

## **TOWN OF FAIRFAX** STAFF REPORT August 1, 2018

TO:

Mayor and Town Council

FROM:

Garrett Toy, Town Manager G

Ben Berto, Planning and Building Director

SUBJECT: Discuss/consider Local Cannabis Regulatory Options and provide direction to the

Planning Commission

#### RECOMMENDATION

Discuss/consider local cannabis regulatory policy options and provide direction to the Planning Commission

#### BACKGROUND

Fairfax is currently operating under a moratorium for commercial cannabis businesses (except for medical marijuana dispensaries allowed under the Town Code) that is in effect until October 31 of this year. Please note that the Council can extend the moratorium for an additional year prior to October 31. The current moratorium provides the Council the ability to determine what types of commercial cannabis regulations are desired for Fairfax.

In December 2017, the Town sponsored a panel discussion on cannabis as well as conduced an on-line survey of cannabis issues.

At its March 7th meeting, the Council reviewed the context for possible cannabis regulations. At that time, several commercial cannabis regulatory parameters were discussed, preliminarily narrowing the types of commercial cannabis businesses desired in Fairfax.

On May 30th the Council held a special Town workshop for the express purpose of receiving more detailed information on the topics discussed at the March meeting. David McPherson, Cannabis Compliance Director for HdL Companies, a firm specializing in municipal regulation and taxation of medical and non-medical cannabis businesses, conducted the workshop.

At its July 18th meeting, the Council spent a majority of the meeting (approx. 3.5 hours) discussing general policy issues regarding cannabis. During open time, the Council received a Marin Alliance advisory petition regarding cannabis, which is attached for informational purposes, with the signatures redacted (Marin Alliance stated there were 457 signatures.)

#### **DISCUSSION**

The July 18th staff report specifically divided the policy discussion into the following categories:

- Eliminated Categories of Use
- Should We Allow These Type of Uses
- Buffer Zones
- · Limit the Number of Retailers
- Personal/Medical Cultivation
- Standards
- Tax Revenues

Under each topic, staff presented the key "policy considerations" for the Council. The objective was that Council direction on each "policy consideration" would help narrow the discussion on other issues.

This staff report summarizes the Council *Direction* on each policy matter. To the extent possible, we noted: a) if Council consensus was reached, b) if the Council majority was leaning a particular way, but no decision rendered and c) request for additional information. Unless otherwise mentioned, Council direction was unanimous.

For consistency purposes, we used the same topics and restated the original policy considerations that the Council discussed at the July 18<sup>th</sup> meeting. This approach appeared to be effective in allowing the Council to make key policy decisions without getting bogged down in the details. It would be helpful for the Council to confirm or modify staff's understanding of the Council's *Direction* on each issue.

### 1) Eliminated Categories of Use

Policy consideration: Confirm the elimination of the following uses from further consideration:

- · Manufacturing of cannabis products
- Distribution of cannabis products
- Commercial cannabis cultivation
- Cannabis testing laboratories

<u>Direction: The Council confirmed the elimination of the above cannabis uses from further consideration.</u> As a result, these uses will not be permitted within the Town.

## 2) Commercial medical cannabis dispensaries/retailers

Policy consideration: Does the Town want to continue to allow medical cannabis dispensaries?

Direction: The Council stated it wanted to continue to allow medical cannabis dispensaries.

Staff indicated that the existing code will need to be amended to reflect changes to state law and the Council's direction on non-medical cannabis uses.

#### 3) Cannabis temporary events

Policy considerations: If such events can occur in town, does the Council want to allow them?

<u>Direction: Council indicated it wanted to prohibit temporary events.</u>

Under current law, temporary events must be held at a county fair or district agricultural association (DAA) properties. Currently, the county fair and DDA do not have locations within the Town's limits. However, there is a bill pending in the State Legislature (AB 2020) that would expand the venue options for the site of a temporary event to any location expressly approved by a local jurisdiction.

#### 4) Personal/Medical Cultivation

Policy considerations: Amend local regulations to clarify that up to 6 cannabis plants may be grown indoors (required by state law) and outdoors for adult, non- medical use? If not, does the Town want to ban outdoor cultivation of cannabis for adult use?

Direction: The Council indicated it would just adopt the state mandated regulations that up to 6 cannabis plants may be grown indoors. While no consensus was reached on outdoor cultivation, the majority of the Council seem to settle on the number of up to 6 outdoor plants may be grown for non-medical cannabis use and that the limitation should also apply to personal medical cultivation. This would require amending the existing standard which allows up to 18 plants per parcel may be grown for medical uses. This is an outstanding issue that may only require confirmation that a majority support the plant limits stated.

#### 5) Cannabis delivery (from retailers outside Town limits)

Policy Direction: Does the Council want to allow non-medical cannabis deliveries? Is it ok if the delivery standards are the same for both medical and non-medical cannabis?

<u>Direction: The Council reached consensus on the issue that delivery standards should be the same for non-medical and medical cannabis. The issue of delivery evolved into a discussion of whether non-medical retailers should be limited to delivery only. It would seem this discussion would be better served combined with the non-medical retail policy consideration.</u>

Staff reported that the State's proposed permanent regulations will allow deliveries in any jurisdiction regardless of local restrictions.

#### 6) Microbusinesses

Policy Consideration: Does the Council want to allow microbusinesses? If so, does the Council want to impose additional restrictions such as eliminating the cultivation option?

<u>Direction: The Council requested additional information on microbusiness licenses. This issue is still outstanding.</u>

Some Councilmembers indicated that since the Town was eliminating a majority of the components of microbusinesses (i.e., commercial cultivation, distribution, manufacturing), microbusinesses should not be allowed. Another concern cited was the unknown scale of microbusinesses. Some Councilmembers indicated they were open to the concept of limiting the scope of microbusiness such as no cultivation. The Council did not reach a consensus on this issue and requested additional information.

Attached is a memo from the Town Attorney's office regarding microbusiness requirements. One item of note is that all activities performed by the microbusiness must occur on the same licensed premises.

#### 7) Non-medical cannabis retail

Policy consideration: Does the Town want to allow non-medical cannabis retailers? Does the Town want retail to be restricted to delivery only with no storefront retail operation? Can a dispensary/retailer sell both medical and non-medical cannabis?

<u>Direction: There was no Council consensus on this issue. However, the majority of the Council seem to support some form of non-medical cannabis retail in Town. The specific type and limitations would be influenced by the discussion of the other policy issues.</u>

From an administrative perspective, staff continues to recommend allowing adult use retail and delivery, along with medicinal retailers/dispensaries, subject to the limitations as discussed in this report.

#### 8) Limit the Number of Retailers

Policy Consideration: Does the Council want to set a limit on the number of non-medical cannabis retailers? Does the Council want to set a combined maximum (e.g., 5 total) of non-medical and medical retail dispensaries? If a business is both a medical and non-medical cannabis retailer should that be combined as 1 or does that count as 2 toward the maximum limit?

<u>Direction: While consensus was not reached, the majority of the Council reflected a desire to set a limit somewhere between 2-4 retailers and allowing a specific number of retailers to be both medical and non-medical retailers. There was limited discussion and no consensus on the consensus of the Council reflected a desire to set a limit somewhere between 2-4 retailers and allowing a specific number of retailers to be both medical and non-medical retailers.</u>

whether these limits would also apply to non-storefront retailers. This is an outstanding issue that can be considered with the non-medical retail discussion.

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.

#### 9) Buffer Zones/Locations

Policy Consideration: Does the Town want to modify the State buffer zone restrictions (i.e., distance and/or specific uses)? Does the Town want to modify the existing buffer zone for medical cannabis dispensaries? Should buffer zones for medical and non-medical retailers be different?

Direction: The Council requested the creation of a map, without the buffer zones, which identifies the potential commercial areas for cannabis uses and identifies schools, day care, and youth centers near the commercial areas. The Council wanted to see if there were commercial locations that are better suited for cannabis uses than what is allowed using the state buffer zone. This is an outstanding policy issue that will be influenced by the discussion of which cannabis uses could potentially be allowed.

The buffer zone map provided at the July meeting showed the areas in Town outside of the State buffer zone of 600 ft. from a school, day care, or youth center. Some Councilmembers indicated they would consider reduced buffer zones for day cares with pre-kindergarten children since they would presumably always be accompanied by adult(s). The attached map, which also identifies parks, would allow the Council to evaluate areas in Town that could potentially be better suited for cannabis uses beyond what is allowed using the current State buffer zone.

Based on the Council's direction, staff would return with a modified map and recommendations on revisions to the buffer zones to reflect the desired direction. To assist the Council in its discussions, attached are potential criteria to be considered for the location of cannabis businesses.

It should be noted that the Town's current zoning code allows medical marijuana dispensaries in the CC (Central Commercial), CH (Highway Commercial), and CL (Limited Commercial) zones. However, the CL zone would not allow non-medical cannabis retailers because retail uses are not permitted. The CL zone would need to be amended to allow non-medical retail cannabis uses. The map does not show Deer Park Villa which is zoned CL.

#### 10)Standards

Policy consideration: Revise the Town's cannabis regulations to accommodate non-medical cannabis retailers.

<u>Direction: Due to the lateness of the hour, staff recommended the Council defer this discussion until the Council provided direction on the other policies. Depending on the policy direction, staff would be in a better position to recommend an approach to developing the cannabis regulations.</u>

Staff recommends the Council consider just revising the Town's cannabis regulations to accommodate non-medical cannabis retailers. This has the advantage of possibly only requiring modest changes to the Town's existing regulations on dispensaries. Presumably, some modifications would be required to make it consistent with State law, we would need to add delivery standards, and make some other minor revisions. With general direction on the above issues, staff would draft standards/regulation for the Planning Commission's (PC's) consideration. One base assumption is that the allowed uses would only be allowed in commercial zones.

#### 11) Tax Revenues

<u>Policy consideration: Defer this discussion until there is an ordinance prepared for the Council's consideration.</u>

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 the local voters. Staff recommends the Council defer this discussion until there is an ordinance prepared for the Council's consideration. This would allow staff to better recommend a revenue structure based on the proposed uses.

#### **NEXT STEP**

Depending on the Council's direction, we may need to return to the Council in September with additional information and confirmation of direction. Once Council has provided sufficient policy direction, staff in conjunction with the Town Attorney would begin to prepare the business and/or zoning regulations for consideration by the Planning Commission. Ultimately, the PC will recommend regulations for Town Council consideration.

It should be noted that the timing of this process will require the Council to consider the extension of the non-medical cannabis moratorium which expires on October 31, 2018.

### **FISCAL IMPACT**

None at this time.

### **ATTACHMENTS**

- A. Memo on microbusiness
- B. Commercial area map for medical and non-medical cannabis
- C. Location criteria for cannabis businesses
- D. Marin Alliance advisory petition



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#### Memorandum

To:

Fairfax Town Council

File No.: 38072.00001

From:

Janet Coleson, Town Attorney

Amanda Charne, Assistant Town Attorney

Date:

July 26, 2018

Re:

Cannabis Microbusinesses

#### **PURPOSE**

At its meeting on July 18, 2018, the Town Council considered various policy issues related to cannabis regulations for the Town of Fairfax. As part of that discussion, the Town Council requested additional information regarding the "microbusiness" license under the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). This is an informational report as requested by the Town Council.

#### ANALYSIS:

A microbusiness is a license designation created under state law that allows a licensee to engage in multiple commercial cannabis activities under one license. Prior to MAUCRSA, there was no state regulatory process for the operation of a vertically integrated microbusiness. (BCC Cal. Code of Regs., Title 16, Division 42, Medicinal and Adult-Use Cannabis Regulation, Initial Statement of Reasons, p. 10.)

MAUCRSA is silent as to how many commercial cannabis activities an applicant must engage in to qualify for a microbusiness license. Under the Bureau of Cannabis Control's (BCC) implementing regulations, a microbusiness must engage in at least three of the following activities:

- o cultivation (in an area less than 10,000 square feet),
- o distribution.
- o nonvolatile (Level 1) manufacturing, and/or
- o retail.

Under the proposed permanent BCC regulations that were released on July 13, 2018. the BCC would recognize newly expanded subcategories for each of these activities. Specifically, proposed regulation 16 CCR § 5500(c) would recognize the following commercial cannabis activities that may be included within a microbusiness:



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- Retailer a licensee that sells and/or delivers cannabis or cannabis products to retail customers.
- Non-storefront retailer a cannabis retailer that provides cannabis to retail customers exclusively though delivery.
- Distributor licensee that procures, sells, and transports cannabis between entities licensed under MAUCRSA. Distributors arrange for testing, check packaging and labeling, collect taxes, transport cannabis between licensees and may act as a wholesaler. Distributors may package and label cannabis (dried flower), but not manufactured cannabis products.
- Transport Only Distributor a type of distributor that only transports cannabis and cannabis products between licensees or self-distribution, but does not perform the other functions of a distributor (quality assurance, testing, packaging, labeling or storing cannabis). However, transport only distributors shall not transport any cannabis goods except for immature cannabis plants and sees to a licensed retailer or microbusiness.
- Level 1 Manufacturer (Type 6) a licensee that manufacture cannabis products using nonvolatile solvents, or no solvents (i.e. mechanical methods). A Level 1 Manufacturer (Type 6 licensee) may also prepare infusions, conduct packaging and labeling of cannabis products. Under the Dept. of Public Health proposed regulations, a Type 6 licensee may also register and operate the licensed premises as a shared-use facility (proposed regulation 17 CCR 40118(a)(2)). At this time it is not clear whether the allowance for share-use facilities would also apply to a microbusiness engaging in manufacturing.
- Cultivation a licensee that engages in cultivation activities. The application
  must include a cultivation plan showing all cultivation activities and that the total
  area of all activities shall be less than 10,000 square feet and provide
  supplemental water source information.

Although the BCC's proposed permanent microbusiness regulation recognizes certain subcategories of retail and distribution activities, it appears that a microbusiness must still engage in at least three of main categories of commercial activity (e.g. retail, distribution, cultivation and manufacturing). The BCC's Initial Statement of Reasons indicates that the intent of the regulation is to ensure that licensees are actually microbusinesses rather than using the license as a substitute for single activity licenses. (BCC Cal. Code of Regulations, Title 16, Division 42, Medicinal and Adult-Use Cannabis Regulation Initial Statement of Reasons, p. 119.) Thus, at least initially, it

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does not appear that a microbusiness licensee could choose only two categories comprising three different subcategories, such as retail, non-storefront retail, and manufacturing.

A summary document issued by the BCC also states that license types created by the Department of Food and Agriculture and the Department of Public Health are not considered qualifying commercial cannabis activities for the purposes of obtaining a microbusiness license. Thus, it appears, for example, a Type P license for manufacturers that only package or label cannabis products would not be an eligible category under the microbusiness license.

A holder of a microbusiness license may only engage in the commercial cannabis activity requested in the license application and approved by the Bureau. The regulations specify various application requirements, depending on the activities proposed. (See 15 CCR §§ 5500-5504.) If a microbusiness licensee wants to engage in additional commercial cannabis activity after the license is issued, the licensee shall submit an application to the Bureau identifying the requested changes and providing all information required for an application for the commercial cannabis activity the licensee wants to conduct. (16 CCR § 5023.)

In terms of any substantive limits on activities of a microbusiness license, the BCC regulations include or are proposed to include the following requirements:

- All cultivation, manufacturing, distribution, and retail activities performed by a licensee under a microbusiness license shall occur on the same licensed premises (see current and proposed 16 CCR 5500(d)).
- Areas of the licensed premises for manufacturing and cultivation be separated from the distribution and retail areas by a wall and all doors between the areas shall remain closed when not in use (see current 16 CCR 5500(a); proposed 16 CCR 5500(h).)
- Licensed retailers and microbusinesses shall only serve customers who are
  within the licensed premises or at a permissible delivery address. The sale and
  delivery of cannabis shall not occur through a pass-out window or tray to the
  exterior of the licensed premises and shall not operate as or with a drive-through.
  Cannabis may not be sold or delivered to a person within a motor vehicle.
  (current and proposed 16 CCR 5025(c).)
- Distributors and microbusinesses shall only transport and sell cannabis goods designated "For Medical Use Only" pursuant to the requirements prescribed by the State Department of Public Health in regulation, to M-designated retailers or M-designated microbusinesses. (current and proposed 16 CCR 5032.)

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 Microbusiness licensees engaging in manufacturing activities must maintain certain batch production records (current and proposed 16 CCR 5506), and those engaging in cultivation activities must maintain certain cultivation records (current and proposed 16 CCR 5505).

Beyond these specific rules, the holder of a microbusiness license must comply with all of the requirements for licensed cultivators, distributors, Level 1 manufacturers, and retailers to the extent the licensee engages in such activities. (current and proposed 16 CCR § 5500(e).) For example, the "holder of a Type 12-Microbusiness license engaged in distribution shall comply with all the rules and requirements applicable to a Type 11-Distributor license" (see current 16 CCR 5500(e)(3)).

It should be noted that the state licensing regulations do not limit the size or volume of a microbusiness.

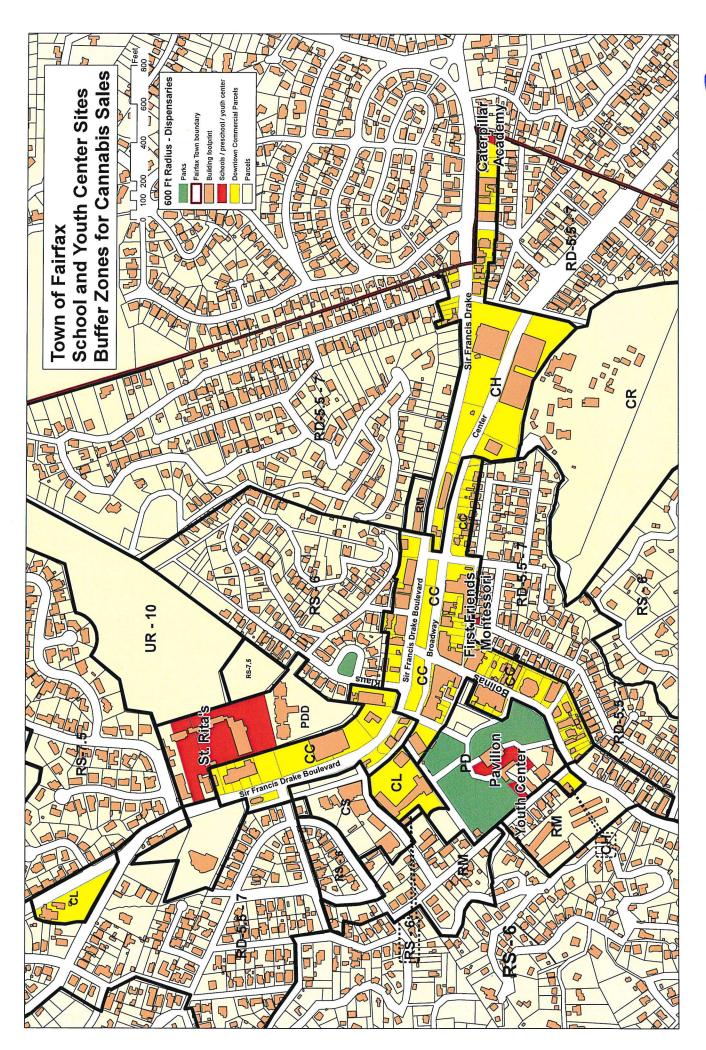
#### CONCLUSION

At its last meeting the Town Council indicated that commercial cannabis manufacturing, cultivation and distribution as standalone businesses where not a good fit for Fairfax, but expressed interest in learning more about the microbusiness license. Although the microbusiness license limits cultivation to 10,000 square feet and manufacturing to nonvolatile production, the microbusiness license does not otherwise limit the scale or volume of commercial activities at a premises. In particular, a microbusiness license could potentially include the full suite of distribution activities, unless the microbusiness opted to be a Transport Only Distributor (see descriptions of distribution licenses on page 2). However, land use and zoning requirements, such as square footage limits, may, as a practical matter, constrain the size or volume of a business.

Finally, please note that the BCC's regulations were recently amended via the emergency regulations effective on June 6, 2018, and are proposed to change again under the proposed permanent regulations released for public comment on July 13, 2018. These regulations likely will continue to change as the industry matures. Accordingly, at this time, it may be more straight forward to focus on the land uses the Town wants to allow, rather than trying to base a zoning ordinance on the current version of state licensing rules.

We look forward to discussing this topic at the August 1, 2018 Town Council meeting.

cc: Garrett Toy, Town Manager



#### **Potential Location Criteria for Cannabis Businesses**

The following criteria/finding categories might be used to assist identification of potential areas that might be appropriate for cannabis businesses:

#### Location

The location may only within the following commercial zoning districts:

CC (Central Commercial)

CH (Highway Commercial)

CL (Light Commercial)

The location will not cause spillover effects into nearby residential areas.

The location is conducive to dissuading loitering and other undesirable activities.

The location is adequately separated, either by distance or other physical separator, from areas identified by State regulations as other a school, day care center, or youth center, or from locations known to be popular with minors, and from religious institutions.

#### Circulation

The site (and design within the site) is conducive to efficient flow of traffic. The site and immediate environs can accommodate anticipated business traffic without undue congestion.

Parking is available onsite on in the immediate vicinity adequate to accommodate business traffic.

The site can adequately accommodate delivery-related traffic onsite.

Customers using alternative transportation (including transit, bicycle, and pedestrian) can safely and conveniently access the site.

#### Design

The design of the business is harmonious with its surroundings and minimize visibility.

The size of the business is limited to a specific size (i.e., set a square foot limit).

All business shall be conducted indoors, with the exception of immature plants, which shall be located in an unobtrusive secured area.

Security elements/features consistent with State requirements is unobtrusively incorporated in the overall design.



# Marin Alliance advisory Petition to the Fairfax Town Council THIS IS NOT THE BALLOT INITIATIVE

#### We the below signed, ask the Fairfax Town Council to:

Replace Fairfax's Current Medical Marijuana Regulations to Allow Medical and Adult-Use Retail, Cannabis Consumption Events, Manufacturing, Distribution and Commercial and Non-Commercial Cultivation of Cannabis.

#### **Summary of request**

Replace Fairfax's current medical marijuana dispensary regulations and allow medical and recreational commercial cannabis businesses within the Tow of Fairfax. Replace Fairfax's regulations pertaining to medical marijuana cultivation for personal use.

Authorize one cannabis retailer to sell and deliver medicinal and adult-use cannabis and cannabis products within the Town. It would also authorize an unlimited number of three-day cannabis consumption events, an unspecified number of product manufacturers, an unspecified number of wholesale distributors and an unspecified number of commercial cultivation sites. Cannabis retailers and manufacturers would require conditional use permits to operate, however, the Measure is unclear as to whether cannabis wholesale distributors, cultivation sites or consumption event would require a permit of operate.

Allow commercial manufacturing in all commercial and residential zones, provided the location is 600 feet from a school or "youth-oriented business." Allow commercial outdoor, greenhouses and indoor cultivation sites of 50 plants or less in residential and commercial zones, provided the site is 600 feet from schools. Buffers from schools would be measured by the most direct route around certain natural and constructed barriers, rather than "as the crow flies". Cannabis businesses would be subject to certain standards listed in the Measure. Additional criteria may be imposed, provided such criteria conform to State Licensing requirements.

Revise the Town rules pertaining to marijuana cultivation for personal use. The Measure would repeal the current 18 plant limit and allow qualified patients to cultivate any amount of medical marijuana reasonable to meet individual medical needs. Non-medical marijuana cultivation for personal use by adults would be limited to six plants per person. All personal use cultivation would have to conform to state law and local codes, but not additional Town permission, clearance or registration would be necessary.

Allow small non-commercial compassion gardens, where cannabis is grown and given away freely to critically ill patients, to be granted a special compassion permit without fees. The Measure does not provide standards for granting permits or for allowable locations for such gardens.

Define a Fairfax Cannabis Appellation.

Default to Bureau of Cannabis Control rules on medicinal marijuana cards.

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