



TOWN OF FAIRFAX

STAFF REPORT

March 7, 2018

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager ^{GT}
Ben Berto, Planning and Building Director

SUBJECT: Begin discussion/consideration of local cannabis (non-medical and medical marijuana) regulatory options

RECOMMENDATION

Begin discussion/consideration on policies and regulations for local cannabis (non-medical and medical marijuana).

This is just the first of several Council meetings we anticipate scheduling for this item. Staff recommends that at this first meeting, the Council focus on the additional information they will need to facilitate their future discussions and, to the extent possible, provide direction to narrow the list of options for a specific policy issue. For example, if the Council were to narrow the types of commercial cannabis businesses, such as no commercial cultivation, it would help to focus the policy discussion.

At subsequent Council meetings, staff would return with the requested information as well as summarize the Council direction from the previous meeting.

The current Town moratorium on most commercial cannabis activities is due to expire on October 31, 2018, after which the State could hypothetically issue licenses for various cannabis businesses to operate in Fairfax. In addition, we would anticipate after the moratorium expires, in the absence of local regulations, there would be any number of prospective cannabis operators that could and would be applying for various commercial business entities. However, the Council may extend the moratorium for an additional 12 months should it require additional time to consider regulations.

BACKGROUND

The Governor on June 27, 2017 signed into law the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), which combined the previously approved Proposition 64 - the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), and the Medical Marijuana Regulation and Safety Act ("MMRSA") into a unified State regulatory structure.

Under State law, personal cultivation and use of cannabis is now legal. However, a commercial cannabis activity may not be conducted until or unless the State has issued a license and the local jurisdiction has issued any local approvals that are necessary for any cannabis business

activity to operate within that jurisdiction.

Recognizing that absent local regulation, the only approvals a commercial cannabis business would need would be from the State, the Town acted on November 1 and again on December 6, 2017 to enact a one-year moratorium on the creation or expansion of any cannabis businesses (with specific exemptions). That moratorium is set to expire on October 31, 2018.

The Town on December 11, 2017 conducted a panel-led public workshop discussion on various cannabis-related topics in the post-Proposition 64 regulatory landscape. It also concluded on January 2 an online survey about cannabis. Staff reported to the Town Council on both topics at their January 16 meeting (click or enter the following links to find January 16 meeting information relating to this topic).

http://townoffairfax.org/packets_2018/council_packet_011618.html

http://townoffairfax.org/recordings/2018/council_broadcast_011618.html

Per the Town Council's request, this report outlines for the Council's review and policy direction various options to regulate cannabis cultivation and commercial cannabis businesses.

DISCUSSION

The following three cannabis-related categories are considered below:

1) Commercial Cannabis Businesses:

- dispensaries/retailers
- commercial cultivation
- manufacturing
- distribution
- testing

2) Personal/Medical Outdoor Cultivation

3) Delivery

1) Commercial Cannabis Businesses: dispensaries/retail (except delivery), commercial cultivation, manufacturing, distribution, testing, and microbusiness

The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) provides unified State regulations governing both medicinal and adult-use cannabis commercial activity. This enables the Town to tier off the State's regulations and regulatory structure in controlling commercial cannabis businesses.

Fairfax is currently the only jurisdiction in Marin that allows on-premises sale of medical cannabis. At present, Fairfax Municipal Code, Chapter 17.110, allows up to three medical cannabis dispensaries to operate in the Town in certain commercial zones with a two-year

dispensary permit. Under Town Code, medical cannabis dispensaries cannot be located within 600 feet of a school, within a residentially-zoned parcel, or directly abutting a residentially-zoned property (unless there is a fence or intervening landform creating a barrier). Chapter 17.110 also imposes a series of operating requirements on medical cannabis dispensaries.

MAUCRSA contains default prohibitions on any retail licensee, whether medical or adult-use recreational, from locating within 600 feet of a school, daycare, or youth center (as defined in State law), unless the local agency or the State licensing authorities establishes a different buffer radius. Based on current staff interpretation, it appears that Fairfax could adjust setback buffer distance requirements that are either farther away or closer than 600 feet to the listed uses, and further could modify what youth-oriented uses would be subject to buffer setbacks (for example, eliminating buffers for an infant day care center or adding parks/playgrounds). The Town could consider whether to adjust its regulations to adopt the more restrictive standards contained in the State's regulations, stipulate varying setbacks for certain types of youth-related uses, or exempt certain types of cannabis businesses from being subject to setback buffer requirements.

Under MAUCRSA, Fairfax can adopt and enforce local ordinances to regulate licensed cannabis businesses, including, but not limited to, local zoning and land use requirements, business license requirements, and may completely prohibit the establishment or operation of one or more types of licensed cannabis businesses. Under both laws, local jurisdictions may also establish standards, requirements and regulations regarding health and safety, testing, security, and worker protections that exceed State standards. The Council has previously expressed a desire to regulate cannabis businesses. Such regulations would greatly reduce uncertainty regarding whether, and under what conditions, activities and businesses would or would not be permitted.

Options:

- (a) Do nothing. Once the cannabis business moratorium expires, this would potentially allow a variety of commercial cannabis activities/business, including retail, commercial cultivation, distribution, testing, and microbusinesses, to locate within Fairfax in accordance with zoning regulations that apply to a permitted analogous (closely-related) land use category.
- (b) Prohibit all commercial cannabis businesses/activities (medical and non-medical), except for the Town's existing medical cannabis dispensary.
- (c) Prohibit all commercial cannabis businesses/activities, except medical dispensaries and adult-use non-medical retailers. Revise the Town's cannabis regulations to accommodate non-medical cannabis retailers. This has the advantage of requiring only modest changes to the Town's existing regulations on dispensaries. An additional policy consideration is whether to allow a dispensary to sell both medical and non-medical cannabis.
- (d) Allow one or more categories of commercial cannabis businesses (medical and/or non-medical) subject to local regulations under specific terms. Development of local regulations could include policy considerations and health and safety regulations. If the Council is interested in allowing

one or more categories of commercial marijuana businesses, staff will develop for further discussion more information about the State regulation and licensing systems and how Fairfax could create a regulatory structure consistent with the State's.

The Council may want to provide guidance on specific restrictions such as distances from certain type of uses (e.g., 600 ft.) or add to the list of uses the distance restriction applies (e.g., parks). For illustrative purposes, attached is a map was showing the commercial locations outside of a 600-foot radius of a school, daycare, or youth center. The Council may want to consider modifying the medical cannabis standards to apply to non-medical cannabis which would impose a three (3) dispensary limit. The benefit to such an approach is that the standards have already been developed and established.

2) Personal/Medical Cultivation

Under State law, local governments no longer have the ability to ban all cannabis cultivation – up to six cannabis plants for personal use can be cultivated indoors within a person's private residence. This includes cultivation in a greenhouse on the same property as the residence as long as it is fully enclosed, secure and not visible by normal unaided vision from a public place. Fairfax Municipal Code, Section 17.138.330 et seq. currently allows for medical purposes outdoor cultivation of up to 18 cannabis plants, and indoor cultivation subject to other restrictions. These Code provisions contains additional standards for such cannabis cultivation.

In passing its 1-year moratorium on most types of cannabis uses, the Town Council exempted medical cannabis cultivation consistent with Town Code Section 17.158.330 et seq., and 6 plants indoors or outdoors for personal adult non-medical use.

Options:

- (a) Do nothing. Until October 31 of this year, this will continue to exempt from the moratorium outdoor cultivation of 6 cannabis plants for personal adult-use. Current Town regulations applying to medical cannabis cultivation would continue indefinitely. However, current uncertainty over Town Code applicability to (and potential conflict with) State cannabis regulations pertaining to adult recreational cultivation would remain.
- (b) Amend local regulations to clarify that up to 6 cannabis plants may be grown indoors (required by state law) and, if desired, outdoors for adult, non-medical use.
- (c) Ban outdoor cultivation of cannabis, until/unless the California Attorney General determines that cannabis is consistent with federal law (if cannabis is legalized federally, outdoor cultivation might end up being regulated, but not prohibited). Local governments can ban all outdoor cannabis cultivation under the Prop.64/MAUCRSA.

3) Cannabis Delivery

Under MAUCRSA, local governments may prohibit or regulate cannabis deliveries to customers from originating or terminating within their jurisdiction. Local governments cannot ban deliveries from using the roads to reach a delivery location outside the jurisdiction (i.e. simply passing through Town). Cannabis deliveries can only be made from a State-licensed dispensary or retailer in a city or county that does not explicitly prohibit them by local ordinance.

It should be noted that there is a bill pending in the State Legislature, SB 1302, that would prohibit a local jurisdiction from preventing delivery of cannabis or cannabis products to an address that is located within the jurisdictional boundaries of that local jurisdiction, by a licensee who is acting in compliance with MAUCRSA and who is acting in compliance with any license, permit, or other authorization obtained from another local jurisdiction.

In 2016, the Town Council and Planning Commission discussed an interest in developing local standards for medical cannabis delivery in addition to whatever standards are developed by the State agencies. The Council referred the matter to the Planning Commission for consideration since the PC previously adopted delivery standards for the current medical cannabis dispensary in Town.

Per Council direction, the Planning Commission (PC) discussed delivery standards for medical cannabis in April 2016. At that meeting, staff presented the results of the on-line community forum regarding medical cannabis delivery. Over 70% (32 of 44) of the respondents to the forum supported the Town Council's desire to regulate delivery. The PC directed staff to research industry best practices and report back. Staff is still working to develop standards for delivery. It is noted that current conditions placed on the only medical dispensary in Fairfax attach restrictions on delivery that exceed the standards contained in the State's MAUCRSA.

Staff assumes that the Council would also like to develop delivery standards for non-medical cannabis and that the PC would develop the standards for Council consideration. We would also anticipate that the proposed delivery standards will be the same for both medical and non-medical cannabis. However, if that is not the case, then the Council should provide direction on the following options.

Options:

- (a) Do nothing. Medical cannabis deliveries will continue to be permitted from businesses located inside and outside the Town. Once the Town's cannabis business moratorium expires on October 31, recreational deliveries to Fairfax will also be allowed.
- (b) Amend Town regulations to expressly prohibit recreational cannabis deliveries. The Town Council has already exempted medical cannabis deliveries from the current cannabis delivery business moratorium, so staff assumes the Council will continue to want to allow medical cannabis deliveries. One item to consider is the ability of the Town to enforce the prohibition on recreational cannabis deliveries by companies not based in Fairfax.

- (c) Amend the Town's regulations to expressly allow some types of medical and recreational cannabis deliveries. Regulatory options will depend on desires and concerns of the Town Council, relative to the State's regulatory structure.

Next Step

At the next Council meeting, staff would like to bring in a consulting firm such as HdL Companies to provide their insight and experience with municipal regulation and taxation of medical and non-medical cannabis businesses. This would also provide an opportunity for the Council to have a Q&A session with an expert in the industry. Those discussions would, hopefully, assist the Council with determining how it wants to regulate and/or prohibit different aspects of commercial cannabis, including deliveries.

At a future meeting, we would anticipate the Council directing staff to prepare business and/or zoning regulations based on their discussions. The proposed regulations would be reviewed by the Planning Commission, for their recommendation to the Town Council regarding adoption.

FISCAL IMPACT

Any taxes generated by Fairfax-based cannabis businesses would create additional revenue for the Town. The Council will need to consider whether it wishes to explore enacting local taxes on cannabis. The amount of revenue is uncertain and would depend on the type, number, size, and success of the cannabis establishments, and whether the Town desires to regulate and tax out-of-town businesses that are delivering cannabis to Fairfax. Any local taxes imposed on cannabis businesses would be subject to Proposition 218 and require approval by two-thirds of local voters.

ATTACHMENT

600 ft. setback buffer radius map for medical and non-medical cannabis

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