care facility for persons with chronic life-threatening illnesses  
24           licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;
- 25           4.     A residential care facility for the elderly licensed pursuant to Chapter 3.2 of  
26           Division 2 of the Health and Safety Code;
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1           5.       A residential hospice or a health home agency licensed pursuant to Chapter 8 of  
2 Division 2 of the Health and Safety Code, as long as such use complies strictly with  
3 applicable law, including but not limited to, Health and Safety Code Section 11362.5 et  
4 seq.

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7           **SECTION 2: CHAPTER XX OF THE ALBANY MUNICIPAL CODE, SECTION**  
8 **20.20.110 TITLED “MEDICAL MARIJUANA DISPENSARIES” IS HEREBY**  
9 **AMENDED AS FOLLOWS:**

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12           **20.20.110     Cannabis Dispensaries.**

13           **A.     Purpose and Intent.** The purpose of this subsection is to promote the public  
14 health, safety and welfare by:

15                   1.       Prohibiting medical and recreational cannabis dispensaries and  
16 commercial cultivation from locating in the City of Albany.

17                   2.       Protecting citizens from the secondary impacts and effects associated with  
18 unregulated and unpermitted medical and recreational cannabis dispensaries and related  
19 activities, including, but not limited to, loitering, increased noise, fraud in obtaining or  
20 using medical cannabis identification cards, sales of medical cannabis to minors, drug  
21 sales, robbery, burglaries, assaults or other violent crimes.

22                   3.       Decreasing demands on police or other valuable scarce City  
23 administrative, financial, or personnel resources in order to better protect the public.

24                   4.       This subsection is not intended to conflict with Federal or State law. It is  
25 the intention of the City Council that this subsection be interpreted to be compatible with  
26 Federal and State enactments and in furtherance of the public purposes which those  
27 enactments encompass.

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3       **B. Definitions.** Unless the particular provision or the context otherwise requires, the  
4 definitions and provisions contained in this section shall govern the construction, meaning and  
5 application of words and phrases used in this subsection:  
6

7       **Cannabis** means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or  
8 *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or  
9 purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative,  
10 mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated  
11 resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature  
12 stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant,  
13 any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks  
14 (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which  
15 is incapable of germination. For the purpose of this division, “cannabis” does not mean  
16 “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.

17       **Commercial Cannabis Activity** includes the cultivation, possession, manufacture,  
18 distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery  
19 or sale of cannabis and cannabis products as provided for in this division.

20       **Cultivation** means any activity involving the planting, growing, harvesting, drying,  
21 curing, grading, or trimming of cannabis.

22       **Cultivation site** means a location where cannabis is planted, grown, harvested, dried,  
23 cured, graded, or trimmed, or a location where any combination of those activities occurs.

24       **Cultivation Personal Use** means that within a private residence occupied by a person 21  
25 years and older, up to six (6) nonmedical cannabis plants per private residence maybe cultivated  
26 indoors for personal use pursuant to the Adult Use of Marijuana Act. Cultivation shall be limited  
27 to covered space in personal residence or in an attached garage or other fully enclosed and locked  
28 accessory structure located entirely on property owned or legally possessed by the occupant.

1           **Delivery** means the commercial transfer of cannabis or cannabis products to a customer.  
2 “Delivery” also includes the use by a retailer of any technology platform owned and controlled  
3 by the retailer.  
4

5           **Identification Card** shall have the same definition or given such term in California  
6 Health and Safety Code Section 11362.7, as may be amended, and which defines "Identification  
7 Card" as a document issued under the authority of the State Department of Health Services  
8 which identifies a person authorized to engage in the medical use of cannabis, and identifies the  
9 person's designated primary caregiver, if any.  
10

11           **Live plants** means living cannabis flowers and plants, including seeds, immature plants,  
12 and vegetative stage plants.

13           **Manufacturer** means a licensee that conducts the production, preparation, propagation,  
14 or compounding of cannabis or cannabis products either directly or indirectly or by extraction  
15 methods, or independently by means of chemical synthesis, or by a combination of extraction  
16 and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis  
17 products or labels or relabels its container.

18           **Medicinal cannabis** or “medicinal cannabis product” means cannabis or a cannabis  
19 product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996  
20 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal  
21 cannabis patient in California who possesses a physician’s recommendation.

22           **Medical Cannabis Dispensary** means any association, business, facility, use,  
23 establishment, location, delivery service, cooperative, collective, or provider, whether fixed or  
24 mobile, that possesses, cultivates, distributes, or makes available medical cannabis to three (3) or  
25 more of the following: a primary caregiver, a qualified patient, or a patient with an identification  
26 card or a patient with a prescription or recommendation from a medical doctor. A dispensary  
27 shall not include the following uses, as long as the location of such uses is otherwise regulated by  
28 this Code or applicable law:

1           1.     A clinic licensed pursuant to Chapter 1, Division 2 of the Health and Safety  
2 Code;

3  
4           2.     A healthcare facility licensed pursuant to Chapter 3.01 of Division 2 of  
5 the Health and Safety Code;

6  
7           3.     A residential care facility for persons with chronic life-threatening  
8 illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;

9  
10          4.     A residential care facility for the elderly licensed pursuant to Chapter 3.2  
11 of Division 2 of the Health and Safety Code;

12          5.     A residential hospice or a health home agency licensed pursuant to  
13 Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies  
14 strictly with applicable law, including but not limited to, Health and Safety Code Section  
15 11362.5 et seq.

16           **Physician's recommendation** means a recommendation by a physician and surgeon that  
17 a patient use cannabis provided in accordance with the Compassionate Use Act of 1996  
18 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

19           **Primary Caregiver** shall have the same definition as given such term in California  
20 Health and Safety Code Sections 11362.5 and 11362.7 as may be amended, and which define  
21 "primary caregiver" as an individual, designated by a qualified patient or identification card  
22 holder, who has consistently assumed responsibility for the housing, health, or safety of that  
23 qualified patient.

24           **Qualified Patient** means a person who is entitled to the protections of Health and Safety  
25 Code Section 11362.5 for patients who obtain and use cannabis for medical purposes upon the  
26 recommendation of an attending physician, whether or not that person applied for and received a  
27 valid identification card issued pursuant to State law.  
28

1           **Recreational Cannabis** means cannabis which is consumed for recreational, non-  
2 medical consumption.

3  
4           **Recreational Cannabis Dispensary** means a facility where cannabis is available for  
5 purchase for recreational, non-medical consumption.

6  
7           **C.       Dispensary Prohibited.**

8           1.       No person or entity shall operate or permit to be operated a medical or  
9 recreational cannabis dispensary or commercial cultivation site in or upon any premises  
10 or any zone in the City. The City shall not issue, approve, or grant any permit, license, or  
11 other entitlement for the establishment or operation of a medical or recreational cannabis  
12 dispensary or commercial cultivation site.

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15           2.       It shall be unlawful for any person or entity to own, manage, conduct,  
16 establish, operate or facilitate the operation of any medical or recreational cannabis  
17 dispensary or commercial cultivation site, or to participate as an employee, contractor,  
18 agent, or volunteer, or in any other manner or capacity, in any medical or recreational  
19 cannabis dispensary or commercial cultivation site in the City. The term "facilitate" shall  
20 include, but not be limited to, the leasing, renting or otherwise providing any real  
21 property or other facility that will in any manner be used or operated as a medical or  
22 recreational cannabis dispensary or commercial cultivation site in the City.

23           3.       Nothing in this subsection shall alter, affect, or limit the criminal defense  
24 authorized by State law and available to qualified patients and their primary caregivers to  
25 possess, transport, deliver or collectively or cooperatively cultivate medical cannabis in  
26 accordance with Health and Safety Code Section 11362.71.

27           **D.       Establishment, Maintenance, or Operation of Medical or Recreational**  
28 **Cannabis Dispensaries Declared a Public Nuisance.** The establishment, maintenance,



1 operation, facilitation, of, or participation in a medical or recreational cannabis dispensary or  
2 commercial cultivation site within the City limits of the City of Albany is declared to be a public  
3 nuisance, and may be abated by the City or subject to any available legal remedies, including but  
4 not limited to civil injunctions and administrative penalties. The City Attorney may institute an  
5 action in any court of competent jurisdiction to restrain, enjoin or abate any condition(s) found to  
6 be in violation of the provision of this subsection, as provided by law. In the event the City files  
7 any action to abate any dispensary or cultivation site as a public nuisance, the City shall be  
8 entitled to all costs of abatement, costs of investigation, attorney's fees, as provided in Section 1-  
9 12 of the Albany Municipal Code, and any other relief available in law or in equity.

11  
12 **E. Commercial Cultivation Prohibited.** The cultivation of medical and recreational  
13 cannabis for commercial purposes is prohibited in the City of Albany. This prohibition includes,  
14 but is not limited to:

- 15 1. Operation of a cannabis nursery, as defined by California Business and Professions  
16 Code section 19300.5(aj) as it now reads or as amended.

17 **F. Manufacturing Prohibited.** The manufacturing of medical and recreational cannabis  
18 for commercial purposes is prohibited in the City of Albany. This prohibition includes, but is not  
19 limited to:

- 20 1. Medical cannabis manufacturing sites, as defined by California Business and  
21 Professions Code section 19300.5(ag) as it now reads or as amended.

22 **G. Personal Use Cultivation Regulations.** Indoor cultivation of up to six (6) cannabis  
23 plants per residence for growth is permitted to the limited extent authorized under California  
24 Health and Safety Code Sections 11362.1 and 11362.2. Outdoor cultivation is prohibited. Indoor  
25 personal use cultivation is subject to the following restrictions:

- 26 1. **Personal Use Cultivation.** An individual who may cultivate cannabis for  
27 personal use pursuant to state law ("qualified person"), shall be allowed to  
28 cultivate cannabis only within his/her personal residence or in an attached

1 garage or other fully enclosed and locked accessory structure located entirely  
2 on property owned or legally possessed by him or her.

3  
4 2. **Area.** In any residence, the cannabis cultivation area shall not exceed thirty-  
5 two (32) square feet measured by the canopy, nor exceed ten (10) linear feet in  
6 height. This limit applies regardless of the number of individuals residing in  
7 the residence. The cultivation area shall be a single designated area.

8  
9 3. **Lighting.** Lighting for cannabis cultivation shall not exceed a total of 1,200  
10 watts, or otherwise pose a fire or safety hazard.

11  
12 4. **Building Code Requirements.** Any alterations or additions to the residence,  
13 including garages and accessory buildings, shall be subject to applicable  
14 building, fire, plumbing, and electrical codes, in addition to all applicable  
15 zoning codes, including lot coverage, set back, height, and parking  
16 requirements.

17 5. **Gas Products.** The use of gas products, including but not limited to carbon  
18 dioxide and butane, for cannabis cultivation or processing is prohibited.

19 6. **Evidence of Cultivation.** From outside the building wherein cultivation  
20 occurs, there shall be limited exterior evidence of cannabis cultivation  
21 occurring on the site

22 7. **Residence.** The qualified person shall reside at the residence wherein the  
23 cannabis cultivation occurs.

24 8. **Cultivation Elsewhere in the City.** The qualified person shall not participate  
25 in cultivation in any other location within the city.

26 9. **Incidental Use.** The residence shall maintain kitchen, bathrooms, and primary  
27 bedrooms for their intended use, and cannabis cultivation shall be limited to an  
28 incidental use of the residence.

1           10. **Ventilation.** The cannabis cultivation area shall include a ventilation and  
2           filtration system designed to ensure that odors from cultivation are not  
3           detectable beyond the residence (or property line for detached single family  
4           residences), and designed to prevent mold and moisture and otherwise protect  
5           the health and safety of persons residing in the residence. This shall include at  
6           a minimum, a system meeting the requirements of the current adopted edition  
7           of the California Building Standards Code, including California Building Code  
8           Section 1203.5 (Natural Ventilation) and Mechanical Code Section 402.3  
9           (Mechanical Ventilation) or the equivalent(s) thereof.  
10

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12           11. **Use and Storage of Chemicals.** For the protection of local groundwater  
13           resources and indoor air quality, and to avoid disposal of harmful substances  
14           into sewers or septic systems, no chemical shall be used for cannabis  
15           cultivation that contains any substance on the list prepared pursuant to Health  
16           and Safety Code Section 25249.8; provided that any chemical specifically  
17           approved by the California Department of Pesticide Regulation (or other  
18           appropriate state agency) for use in small indoor cannabis grow areas may be  
19           used in amounts prescribed by that agency. No chemical used for cannabis  
20           cultivation shall be stored in a manner visible from neighboring residences or  
21           to individuals located outside the property line or in the public right-of-way.

22           12. **Nuisance.** The cannabis cultivation area shall not adversely affect the health  
23           or safety of nearby residents by creating unreasonable dust, glare, heat, noise,  
24           noxious gasses, odors, traffic, vibrations, or similar impacts. Nor shall  
25           cannabis cultivation be hazardous due to the use or storage of materials,  
26           processes, products, or wastes, or from any actions incidental or related to the  
27           cultivation.

28           13. **Property Owner Authorization.** For rental property, the property owner,  
          property manager or management company shall provide written authorization

1 to the tenant that personal use cultivation is permitted.

2  
3 **H. Cannabis Deliveries Permitted.** The commercial delivery of medical and  
4 recreational cannabis is permitted to locations within the City of Albany.

5 **I. Penalties for Violation.**

6  
7 1. The violation of any provision of this subsection is unlawful and  
8 constitutes a misdemeanor, punishable by a fine of not more than one thousand  
9 (\$1,000.00) dollars or a jail term of six (6) months, or both. Each and every day a  
10 violation occurs shall be deemed a separate violation.

11  
12 2. In addition to the remedies set forth herein, the City in its sole discretion,  
13 may also issue an Administrative Citation in accordance with Section 1-11  
14 "Administrative Citations" of the Albany Municipal Code to any person or entity that  
15 violates the provisions of this subsection.

16 **J. Severability.** If any provision of this subsection, or the application thereof to any  
17 person or circumstance, is held invalid, that invalidity shall not affect any other provision  
18 or application of this subsection that can be given effect without the invalid provision or  
19 application; and to this end, the provisions or applications of this subsection are  
20 severable.

21 **SECTION 3: PUBLICATION AND EFFECTIVE DATE.**

22 This ordinance shall be posted at three public places within the City of Albany and shall  
23 become effective thirty days after the date of its posting. City staff shall compile information  
24 about the experiences of other cities which have chosen to permit commercial cannabis activities  
25 and report back to the Planning & Zoning Commission and City Council within twenty (20)  
26 months following the effective date of this ordinance.

27 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on  
28 the 20th day of November 20, 2017, by the following vote:

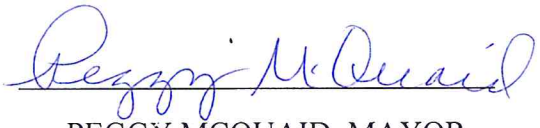
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AYES: Council Members: Barnes, Maass, Nason + Mayor McQuaid

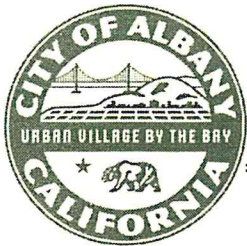
NOES: Council Member Pitch

ABSENT:

ABSTAIN:



PEGGY MCQUAID, MAYOR



# City of Albany

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1000 San Pablo Avenue • Albany, California 94706  
(510) 528-5710 • [www.albanyca.org](http://www.albanyca.org)

**ORDINANCE NO. 2017-07**

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

the 4th day of December, 2017 by the following votes:

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

NOES: Council Member Pilch

ABSTAINED: none

ABSENT: none

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

5th day of December, 2017.

*Eileen Harrington*

Eileen Harrington  
DEPUTY CITY CLERK