

1
2 **Ordinance #05-03**

3 **AN INTERIM URGENCY ORDINANCE OF THE CITY OF ALBANY RESTRICTING**
4 **AND/OR PROHIBITING, SUSPENDING AND/OR DENYING ANY PERMITS FOR, OR**
5 **OTHERWISE RESTRICTING THE APPROVAL OF MEDICAL MARIJUANA**
6 **DISPENSERIES AND SUSPENDING FOR A PERIOD NOT TO EXCEED FORTY FIVE**
7 **(45) DAYS, THE ISSUANCE OF PERMITS, APPROVALS, OR OTHER**
8 **ENTITLEMENTS WHICH WOULD RESULT IN THE OPENING OF ANY MEDICAL**
9 **MARIJUANA DISPENSARIES WITHIN THE CITY OF ALBANY**

10 **WHEREAS**, the City of Albany is a Charter City formed under the Constitution of the
11 State of California; and

12 **WHEREAS**, the Charter of the City of Albany, passed by the voters and approved by the
13 State of California in 1927, allowed for the adoption of a system of zoning dividing the City into
14 various zones of permitted uses which was later also allowed for by the State of California by the
15 adoption of the Government Code sections concerning planning and zoning matters by cities,
16 counties and chartered cities; and

17 **WHEREAS**, Albany City Charter Section 2.06 and Government Code Section 65858
18 provide for the adoption as an urgency measure of interim ordinances for certain expressed
19 purposes and by a vote of four-fifths (4/5) majority of the voting City Council members; and

20 **WHEREAS**, under the Albany Municipal Code, a question has been posed whether
21 medical marijuana facilities may be approved, subject to the granting of a conditional use permit
22 pursuant to the procedures in subsections 20-100.010 and 20-100-030 thereby making it possible
23 to open a medical marijuana dispensary facility in SC, SPC, and CMX districts within the City of
24 Albany; and

25 **WHEREAS**, the City Council finds that the zoning provisions now in effect do not
26 contain any specific regulatory requirements governing the approval of medical marijuana
27 dispensary facilities within the City of Albany; and

28 **WHEREAS**, the City Council finds that it would be detrimental to the public health,
safety and welfare of the City to allow the establishment and approval of any medical marijuana
medical dispensaries until such time as the Planning and Zoning Commission, the City Council,
and the public have had an opportunity to determine the appropriateness of such facilities within

1 the City of Albany, including but not limited to evaluating the legal authority to establish such
2 facilities, the desirability of such facilities, and the extent of regulatory controls, should such
3 facilities be thought appropriate; and

4 **WHEREAS**, Government Code §65858 allows, without following the procedures
5 otherwise required prior to the adoption of a zoning ordinance, the City Council to protect the
6 public safety, health and welfare, by adopting as an urgency measure an interim ordinance
7 prohibiting the approval of any application for the approval of a medical marijuana dispensary
8 facility within the City of Albany.
9

10
11 **NOW, THEREFORE, THE ALBANY CITY COUNCIL DOES HEREBY ORDAIN AS**
12 **FOLLOWS:**

13 **Section 1: Purpose and findings.**

14 Medical marijuana dispensaries have been established in several locations in California,
15 and as a consequence, some local agencies have reported increases in illegal drug activity, illegal
16 drug sales, robbery of persons leaving dispensaries, loitering around dispensaries, falsely
17 obtaining 'identification cards' to qualify for medical marijuana, and other increases in criminal
18 activity. Recent examples include: men who kicked in the window of a medical marijuana
19 dispensary in Oakland and tried to rob to the dispensary; at another medical marijuana
20 dispensary in Alameda County, thieves broke into the building and robbed the safe as well as
21 persons present. The United States Department of Justice's (DOJ) California Medical Marijuana
22 Information report has advised that large-scale drug traffickers have been posing as "care givers"
23 to obtain and sell marijuana. Furthermore, the State of California has not implemented its State-
24 wide identification card program for qualified patients, and their primary care givers, related to
25 medical marijuana; and many unresolved legal issues related to Federal preemption of State law
26 remain. To protect residents and businesses from harmful secondary effects of medical
27 marijuana dispensaries, City staff need time to study licensing and criminal background check
28 procedures, as well as determine which zoning districts may be appropriate for such a use, and
pursuant to what level of discretionary review.

1 **Section 2: Interim Suspension of Permits, Approvals, or Other Entitlements.**

2 Notwithstanding any other provisions of the Albany Municipal Code or any other
3 ordinances or regulations of the City of Albany to the contrary, no permits, licenses, or other
4 applicable entitlements for use, which has as its result the final approval or allowance of medical
5 marijuana dispensary facilities within the City of Albany, shall be granted or approved by any
6 employee, department or commission of the City for a period of forty-five days immediately
7 succeeding the effective date of this ordinance, unless appealed or extended by a later enacted
8 ordinance.
9

10 **Section 3: Immediate threat to health, safety and welfare.**

11 Based on the findings herein, this ordinance is adopted pursuant to California
12 Government Code §65858 and is required to address a current and immediate threat to the public
13 health, safety and welfare. The City Council has determined that granting additional land use
14 approvals or building permits for medical marijuana dispensaries would result in a threat to the
15 public health, safety and welfare.

15 **Section 4: Amendments to Ordinance.**

16 The City Council by ordinance after notice of public hearing, by the affirmative vote of at
17 least four-fifths (4/5) of the voting City Council Members may modify, amend, delete or add to
18 this ordinance upon a finding that such action will implement and enforce the goals, policies, and
19 purposes of this ordinance.

19 **Section 5: Waiver.**

20 The City, on a case by case basis, shall have the authority, upon a showing of good cause
21 by an applicant, to waive the interim prohibition/moratorium imposed by this ordinance and
22 allow for the granting of permits to said applicant pursuant to the Conditional Use Permit process
23 set forth in the Albany Municipal Code. Good cause shall mean a factual and evidentiary
24 showing by the applicant that the interim prohibition/moratorium, if not waived, will deprive the
25 applicant of substantially all reasonable use of his/her property. All such applications for waiver
26 shall be filed with the City Community Development Department. Fees for waiver applications
27 and associated appeals shall be the same as those charged for a Conditional Use Permit.
28

1 **Section 6: Urgency Ordinances; Extension.**

2 This interim urgency ordinance shall by operation of law be of no further force and effect
3 forty five (45) days from and after the date of this adoption on October 18, 2004; provided,
4 however, that after notice of public hearing the City Council Members may by a four-fifths (4/5)
5 of the voting City Council Members extend this interim or urgency ordinance for an initial
6 period of time up to ten (10) months and fifteen (15) days. Thereafter, after hearing a further one
7 (1) year extension is also permitted.

8 **Section 7: Urgency Ordinances; Findings.**

9 This ordinance is declared to be an urgency ordinance of the City of Albany for
10 preserving the public health, safety and welfare. The reasons for the urgency in connection with
11 this ordinance are herein set forth and incorporated by reference in the findings contained and set
12 forth hereinabove.

13 The City Council further finds and declares that the adoption of this interim ordinance is
14 necessary to protect the public health, safety or welfare of the community in that inquiries to
15 open medical marijuana dispensaries have increased and at the present time there are no Albany
16 regulatory requirements in effect. It is in the best health, safety and welfare interests of the City,
17 should the City decide to permit medical marijuana dispensaries, to establish an application
18 process that provides the City with information concerning the impacts of medical marijuana
19 dispensaries and regulations that restrict where and how such facilities can be put into service.

19 **Section 8: Severability.**

20 If any section, subsection, sentence, clause or phrase of this ordinance is for any reason
21 held to be invalid, such decision shall not affect the validity of the remaining portions of this
22 ordinance. The City Council hereby declares that it would have adopted the ordinance and each
23 section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or
24 more sections, subsections, sentences, clauses or phrases be declared invalid.

24 **Section 9: Urgency Measures; Effective Date.**

25 This ordinance is hereby declared to be an urgency measure and shall be enforced and be
26 in effect immediately upon its adoption.

1 **Section 10: Publication.**

2 Within fifteen (15) days after adoption, this ordinance shall be circulated with the names
3 of the members voting for and against the same at least once in a newspaper of general
4 circulation in the City of Albany, and posted in public places within the City. The City Clerk is
5 further directed to send a copy of this ordinance to all property owners within the boundary of
6 the area regulated by this ordinance.
7

8 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting held
9 on the 18th day of April, 2005, by the following vote:

10 AYES:

11 NOES:

12 ABSENT:

13 ABSTAIN:
14

15
16 _____
Mayor Robert Good
17
18
19
20
21
22
23
24
25
26
27
28