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

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

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

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

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

WHEREAS, the Albany City Council held a public hearing to discuss marijuana regulations on November 20, 2017; and
WHEREAS, the Albany City Council held a public hearing and considered all public comments received, the presentation by City staff, the staff report, and all other pertinent documents regarding the proposed request;

NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS AS FOLLOWS:

SECTION 1: CHAPTER XX OF THE ALBANY MUNICIPAL CODE, SECTION 20.08 TITLED “DEFINITIONS” IS HEREBY AMENDED AS FOLLOWS:

SECTION 20.08 “DEFINITIONS”

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

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

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

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

4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code;
5. A residential hospice or a health home agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law, including but not limited to, Health and Safety Code Section 11362.5 et seq.

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

20.20.110 Cannabis Dispensaries.

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

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

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

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

4. This subsection is not intended to conflict with Federal or State law. It is the intention of the City Council that this subsection be interpreted to be compatible with Federal and State enactments and in furtherance of the public purposes which those enactments encompass.
B. Definitions. Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning and application of words and phrases used in this subsection:

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

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

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

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

Cultivation Personal Use means that within a private residence occupied by a person 21 years and older, up to six (6) nonmedical cannabis plants per private residence maybe cultivated indoors for personal use pursuant to the Adult Use of Marijuana Act. Cultivation shall be limited to covered space in personal residence or in an attached garage or other fully enclosed and locked accessory structure located entirely on property owned or legally possessed by the occupant.
Delivery means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer.

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

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

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

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

Medical Cannabis Dispensary means any association, business, facility, use, establishment, location, delivery service, cooperative, collective, or provider, whether fixed or mobile, that possesses, cultivates, distributes, or makes available medical cannabis to three (3) or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card or a patient with a prescription or recommendation from a medical doctor. A dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by this Code or applicable law:
1. A clinic licensed pursuant to Chapter 1, Division 2 of the Health and Safety Code;

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

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

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

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

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

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

**Qualified Patient** means a person who is entitled to the protections of Health and Safety Code Section 11362.5 for patients who obtain and use cannabis for medical purposes upon the recommendation of an attending physician, whether or not that person applied for and received a valid identification card issued pursuant to State law.
Recreational Cannabis means cannabis which is consumed for recreational, non-
medical consumption.

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

C. Dispensary Prohibited.

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

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

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

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

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

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

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

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

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

1. Personal Use Cultivation. An individual who may cultivate cannabis for personal use pursuant to state law (“qualified person”), shall be allowed to cultivate cannabis only within his/her personal residence or in an attached
garage or other fully enclosed and locked accessory structure located entirely on property owned or legally possessed by him or her.

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

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

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

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

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

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

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

9. **Incidental Use.** The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use, and cannabis cultivation shall be limited to an incidental use of the residence.
10. **Ventilation.** The cannabis cultivation area shall include a ventilation and filtration system designed to ensure that odors from cultivation are not detectable beyond the residence (or property line for detached single family residences), and designed to prevent mold and moisture and otherwise protect the health and safety of persons residing in the residence. This shall include at a minimum, a system meeting the requirements of the current adopted edition of the California Building Standards Code, including California Building Code Section 1203.5 (Natural Ventilation) and Mechanical Code Section 402.3 (Mechanical Ventilation) or the equivalent(s) thereof.

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

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

13. **Property Owner Authorization.** For rental property, the property owner, property manager or management company shall provide written authorization
to the tenant that personal use cultivation is permitted.

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

I. Penalties for Violation.

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

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

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

SECTION 3: PUBLICATION AND EFFECTIVE DATE.

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

PASSED AND ADOPTED by the City Council of the City of Albany at its meeting on the 20th day of November 20, 2017, by the following vote:
AYES:  Council Members: Barnes, Magee, Nason & Mayor McQuaid
NOES:  Council Member Pilot
ABSENT:
ABSTAIN:

[Signature]

PEGGY MCQUAID, MAYOR
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
DEPUTY CITY CLERK