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ORDINANCE #07-01
AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING
CHAPTER XX, PLANNING AND ZONING
OF THE ALBANY MUNICIPAL CODE
TO INCLUDE REGULATIONS FOR
MEDICAL MARIJAUNA DISPENSARIES

WHEREAS, the City of Albany has adopted a Zoning Ordinance in the form of Chapter XX of the Albany Municipal Code, Planning and Zoning; and

WHEREAS, on May 2, 2005 the Albany City Council enacted Ordinance #05-03 as an interim urgency measure to prohibit issuance of any permits for, or otherwise approving the opening of medical marijuana dispensaries within the city of Albany, with the finding 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 the City of Albany, including but not limited to evaluating the legal authority to establish such facilities, the desirability of such facilities, and the extent of regulatory controls, should such facilities be thought appropriate; and

WHEREAS, on June 6, 2005 and on April 3, 2006 the Albany City Council extended the interim urgency measure to assure that adequate time would be available for public review of proposed options to regulate medical marijuana dispensaries, and for City Council consideration and adoption of an appropriate ordinance therefore, while the moratorium imposed by the urgency measure remains in effect; and

WHEREAS, the City Council desires to include in Chapter XX of the Albany Municipal Code, Planning and Zoning, provisions regarding medical marijuana dispensaries; and

WHEREAS, pursuant to said desires of the City Council, the Albany Planning and Zoning Commission held a duly noticed public hearing, on February 28, 2006, to consider two potential responses to City Council direction in the form of draft language for Option A, to regulate dispensaries, and Option B, to prohibit dispensaries; and

WHEREAS, pursuant to the California Environmental Quality Act, City staff prepared an Initial Study of potential environmental effects of the proposed Option A to regulate medical marijuana dispensaries, and as a result a notice of intent to adopt a Negative Declaration was circulated on February 8, 2006, for public review and comment; and

1 **WHEREAS**, City staff determined that Option B to prohibit medical
2 marijuana facilities is exempt from the California Environmental Quality Act on the
3 basis that such prohibition could not have an impact on the environment; and
4

5 **WHEREAS**, on February 28, 2006 the Planning and Zoning Commission
6 held a heard public testimony on the proposed zoning amendments and considered all
7 comments on the draft Negative Declaration; and
8

9 **WHEREAS**, following the close of said public hearing the Planning and
10 Zoning Commission performed a detailed review of the draft language for both
11 Option A and Option B, and recommended certain changes to the language of each
12 option for consideration by the City Council; and recommended that the City Council
13 adopt Option B; and
14

15 **WHEREAS**, on April 3, 2006, The Albany City Council held a duly noticed
16 public hearing on options to amend Chapter XX regarding medical marijuana
17 dispensaries; and following said public hearing the Albany City Council adopted
18 Resolution 06-9 adopting a Negative Declaration in compliance with the California
19 Environmental Quality Act (CEQA) regarding potential environmental effects of the
20 proposed regulations of Option A; and
21

22 **WHEREAS**, on November 7, 2006, the voters of Albany approved Measure
23 D, giving an affirmative answer to the question, "Do you support the
24 establishment of a single medical marijuana dispensary in the City of Albany,
25 to be subject to regulations that the City Council will incorporate into the
26 Municipal Code prior to consideration of any permit for such a dispensary?";
27 and
28

29 **WHEREAS**, on February 13, 2007 the Planning and Zoning Commission
30 adopted Resolution No. PZ 07-01, which includes findings stating that the
31 Commission had reviewed the Initial Study and draft Negative Declaration on Option
32 A, and which recommends that the City Council adopt regulations applicable to
33 medical marijuana facilities,
34

35 **WHEREAS**, the Albany City Council, on February 20, 2007, after due public
36 notice, held a public hearing on the proposed amendment to Chapter XX to regulate
37 medical marijuana dispensaries, and
38

39 **WHEREAS**, the Albany City Council hereby finds that the proposed
40 amendment to Chapter XX falls within the scope of the Negative Declaration adopted
41 on April 3, 2006.
42

43 **NOW, THEREFORE, THE ALBANY CITY COUNCIL DOES HEREBY**
44 **ORDAIN AS FOLLOWS:**
45

1 **Section 1:** Chapter XX of the Albany Municipal Code, Section 20.08 titled
2 "Definitions" is hereby amended to include the following text:

3 **Medical Marijuana Dispensary** means any facility in a single fixed location
4 where a primary caregiver makes available, sells, transmits, gives or otherwise
5 provides medical marijuana, or cannabis, to two or more qualified patients or persons
6 with an identification card. For purposes of this Chapter, medical marijuana
7 dispensary does not include licensed clinics, health care facilities, residential care
8 facilities, hospices or home health agencies listed in California Health and Safety
9 Code §11362.7(d) (1).

10 The following terms related to medical marijuana facilities have the following
11 meanings:

- 12 a. **Applicant** means a person who is required to file an application for a
13 permit under Subsection 20.20.110 of the Chapter, including an
14 individual owner, managing partner, officer of a corporation, or any
15 other operator, manager, employee or agent of a medical marijuana
16 dispensary.
- 17
- 18 b. **Primary Caregiver** shall have the same definition as in California
19 Health and Safety Code §11362.7 (d), as it may be amended from time
20 to time.
- 21
- 22 c. **Qualified Patient** shall have the same definition as in California
23 Health and Safety Code §11362.7 (f), as it may be amended from time
24 to time, with the additional stipulation that a Qualified Patient shall
25 have a valid Identification Card, as defined in definition f. below.
- 26
- 27 d. **Attending Physician** shall have the same definition as in California
28 Health and Safety Code §11362.7 (a), as it may be amended from time
29 to time.
- 30
- 31 e. **Written Documentation** shall have the same definition as in
32 California Health and Safety Code §11362.7 (i), as it may be amended
33 from time to time.
- 34
- 35 f. **Identification Card** shall mean any photo identification card issued
36 by an entity whose procedures for validation and issuance have been
37 approved by the Albany Chief of Police.
- 38
- 39 g. **Person with an Identification Card** shall have the same definition as
40 in California Health and Safety Code §11362.7 (h), as it may be
41 amended from time to time.
- 42
- 43 h. **Serious Medical Condition** shall have the same definition as in
44 California Health and Safety Code §11362.7 (d), as it may be amended
45 from time to time.
- 46

1 i. **Chief of Police** shall mean the Chief of Police of the City of Albany
2 and his or her authorized representatives.
3
4

5 **Section 2:** Chapter XX of the Albany Municipal Code, Subsection 20.12.040 titled
6 “Permitted Uses by District” is hereby amended to include the following text:
7

8 *Add to Table 1: Under Public and Quasi-public: Medical Marijuana Dispensary,*
9 *permitted with a Use Permit in SC-Solano Commercial, SPC-San Pablo Commercial,*
10 *and CMX-commercial Mixed Use Districts.*
11

12 **Section 3:** Chapter XX of the Albany Municipal Code, Subsection 20.16.050 titled
13 “Public and Quasi-public Use Classifications” is hereby amended to include the
14 following text:
15

16 **Q. Medical Marijuana Dispensaries.** Establishments meeting the
17 definition of Medical Marijuana Dispensary in Section 20.08.
18

19 **Section 4:** Chapter XX of the Albany Municipal Code is hereby amended to include a
20 new Subsection 20.20.100 titled “Medical Marijuana Dispensaries” to consist of the
21 following text:
22

23 **A. Purpose.** The purpose and intent of this subsection to regulate medical
24 marijuana dispensaries in order to promote the health, safety, morals, and general
25 welfare of the residents and businesses within the city.
26

27 **B. Findings.** The City Council adopts this Subsection 20.20.110 based
28 upon the following findings:

29 1. The voters of the State of California approved Proposition 215
30 (codified as California Health and Safety Code §§ 11362.5 *et seq.*, and
31 entitled “The Compassionate Use Act of 1996”).

32 2. The intent of Proposition 215 was to enable persons who are in
33 need of marijuana for specified medical purposes to obtain and use it under
34 limited, specified circumstances.

35 3. The State enacted Senate Bill 420 in October 2003
36 (commencing with California Health and Safety Code § 11362.7), relating
37 to controlled substances, to clarify the scope of the Compassionate Use Act
38 of 1996 and to allow cities and other governing bodies to adopt and enforce
39 rules and regulations laws consistent with SB 420.

40 4. To protect the public health, safety, and welfare, it is the desire
41 of the City Council to modify the Municipal Code to be consistent with SB

1 420, regarding the location and operation of Medical Marijuana
2 Dispensaries.

3 5. It is the City Council's intention that nothing in this Subsection
4 shall be deemed to conflict with federal law as contained in the Controlled
5 Substances Act, 21 U.S.C. § 841, nor to otherwise permit any activity that is
6 prohibited under that Act or other applicable Federal or State law.

7 6. It is the City Council's intention that nothing in this Subsection
8 shall be construed to allow persons to engage in conduct that endangers
9 others or causes a public nuisance, allow the use of marijuana for non-
10 medical purposes, or allow any activity relating to the cultivation,
11 distribution, or consumption of cannabis that is otherwise illegal.

12 7. In a Bulletin to All California Law Enforcement Agencies, dated
13 June 22, 2005 the Attorney General has stated that, through the
14 Compassionate Use Act, California has an express policy decriminalizing
15 the medically approved use of marijuana, which policy must necessarily
16 govern the exercise of discretionary arrest powers by California peace
17 officers and counsels against effecting arrests and seizures under federal law
18 when the use, possession, or cultivation of the marijuana appears legal
19 within the meaning of California's Compassionate Use Act.

20 8. Pursuant to California Health and Safety Code §§ 11362.7 *et*
21 *seq.*, the State Department of Health shall be responsible for establishing
22 and maintaining a voluntary identification card program.

23 9. California Health and Safety Code § 11362.71(b) requires
24 every county health department, or its designee, to implement a procedure to
25 accept and process applications from those seeking to join the identification
26 program in the manner set forth in Cal. Health and Safety Code §§ 11362.71
27 *et seq.*

28 10. The adoption and implementation of this Subsection will not have
29 a significant effect on the environment, because City regulations, which
30 have been established previously, or are established by this Subsection, are
31 adequate to insure there will be no significant impacts. An Initial Study did
32 not reveal any potentially significant impacts, which cannot be avoided
33 under previously existing regulations or additional regulations, contained
34 herein. This Subsection establishes standards for the location and operation
35 of medical marijuana dispensaries in accordance with state law, and shall be
36 subject to on-going oversight by the Chief of Police, the Community
37 Development Director, and the Planning and Zoning Commission, with
38 potential appeal to the City Council.

39 **C. Business License Investigation Required.** Prior to filing an
40 application for a use permit for a medical marijuana dispensary, the applicant must

1 provide information to the Chief of Police for a business license investigation and pay
2 the business license investigation fee as set forth in the Master Fee Schedule, no part
3 of which shall be refundable. If the applicant is a corporation, the complete
4 identification information of each of the officers and directors of such corporation and
5 of each stockholder owning more than ten (10%) percent of the stock of the
6 corporation shall be set forth as described in paragraph C.1.a. If the applicant is a
7 partnership, the complete identification information of each of the partners, including
8 limited partners, shall be set forth as described in paragraph C.1, below:

9 1. Any applicant for such a permit shall furnish the following
10 information:

11 a. Applicant(s) name. The full name (including any current or
12 prior aliases, or other legal names the applicant is or has been known
13 by, including maiden names), date of birth, social security number,
14 present residence address, and telephone number of the applicant;

15 b. Applicant(s) mailing address. The address to which notice of
16 action on the application is to be mailed;

17 c. Previous addresses. Previous residence addresses for the
18 past five years immediately prior to the present address of the
19 applicant;

20 d. Verification of age. Written proof that the applicant is over
21 the age of eighteen (18) years of age;

22 e. Physical description. Applicant's height, weight, color of
23 eyes and hair;

24 f. Photographs. Two Passport quality color photographs for
25 identification purposes;

26 g. Nothing herein contained shall be construed to deny to the
27 police department the right to take the fingerprints and additional
28 photographs of the applicant.

29 h. Employment history. All business, occupation, or
30 employment of the applicant for the five years immediately preceding
31 the date of the application;

32 i. Tax history. The business tax history of the applicant with
33 respect to any medical marijuana dispensary, including whether such
34 person, in previously operating in this or another city, county or state
35 under license has had a business license revoked or suspended, the

1 reason therefore, and the business or activity or occupation subsequent
2 to such action of suspension or revocation;

3 j. The names and telephone numbers of the person or persons
4 to be regularly engaged in the operation of the proposed dispensary,
5 whether an employee, volunteer or contractor. The application shall
6 also identify those persons, including telephone numbers (i.e.,
7 emergency contact), having management and supervisory
8 responsibilities for the proposed dispensary. Every person listed as
9 owner, manager, supervisor or employee must submit fingerprints and
10 other necessary information for a background check to the Albany
11 Police Department, and be photographed for identification purposes. In
12 addition, any new employees, independent contractors, other persons
13 and/or volunteers who will work at the proposed medical marijuana
14 dispensary must submit their complete identification information to the
15 police department no less than thirty days prior to the start of their
16 employment.

17 k. Authorization for the Chief of Police or his designee to seek
18 verification of the information contained in the application.

19 l. Applicant's certification. A statement in writing by the
20 applicant that he or she certifies under penalty of perjury that all the
21 information contained in the application is true and correct.

22 2. The Chief of Police shall commence the background
23 investigation of any applicant immediately upon its filing and shall complete
24 such review within sixty days. Where the Chief of Police determines that
25 good cause exists as to why such review cannot be completed within sixty
26 days, the Chief may be allow for no more than two extensions of thirty days
27 each.

28 3. Within ten business days after the filing of an application, the
29 Chief of Police shall reject any application and so notify the applicant, if the
30 application has been improperly completed or if it is incomplete.

31
32 4. Effect of Incomplete Filing. Upon notification that an
33 application submittal is incomplete, the applicant shall be granted an
34 extension of time to submit all materials required to complete the
35 application within ten (10) days. If the application remains incomplete in
36 excess of ten (10) days the application shall be deemed withdrawn and a
37 new application submittal shall be required in order to proceed with the
38 subject request. The time period for granting or denying a permit shall be
39 stayed during the period in which the applicant is granted an extension of
40 time.
41

1 5. The Chief of Police shall be responsible for verifying factual
2 information in the application, including names, addresses and other
3 information on the applicant operator and its employees of the proposed
4 dispensary.

5
6 6. Upon completion of the background investigation, the Chief of
7 Police shall reject any permit that meets any of the following criteria:

8 a. The proposed dispensary does not comply with requirements
9 of this Chapter.

10 b. The applicant has knowingly made a false statement of
11 material fact or has knowingly omitted one or more material facts from
12 the application.

13 c. The operation of the proposed dispensary at the proposed
14 location is prohibited by any state or local law or regulation.

15 d. The applicant, his or her agent or employees, or any person
16 who is exercising managerial authority on behalf of the applicant has
17 been convicted of a felony, or of a misdemeanor involving moral
18 turpitude, or has engaged in misconduct related to the qualifications,
19 functions or duties of a permittee. A conviction within the meaning of
20 this section means a plea or verdict of guilty or a conviction following
21 a plea of *nolo contendere*.

22 e. The applicant has violated any local or state law, statute, rule
23 or regulation respecting the distribution, possession, or consumption of
24 marijuana.

25 f. The applicant has engaged in unlawful, fraudulent, unfair, or
26 deceptive business acts or practices.

27 g. The applicant or the operator listed in the application is less
28 than eighteen (18) years of age.

29
30 7. In the event of denial, notifications and reasons for denial shall be set forth in
31 writing and shall be sent to the applicant by means of registered or certified
32 mail or hand delivery.

33
34 8. In the event of acceptance, notification will be set forth in writing and sent to
35 the applicant by means of registered or certified mail or hand delivery. A copy
36 of the notice shall be sent to the Community Development Department.

37
38 **D. Prohibited Activities.** The following activities are prohibited from
39 being associated with a medical marijuana dispensary. The term "premises" as used
40 herein shall include the building or building space occupied by the dispensary, as well

1 as any accessory structures, parking areas, or other surroundings within 200 feet of
2 any entrance to the dispensary.
3

4 1. A medical marijuana dispensary will not be permitted as an
5 accessory use to any other permitted use.
6

7 2. The commercial sale of any product, good, or service is
8 prohibited. The term "commercial sale" does not include the provision of
9 medical marijuana, or devices directly related to the administration of
10 medical marijuana, on terms and conditions that are consistent with this
11 Subsection and applicable law.
12

13 3. No dispensary shall hold or maintain a license from the State
14 Department of Alcohol Beverage Control to sell or furnish alcoholic
15 beverages, or to operate a business that sells or furnishes alcoholic
16 beverages.

17 4. The display, sale or use on the premises of alcohol, or tobacco
18 is prohibited.
19

20 5. No marijuana shall be smoked, ingested or otherwise
21 consumed on the premises of a dispensary. The term "premises" as used
22 herein shall include the building or building space occupied by the
23 dispensary, as well as any accessory structures, parking areas, or other
24 surroundings within 200 feet of any entrance to the dispensary.
25

26 6. Notwithstanding California Health and Safety Code §
27 11362.77, no living marijuana plants maybe cultivated or maintained on the
28 premises of any medical marijuana dispensary.
29

30 7. Patients who are patrons of the dispensary shall not medicate in
31 public places, including any street or sidewalk, within the City of Albany.
32

33 8. No dispensary shall utilize the services of an Attending
34 Physician on the premises to evaluate patients and provide a
35 recommendation for medical marijuana.
36

37 9. Dispensary sales to any person attempting to obtain a doctor's
38 recommendation onsite by telephone, facsimile, electronic mail or other
39 communication methods are strictly prohibited.
40

1 10. Any off-site sale of marijuana, including but not limited to sale via
2 internet, or delivery of marijuana to any location outside of the dispensary,
3 is prohibited.

4
5 **E. Standards for Facility Location.** The following standards shall apply
6 to the physical location of any medical marijuana dispensary:

7
8 1. No more than one (1) medical marijuana dispensary shall
9 be permitted to be located and operational within the limits of the City
10 of Albany at any time.

11
12 2. A permitted medical marijuana dispensary shall be limited to a
13 single, fixed location, within a building.

14
15 3. No dispensary shall have a principal entrance located within 95
16 feet of a parcel of land in an R – Residential zoning district.

17
18 4. The principal entry to any dispensary shall be located within
19 clear sight of a public street, and shall not be within 25 feet of any
20 residential entrance, including the principal entry of any multi-unit
21 residential building.

22
23 5. No medical marijuana dispensary shall be located within a
24 1,000-foot distance of any of the following:

25
26 a. any other such dispensary, including any dispensary located
27 in an adjacent jurisdiction;

28
29 b. any schools, child daycare centers, public libraries or public
30 community centers.

31
32 c. any municipal parks or playgrounds.

33
34 6. No medical marijuana dispensary shall be located within a 1,000-
35 foot distance of any of the following businesses, where such businesses
36 were existing at the time of approval of a use permit for a medical marijuana
37 dispensary:

38
39 a. any smoke-shop which sells paraphernalia for consuming
40 drug or tobacco products.

41
42 b. any “youth-oriented establishment” characterized by either
43 or both of the following: (1) the establishment advertises in a manner
44 that identifies the establishment as catering to or providing services
45 primarily intended for minors; or (2) the individuals who regularly

1 patronize, congregate or assemble at the establishment are
2 predominantly minors.
3

4 7. Exception to 1,000-foot distance specified in paragraph 7. above:
5 The Planning and Zoning Commission may permit a new youth-oriented
6 establishment to be located within 1,000 feet of an existing medical
7 marijuana dispensary, subject to the following findings:
8

9 a. *The subject youth-oriented establishment would not be a*
10 *permitted use in a residential district; and*
11

12 b. *The proximity of the existing medical marijuana dispensary*
13 *would not have any detrimental effect on the minor patrons of the*
14 *youth-oriented establishment.*

15 **F. Use Permit and Business License Required.** Upon approval of a
16 business license investigation report all of the following steps are required to
17 be completed prior to initiating operation of a medical marijuana dispensary:

18 1. The applicant shall apply for a conditional use permit. All use
19 permit applications for a medical marijuana dispensary shall be
20 accompanied by a fee for a major use permit as set forth in the Master Fee
21 Schedule, no part of which shall be refundable.

22 2. Upon receipt of a use permit application the Community
23 Development Department shall process the application and forward to it to
24 the Fire Department, which within a period of thirty (30) days from the date
25 of application shall review records or make an inspection of the premises
26 proposed to be used as a medical marijuana dispensary, and shall make a
27 written recommendation to the Community Development Department
28 concerning compliance with the respective requirements.

29 3. The Planning and Zoning Commission shall schedule and conduct a
30 public hearing on the use permit application, under Subsection 20.100.030
31 and may grant the permit provided that applicant meets the findings required
32 by Subsection 20.100.030.D and the findings required for a medical
33 marijuana dispensary listed in paragraph H. below.
34

35 4. Upon approval of a use permit, the applicant shall be required to
36 obtain a business license prior to commencing operation of the dispensary.
37

38 **G. Use Permit Application Requirements.** An application for a use
39 permit shall be submitted on a standard application form provided by the Community
40 Development Department, and shall include the following materials and information
41 at a minimum:
42

1
2 1. A report from the Chief of Police approving a business license
3 investigation report, as required in paragraph C. above.

4 2. A statement of qualifications, on the part of the applicant and
5 any employees involved in transactions relating to the dispensing of medical
6 marijuana.

7
8 3. A statement of the need for a medical marijuana dispensary to
9 be located within the city limits of Albany.

10
11 4. Evidence of consent by the owner of the property on which the
12 dispensary is to be located to file application for a use permit.

13
14 5. A site plan, drawn to accurate scale, showing the location and
15 function of all buildings on the site; parking areas with delineation of spaces;
16 landscaped areas; adjacent rights-of-way, including sidewalks and street
17 frontage; and the locations and functions of buildings on abutting properties.

18
19 6. A floor plan of the building delineating separate areas for a waiting
20 room, dispensing area, and storage area, and the use of any other spaces
21 within the building, or in any accessory buildings on the site.

22
23 7. Plans and descriptions of a security system, including lighting,
24 alarm and locking systems.

25
26 8. Plans for signage, showing locations, dimensions, materials, colors
27 and content of all exterior signs, including identification signs and required
28 informational signs.

29
30 9. A narrative description of proposed operations, including the
31 following:

32
33 a. number of persons expected to be employed on the site,
34 including any volunteer staff, and the functions to be performed by
35 each person.

36
37 b. anticipated numbers of persons to be served by the dispensary.

38
39 c. how the operation of the dispensary will comply with the
40 performance standards listed in paragraph K. below for dispensing,
41 security, site management, personnel management, and records
42 maintenance.
43

1 **H. Findings Required for Use Permit.** In granting a use permit for a
2 medical marijuana dispensary, the Planning and Zoning Commission shall make all
3 of the following findings:

4
5 1. *All findings required by Subsection 20.100.030.D for granting*
6 *a use permit.*

7
8 2. *The proposed location, design and operation of the dispensary*
9 *are consistent with applicable state and local laws.*

10
11 3. *The Chief of Police has determined that the nature of the site*
12 *or and the immediate area of the site are not expected to present law*
13 *enforcement problems.*

14 4. *All standards for facility location, as stated in this Subsection, are*
15 *met.*

16
17 5. *The Site design and floor plan will minimize the potential for*
18 *crime.*

19
20 6. *All reasonable measures have been incorporated in the plan to*
21 *control patrons' conduct inside and outside and to avoid public nuisance.*

22
23 **I. Standard Conditions of Use Permit.**

24
25 1. Term of Permit. The term of a use permit for a medical
26 marijuana dispensary shall be limited to one year. An extension may be
27 considered as provided in paragraph J. below

28 2. Compliance with Laws. The premises occupied by a dispensary
29 shall comply with all applicable local, state and federal rules, regulations and
30 laws including but not limited to building codes and the Americans with
31 Disabilities Act.

32 3. Limitations on Clientele. Persons to whom marijuana may be
33 dispensed shall be limited to persons who are residents of Alameda County
34 and who hold Identification Cards issued by any entity whose procedures for
35 validation and issuance have been approved by the Albany Chief of Police.

36 4. Compensation. A dispensary may receive compensation only
37 for actual expenses, including reasonable compensation incurred for services
38 provided to an eligible qualified patient, or person with an identification card,
39 to enable that person to use marijuana pursuant to California Health and
40 Safety code §11362.7 et seq., or for payment for out-of-pocket expenses
41 incurred in providing those services, or both. However, any dispensary must
42 pay applicable sales tax on the services and obtain and maintain the applicable

1 seller's or similar permit from the Franchise Tax Board or other regulatory
2 agency.

3 5. Staffing requirements. A dispensary shall be staffed with at
4 least one person during hours of operation who shall not be responsible for
5 dispensing medical marijuana. It shall be unlawful for the permittee, operator,
6 or other persons in charge of any medical marijuana dispensary to employ, or
7 accept volunteer services from, any person who is not at least 18 years of age.

8 6. Operating Hours: Specific hours of operation shall be as
9 established by a condition of a use permit, provided that no dispensary shall
10 be permitted to be open at any time between the hours of 7:00 p.m. and 8:00
11 a.m.

12 7. Limitations on inventory. The quantities of marijuana that may
13 be stored or maintained on the premises of the dispensary at any time shall not
14 exceed the quantities specified by California Health and Safety Code §
15 11362.77 for each qualified patient, including any additional quantity
16 authorized according to paragraph (b) of § 11362.77, provided further that the
17 following limitations shall apply:

18 It shall be a violation of this ordinance if at any time the
19 amount of marijuana on the premises exceeds the lesser of:

20 a. An amount of marijuana equal to eight ounces per
21 Primary Caregiver or Person with an Identification Card who has
22 received marijuana from the dispensary during the previous thirty
23 (30) calendar days, or

24 b. A total of twenty (20) pounds of marijuana.

25 8. Interior layout: A dispensary shall have a lobby waiting area at
26 the entrance to receive clients, and a separate and secure designated area for
27 dispensing medical marijuana to qualified patients or designated caregivers. A
28 dispensary shall have a locked safe on premises, with a performance rating of
29 TL-30 or greater, identified as a part of the security plan, for after-hours
30 storage of medical marijuana
31

32 9. Primary entrance. The primary entrance to a dispensary shall
33 be located and maintained clear of barriers, landscaping and similar
34 obstructions so that it is clearly visible from public streets and sidewalks.

35 10. Alarm system. A professionally monitored robbery
36 alarm system shall be installed and maintained in good working
37 condition.
38

1 11. Security cameras. Security surveillance cameras shall be
2 installed to monitor the main entrance and exterior of the premises to
3 discourage loitering, crime, illegal or nuisance activities.
4

5 12. Community relations contact. A dispensary shall
6 provide the Chief of Police and the Community Development Director
7 with the name, phone number and facsimile number of an on-site
8 community relations staff person to whom one can provide notice if
9 there are operating problems associated with the dispensary. The
10 dispensary shall make every good faith effort to encourage
11 neighborhood residents to call this person to try to solve operating
12 problems, if any, before any calls or complaints are made to the City or
13 Police Department.
14

15 13. Odors control. A dispensary shall have an air treatment system
16 that ensures off-site odors shall not result.

17 14. Signage: Signs on the exterior of the facility shall conform to
18 all applicable regulations of Section 20.32 of this Chapter, except neither the
19 Community Development Director nor the Planning and Zoning Commission
20 shall issue a permit for a temporary sign of any nature. In addition, the
21 following specific regulations shall apply to any medical marijuana
22 dispensary:

23 a. The building entrance to a dispensary shall be clearly and
24 legibly posted with a notice indicating the following:
25

26 1) Smoking, ingesting or consuming marijuana on the
27 premises or in the vicinity of the dispensary is prohibited.

28 2) Persons under the age of 18 are precluded from
29 entering the premises unless they are a qualified patient or a
30 primary caregiver and are in the presence of a parent or
31 guardian.
32

33 b. Signs on the premises shall not obstruct the entrance or
34 windows.

35 c. Business identification signage shall be limited to that
36 needed for identification only. Signs shall not contain any textual or
37 graphic that identifies advertises or lists the services offered.
38

39 15. Performance. The dispensary shall observe all performance
40 standards for facility operation as enumerated in Paragraph K. below.
41

1 16. Inspection by City; Right of Entry by Officials. Officials of the
2 City, including the Chief of Police and members of his/her department, shall
3 have the right to enter the premises during regular business hours for the
4 purpose of making reasonable inspections to enforce compliance with
5 building, fire, electrical, plumbing or health regulations, and for the purpose
6 of determining that the provisions of this section, and other provisions of law,
7 are being complied with . The Chief of Police and the permittee shall
8 endeavor to develop a protocol to conduct inspections that address medical
9 privacy rights of clientele.

10 17. Additional conditions. The dispensary shall meet any specific,
11 additional operating procedures and measures as may be imposed as
12 conditions of approval by the Planning and Zoning Commission or the City
13 Council to insure that the operation of the dispensary is consistent with the
14 protection of the health, safety and welfare of the community, qualified
15 patients, and primary caregivers, and will not adversely affect surrounding
16 uses.

17
18 **J. Extension of Use Permit.** Upon filing of an application for an
19 extension of a valid use permit, the Planning and Zoning Commission may consider
20 extension of the use permit at annual intervals, for no more than 12 months each, after
21 holding a public hearing and considering reports from the Community Development
22 Director and the Chief of Police regarding the dispensary's compliance with
23 applicable laws, requirements and conditions. After granting two 12-month
24 extensions of a use permit, the Planning and Zoning Commission shall have the
25 discretion to extend the interval to 24 months. Upon application for an extension of a
26 use permit, the Chief of Police may require current background investigations, with
27 fingerprinting, of dispensary owners, managers and other personnel, with costs of
28 such investigations to be borne by the applicant.

29
30
31 **K. Performance Standards for Facility Operation.**

32
33 1. Site Management Standards. The operator of the dispensary
34 shall be responsible for ongoing management of the site and its immediate
35 surroundings according to the following standards:

36
37 a. The entry to the dispensary shall be locked at all times. Only
38 persons with bona fide purposes shall be allowed inside the dispensary

39
40 b. The dispensing area shall be limited to dispensing personnel
41 and one Person with an Identification Card and Primary Caregiver at
42 any time.

43
44 c. Restrooms shall be locked and under control of the manager
45 at all times.

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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 feet beyond property lines along the street as well as any parking lots under the control of the operator as needed to control litter, debris and trash.

h. The operator shall remove all graffiti from the premises and parking lots under the control of the operator within 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 72 hours.

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- 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 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 days prior to the commencement of the employee's period of employment at the medical marijuana dispensary. Failure to comply with this section shall be grounds for suspension or revocation of the permit. The following procedures shall be observed:

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(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 section.

c. A dispensary shall maintain records of all Persons with an Identification Card, and primary caregivers, using only the identification card number issued by the county or other entity approved by the Chief of Police, as a protection of the confidentiality of the cardholders.

1
2 d. Information on prior years operations shall be
3 provided annually, as required in this chapter. The operator
4 shall adjust the operations as necessary to address issues.
5

6 e. Each dispensary shall allow the Chief of Police, or his
7 designee, to have access to the dispensary's books, records, accounts,
8 and all data relevant to its permitted activities for the purpose of
9 conducting an audit or examination to determine compliance with this
10 code and applicable law. Books, records, accounts and any and all
11 relevant data will be produced no later than twenty-four (24) hours
12 after receipt of the written request(s) by the Chief of Police.
13

14L. **L. Violations**

15
16 1. Scope of Liability for Violations. Whenever in this subsection
17 any act or omission is made unlawful, it shall include causing, permitting,
18 aiding, abetting, suffering or concealing the fact of the act or omission.
19

20 2. Remedies for Enforcement of Violations. Remedies include
21 but are not limited to:

22
23 a. Criminal Penalties. Any person who violates, causes, or
24 permits another person to violate any provision of this Subsection is
25 subject to prosecution for a misdemeanor offense, and upon conviction
26 thereof, shall be punished.
27

28 b. Civil Injunction. The violation of any provision of this
29 Subsection shall be, and hereby is, declared to be contrary to the public
30 interest and shall, at the discretion of the City, create a cause of action
31 for injunctive relief.
32

33 c. Administrative Remedies. In addition to the civil
34 remedies and criminal penalties set forth above, any person that
35 violates the provisions of this Subsection may be subject to
36 administrative remedies as set forth by City ordinance. Administrative
37 remedies shall include the ability of the Chief of Police to order the
38 immediate closure of the dispensary, pending a hearing before the City
39 Council, if evidence is discovered that would lead a reasonable person
40 to conclude that any of the following conditions exists:
41

42 1) The provisions of the Medical Marijuana Dispensary
43 Regulations are being, or have been, violated;

44 2) Any condition is discovered that would warrant the
45 denial of the issuance of such conditional use permit or
46 business license in the first instance;

1 3) The Chief of Police (or designee) determines that the
2 immediate closure of the dispensary is in order to protect the
3 public peace or welfare.

4
5 d. Abatement. Any use or condition caused, or permitted
6 to exist, in violation of any provision of this ordinance shall be, and
7 hereby is, declared a public nuisance and may be summarily abated by
8 the City.

9
10 e. Revocation or non-renewal of the permit. The terms of
11 the use permit will be enforced as proved by Subsection 20.100.010.M
12 of this Chapter, which subsection contains a process for the
13 consideration of the revocation of a use permit for reasons that include,
14 among other things, failure to comply with the terms and conditions of
15 the use permit, or for any grounds that would warrant denial of the
16 issuance of a use permit in the first instance.

17
18 3. Remedies Cumulative. All remedies prescribed under this
19 chapter shall be cumulative and the use of one or more remedies by the City
20 shall not bar the use of any other remedy for the purpose of enforcing the
21 provisions hereof.

22
23 4. Separate Offense for Each Day. Any person that violates any
24 provision of this chapter shall be guilty of a separate offense for each and
25 every day during any portion of which any such person commits, continues,
26 permits, or causes a violation thereof, and shall be penalized accordingly.

27
28 **M. No Mandatory Duty of Care.** This ordinance is not intended to and
29 shall not be construed as or given effect in a manner that imposes on the City of
30 Albany or any officer or employee thereof a mandatory duty of care towards persons
31 and property within or without the city, so as to provide a basis of civil liability for
32 damages, except as otherwise imposed by law.

33
34 **N. Liability.** To the fullest extent permitted by law, any actions taken by
35 a public officer or employee under the provisions of this chapter shall not become a
36 personal liability of any public officer or employee of the City of Albany.

37
38 **Section 5. Severability.**

39 If any section, subsection, sentence, clause or phrase of this ordinance is for
40 any reason held to be invalid, such decision shall not affect the validity of the
41 remaining portions of the ordinance, and each section, subsection, sentence, clause or
42 phrase thereof, irrespective of the fact that any one or more sections, subsections,
43 sentences, clauses or phrases be declared invalid.

44
45 **Section 6: Publication and Effective Date.**

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

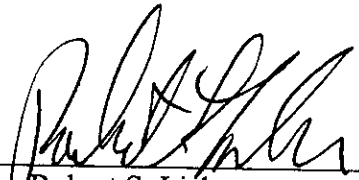
4 **PASSED AND ADOPTED** by the City Council of the City of Albany at its
5 meeting on the 5th day of March, 2007, by the following vote:
6

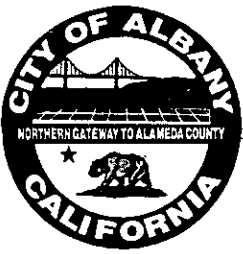
7 AYES: Council Members Atkinson, Javandel, Okawachi & Mayor Lieber

8 NOES: None

9 ABSENT: Council Member Wile

10 ABSTAIN: None

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12
13 
14 _____
15 Mayor Robert S. Lieber
16



City of Albany

1000 SAN PABLO AVENUE • ALBANY, CALIFORNIA 94706-2295

CITY ADMINISTRATOR
PH. (510) 528-5710
FAX (510) 528-5797

CITY ATTORNEY
PH. (510) 524-9205
FAX (510) 526-9190

CITY CLERK
PH. (510) 528-5720
FAX (510) 528-5797

CITY COUNCIL
PH. (510) 528-5720
FAX (510) 528-5797

COMMUNITY DEVELOPMENT & ENVIRONMENTAL RESOURCES
• Building
• Engineering
• Environmental Resources
• Maintenance
• Planning
PH. (510) 528-5760
FAX (510) 524-9359

FINANCE & ADMINISTRATIVE SERVICES
CITY TREASURER
PH. (510) 528-5730
FAX (510) 528-2743

FIRE & EMERGENCY MEDICAL SERVICES
PH. (510) 528-5771
FAX (510) 528-5774

PERSONNEL
PH. (510) 528-5714
FAX (510) 528-5797

POLICE
PH. (510) 525-7300
FAX (510) 525-1360

RECREATION & COMMUNITY SERVICES
1249 Marin Avenue
PH. (510) 524-9283
FAX (510) 528-8914
• Friendship Club/
Childcare Program
PH. (510) 524-0135
• Senior Center
PH. (510) 524-9122
FAX (510) 524-8940
• Teen Center
PH. (510) 525-0576

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss
CITY OF ALBANY)

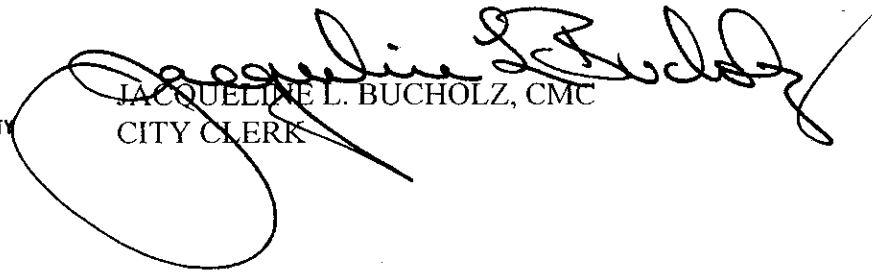
I, **JACQUELINE L. BUCHOLZ**, City Clerk of the City of Albany, California, do hereby certify that the whole number of members of the City Council of said City of Albany is five and that the foregoing is a true and correct copy of Ordinance No. 07-01 which was passed and adopted by the said City Council, approved and signed by the Mayor of said City, and attested by the City Clerk of said City, all at a regular meeting of the said Council on the 5th day of March 20⁰⁷ A.D., and that the same was so passed and adopted by the following votes and duly published or posted according to State law.

AYES: Council Members Atkinson, Javandel, Okawachi & Mayor Lieber

NOES: None

ABSENT: Council Member Wile

In witness whereof, I have hereunto set my hand and affixed the official seal of the City of Albany, this 7th day of March, 20⁰⁷.


JACQUELINE L. BUCHOLZ, CMC
CITY CLERK

The City of Albany is dedicated to maintaining its small town ambience, responding to the needs of the community, and providing a safe, healthy environment now and in the future.



PRINTED ON RECYCLED PAPER

NOTICE OF POSTING

**STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

I, Jacqueline L. Bucholz, City Clerk of the City of Albany, County of Alameda, State of California, say:

That on the 6th day of March, 2007, I posted notices in the following areas designated as the official posting areas for the City of Albany:

CITY HALL


FIRE DEPARTMENT

LIBRARY

The notice was for: Ordinance #07-01 - Medical Marijuana

Dispensaries

I declare under penalty of perjury that the foregoing is true and correct. Executed on the 6th day of March, 2007, at Albany, California.


JACQUELINE L. BUCHOLZ, CMC
CITY CLERK