




# TOWN OF FAIRFAX

## STAFF REPORT

### November 1, 2017

**TO:** Mayor and Council

**FROM:** Ben Berto, Planning Director 

**SUBJECT:** Adoption of an Urgency Interim Zoning Ordinance Of The Town Council Of The Town Of Fairfax Adopted Pursuant To Government Code Section 65858 Establishing A Moratorium In All Zoning Districts On The Establishment, Creation Or Expansion Of Any And All Commercial Cannabis Uses, With Exceptions, Effective Immediately From And Including November 1, 2017 Through And Including December 16, 2017, Unless Extended By Further Action Of The Town Council *which enacts a temporary moratorium on the establishment, creation, or expansion of all commercial cannabis uses, with some exceptions.* Categorically exempt from CEQA under CEQA guidelines (a) Section 15308, (b) Section 15060(c)(2), and (c) Section 15061

---

#### **RECOMMENDATION**

1. Conduct the public hearing.
2. Adopt An Urgency Interim Zoning Ordinance Of The Town Council Of The Town Of Fairfax Adopted Pursuant To Government Code Section 65858 Establishing A Moratorium In All Zoning Districts On The Establishment, Creation Or Expansion Of Any And All Commercial Cannabis Uses, With Exceptions, Effective Immediately From And Including November 1, 2017 Through And Including December 16, 2017, Unless Extended By Further Action Of The Town Council.

A 4/5 vote is required by the Town Council in order to adopt the ordinance. If adopted, the ordinance will take effect immediately.

#### **BACKGROUND**

Cannabis regulation has changed dramatically in recent years. For example, although still classified at the Federal level as a Schedule 1 drug (alongside heroin), at the State level, 29 States have legalized cannabis for medical purposes, and 8 States, including all west coast States, have legalized adult recreational cannabis use.

Locally, in 1997 Fairfax became the location of the first legal medical cannabis dispensary in the State under the auspices of Proposition 215, California's Compassionate Use Act. The Town subsequently adopted regulations in 2011 that conditionally permitted medical marijuana facilities.

In September 2015, the California Legislature adopted the Medical Cannabis Regulation and Safety Act (MCRSA) in order to clarify and establish a statewide regulatory framework to oversee the medical cannabis-related businesses. MCRSA took effect on January 1, 2016.

On November 8, 2016, California voters approved the Proposition 64 initiative, generally known as the Adult Use of Marijuana Act (or "AUMA"). In Marin, approximately two-thirds of voters supported Proposition 64. In Fairfax, 77 percent voted in favor.

Proposition 64 immediately legalized recreational use of cannabis for persons who are at least 21 years old. As of January 1, 2018, Proposition 64 also allows various commercial uses connected to adult recreation use – cultivation, manufacturing, delivery, and stores/dispensaries, along with new taxes on commercial cultivation and retail sale of recreational cannabis. Those taxes are directed in part on drug research, treatment, enforcement, health and safety grants concerning cannabis, youth programs, and addressing environmental damage from illegal cannabis production. Local jurisdictions will not be eligible to receive certain Proposition 64-funded grants from the Board of State and Community Corrections if they ban the cultivation (including personal outdoor cultivation) and retail sale of cannabis in their community. (Such jurisdictions would not be disqualified on this basis from California Highway Patrol grants to local governments addressing traffic safety issues, or from other Prop. 64 grants.)

Between June and September 2017, additional new State laws were passed that combined and coordinated government oversight and licensing of the State's medical and nonmedical cannabis-related businesses into one master regulatory regime, now called the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The State has set a target date of January 1, 2018 to begin issuing licenses to commercial cannabis businesses. One of the three licensing agencies, the Bureau of Cannabis Control, has announced that it will begin processing temporary licenses in December, 2017 that would be effective for operations on January 1st.

Under MAUCRSA, local governments retain the authority to adopt and enforce local ordinances to regulate cannabis businesses, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of cannabis businesses within the local jurisdiction.

However, if Fairfax does not take action to regulate or temporarily prohibit commercial cannabis business uses, the State could begin issuing licenses to such businesses in Fairfax without local review or input starting January 1, 2018. The range of cannabis uses that could apply to the State for a license under this scenario is provided in the definition of "commercial cannabis uses" included in the proposed moratorium.

## **DISCUSSION**

At its April 2017 meeting, the Council discussed key policy issues regarding local regulation of non-medical marijuana and changes to State law which will require amendments to the Town's medical marijuana regulations.

The Council determined that it wanted to consider additional community input on the issues before providing direction to staff. Specifically, the Town would conduct community on-line forum surveys similar to the ones conducted for medical marijuana cultivation and delivery. In addition, the Council indicated it would like to hold a panel discussion on the issues. This

panel would consist of critics, proponents, and professionals knowledgeable of the issues and would be open to the community.

At the Council's October meeting, staff reported we were unable to conduct the survey and panel discussion in a timely fashion due to limited staff resources and changing priorities. As a result, staff indicated we would return to the Council at its November meeting with an urgency ordinance placing a moratorium on all commercial, non-medical and medical marijuana activities other than what is listed in the Town Code. This moratorium would alleviate the concern that the Town would not have its local regulations in place prior to the state issuing commercial licenses.

#### Purpose & Length of Moratorium

The adoption of this Urgency Ordinance imposes a temporary 45-day moratorium on all commercial cannabis uses, other than what is allowed under existing Town code, in order to retain the full ability to control any such uses in Fairfax. If adopted at this meeting, staff will return to the Town Council in December with a request to extend the temporary moratorium for up to an additional 10 months and fifteen days.

The moratorium would temporarily prohibit any and all commercial cannabis uses (with specified exceptions) from being established, operated, or expanded in Fairfax. This prohibition would include all cannabis uses falling into the five primary State licensing categories: retail (including recreational cannabis delivery), manufacturing, cultivation, distribution, and testing.

As stated above, a 4/5 vote is required by the Town Council in order to adopt the ordinance. If adopted, the ordinance will take effect immediately.

#### Exemptions from Moratorium

Section III of the proposed ordinance lists several cannabis uses to which use prohibitions are not proposed to apply. We believe the exemptions reflect the Council's discussions from its April 2017 meeting. Generally these cannabis uses are already expressly permitted or conditionally permitted in the Town, and are as follows:

- A. This moratorium does not apply to indoor or outdoor cultivation of medical marijuana/cannabis for personal use permitted and regulated by Fairfax Municipal Code, Chapter 17.138, Article III, as may be amended.
- B. The moratorium does not apply to indoor or outdoor cultivation of up to six cannabis plants per private residence for personal use authorized by State law, Health and Safety Code 11362.1 et seq. Persons engaging in indoor or outdoor cultivation must comply with all existing or future adopted state and local laws regarding fire safety, water use, electrical wiring, buildings, and indoor or outdoor cultivation and personal use of cannabis.
- C. This moratorium does not apply to the establishment or operation of a medical marijuana dispensary in full compliance with Chapter 17.110 of the Fairfax Municipal Code and state law.
- D. This moratorium also does not apply to delivery of medical cannabis and cannabis products from medical marijuana dispensaries or medical cannabis retailers, with a premises from which cannabis delivery services are

conducted which is physically located outside of the Town of Fairfax, provided that such delivery services otherwise comply with the Fairfax Municipal Code and do not establish, create, or expand to commercial cannabis uses covered by this moratorium.

A quick survey of Marin jurisdictions indicates that six communities either allow medical cannabis deliveries, or are proposing regulations that would allow such deliveries in the near future.

#### Public Outreach

Fairfax has not yet undertaken systematic public outreach on this issue. Community input will be important in determining what policies and regulations are appropriate. While Proposition 64-related uses have certainly been a topic of conversation since before it became State law, a more systematic approach seems appropriate.

Along these lines, staff will be shortly circulating a web-based public opinion survey on cannabis to Fairfax residents. All interested persons are encouraged to participate in the survey.

Additionally, the Town will be conducting a public workshop on Proposition 64-related cannabis topics and issues sometime in late November - early December. It is anticipated that there will be a panel discussion from experts in fields such as public health, government regulation, the cannabis industry, finance, and policing.

#### Local Regulation Adoption

Developing and adopting permanent cannabis regulations will involve multiple public hearings before the Planning Commission and Town Council. As can be seen from the definition of commercial cannabis uses (above), the subject cannabis regulation is very complex. Local regulations, assuming they do not consist of a blanket ban, will need be able to address that complexity. The local development, review, and adoption process is therefore likely to take several months. We will report back to the Council in December with a schedule.

#### CEQA

This ordinance is categorically exempt from CEQA under: (a) Section 15308 of the State CEQA Guidelines because it is a regulatory action taken by the Town in accordance with CA Gov. Code §65858 to assure maintenance and protection of the environment; (b) Section 15060(c)(2) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and (c) Section 15061 because it can be seen with certainty that there is no possibility that the adoption of the ordinance may have a significant effect on the environment since the ordinance prohibits physical changes for a specified period of time.

#### ATTACHMENT Ordinance

ORDINANCE NO. \_\_\_\_\_

**AN URGENCY INTERIM ZONING ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858 ESTABLISHING A MORATORIUM IN ALL ZONING DISTRICTS ON THE ESTABLISHMENT, CREATION OR EXPANSION OF ANY AND ALL COMMERCIAL CANNABIS USES, WITH EXCEPTIONS, EFFECTIVE IMMEDIATELY FROM AND INCLUDING NOVEMBER 1, 2017 THROUGH AND INCLUDING DECEMBER 16, 2017, UNLESS EXTENDED BY FURTHER ACTION OF THE TOWN COUNCIL**

**WHEREAS**, in 2011, medical marijuana dispensaries, defined by the Fairfax Municipal Code, Section 17.110.020, to mean any medical cannabis dispensing collective, any medical cannabis patient collective or any facility or location where the primary purpose is to dispense medical cannabis (i.e. marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to and/or distributed by or to two or more primary caregivers and/or qualified patients, is conditionally allowed and regulated by Chapter 17.110 of the Fairfax Municipal Code; and

**WHEREAS**, in 2015, the California Legislature enacted the Medical Cannabis Regulation and Safety Act (MCRSA), which for the first time in the State's history adopted comprehensive regulations and licensing for the medical cannabis industry; and

**WHEREAS**, in 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which legalized the non-medical use of marijuana by adults over 21 years of age, and provides for state licensing of adult-use marijuana businesses; and

**WHEREAS**, Senate Bill 94 ("SB 94"), a budget trailer bill made effective on June 27, 2017, repealed the MCRSA, and amended AUMA to consolidate the state licensing scheme applicable to both medical and adult-use commercial cannabis activity under a new law entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA); and

**WHEREAS**, Assembly Bill 133 ("AB 133"), effective on September 16, 2017, further amended various provisions of MAUCRSA, including but not limited to changes to the state licensing requirements and procedures; and

**WHEREAS**, on October 6, 2017, California's three cannabis licensing authorities announced the official withdrawal of the medical cannabis regulations that were proposed in late spring by the Department of Consumer Affairs' Bureau of Cannabis Control, Department of Public Health's Manufactured Cannabis Safety Branch and Department of Food and Agriculture's CalCannabis Cultivation Licensing. The proposed regulations were geared toward the implementation of the now-repealed MCRSA; and

**WHEREAS**, the State's three licensing authorities will use the emergency rulemaking process for new regulations to implement MAUCRSA. The emergency regulations are expected to be published in November, 2017 and the State's implementation date for the issuance of medical and adult-use commercial cannabis licenses remains January 1, 2018; and

**WHEREAS**, the Bureau of Cannabis Control has announced that it plans to begin processing applications for temporary licenses prior to January 1, 2018, likely sometime in December, 2017; and

**WHEREAS**, Town Staff is therefore currently considering, studying and analyzing various medical and non-medical cannabis uses in light of the new State laws, pending State legislation and pending State regulations referenced above, including proposed amendments to the Town's existing zoning regulations to prohibit, permit, or conditionally permit certain medical and/or adult-use commercial cannabis activities; and

**WHEREAS**, the Town has received inquiries from the public related to the establishment of commercial cannabis retail, manufacturing, and testing businesses in the Town, among other commercial cannabis opportunities; and

**WHEREAS**, the unintended and unregulated establishment of new commercial cannabis uses at this time, not already expressly permitted by the Town's Zoning Code, poses a variety of potential known and unknown adverse impacts, such as offensive odors, gases, and other discharges related to commercial-scale cultivation and processing of cannabis products; unsafe or disapproved use of volatile and nonvolatile solvents intended to be regulated by the upcoming emergency State regulations; excess or dangerous waste, water, and electricity usage; and theft or other crime related to the storage and commercial distribution of commercial-scale quantities of cannabis, and traffic impacts from delivery or distribution centers; and

**WHEREAS**, in light of the potential known and unknown adverse impacts of commercial cannabis uses currently unregulated by local law, rapid changes of State law, ongoing development of State Regulations, and Town Staff's ongoing study of zoning proposals related to commercial cannabis uses, the Town Council finds that the current establishment, creation, or expansion of commercial cannabis uses, excepting those uses already established and permitted by the Town's Zoning Code, would create a current and immediate threat to the health, safety, and welfare of the Town, its residents and businesses; and

**WHEREAS**, the Town Council further finds that the establishment or creation of such commercial cannabis uses without appropriate regulation, might conflict with or be inconsistent with surrounding uses and intended zoning requirements, and if allowed to proceed under current zoning, new commercial cannabis uses not already permitted in the Town could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations, consistent with State law, regarding commercial cannabis uses; and

**WHEREAS**, Town Council therefore desires to temporarily prohibit all commercial cannabis uses which are not already permitted by the Town's Zoning Code to provide adequate time to continue studying zoning proposals related to medical and non-medical/adult-use commercial cannabis uses and adopt regulations as necessary; and

**WHEREAS**, California Government Code Section 65858 expressly authorizes the Town Council to adopt by four-fifths (4/5) vote, without following the procedures otherwise required for the adoption of a zoning ordinance, an urgency ordinance which is necessary for the immediate protection of the public health, safety and welfare.

NOW, THEREFORE, the Town Council of the Town of Fairfax does hereby ordain as follows:

**Section 1. Findings, Declaration of Urgency.**

The Town Council of the Town of Fairfax hereby finds and declares that there is a need to enact an urgency interim ordinance establishing a moratorium on the establishment or creation of all commercial cannabis uses in all zoning districts in the Town, subject to the findings and conditions contained in this Ordinance. The Town Council of the Town of Fairfax hereby incorporates the findings set forth in the recitals stated above. The Town makes this declaration of urgency based, in part, on recent inquiries regarding the allowance of cannabis retail businesses in the Town, as well as general inquiries regarding the passage of AUMA/MAUCRSA and the establishment of similar commercial marijuana businesses. Specifically, the Town Council makes the following findings:

- (a) If a moratorium on the establishment or creation of all medical and adult-use commercial cannabis uses in the Town, excluding medical marijuana dispensaries as authorized by the Zoning Code, is not adopted prior to January 1, 2018, and prior to December, 2017 for temporary licenses to be issued by the Bureau of Cannabis Control, there is a risk that the state cannabis licensing authorities may approve medical or adult-use commercial cannabis uses to operate in the Town.
- (b) If commercial cannabis uses are allowed to proceed without appropriate review of location and operational criteria and standards, including the safe and appropriate use of volatile and nonvolatile solvents for processing and refining cannabis products and security measures adequate to protect against theft and crime of commercial-scale quantities of cannabis, such businesses could have deleterious effects on surrounding neighborhoods and businesses that present a clear and immediate danger to the public health, safety and welfare.
- (c) If cannabis retail uses or other commercial cannabis uses are allowed to proceed prior to revising current zoning standards and regulations, it would conflict with, and defeat the purpose and intent of, current zoning requirements and operational rules that apply to and only permit medical marijuana dispensaries.
- (d) The Town Council finds that if establishment or development of medical or non-medical/adult-use commercial cannabis uses, beyond those already established and permitted by the Town's Code, were allowed to proceed while the Town is studying zoning ordinances and regulations for such uses, it would defeat the purpose of studying and considering zoning proposals to regulate and/or prohibit certain medical and adult-use cannabis uses.
- (e) Failure to enact this moratorium may result in significant irreversible changes to neighborhood and community character, and may ultimately conflict with new and pending State law, State Regulations and Town ordinances that the Town may ultimately impose after it has considered and studied this issue, which will be accomplished in a reasonable time.

- (f) There is a current and immediate threat to the public health, safety and welfare of the Town and its community, thereby necessitating the immediate enactment of this moratorium as an urgency ordinance in order to ensure that permits for such commercial cannabis uses are established only under adequate regulations.
- (g) There is a current and immediate threat to the public health, safety, or welfare posed by commercial cannabis uses beyond those exempted in Section 3 below, and the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.
- (h) Based on the foregoing, the Town Council does hereby declare this urgency ordinance is necessary to protect the public health, safety, and welfare while the Town is considering revisions to zoning regulations related to commercial cannabis uses.

**Section 2. Moratorium.**

Except as provided in Section 3 of this Ordinance, the Town Council hereby declares a moratorium on any and all commercial cannabis uses within all zoning districts in the Town. The Town shall not approve or issue land use approvals or permits, including but not limited to zoning amendments, conditional use permits, variances, tentative subdivision or parcel maps, site plan approvals, design review approvals, and building permits or other applicable entitlements for the establishment, creation or operation of commercial cannabis uses, or modification or expansion of existing businesses for commercial cannabis uses, during this moratorium.

**Section 3. Exemptions.**

This moratorium shall not apply to those cannabis uses already expressly permitted or conditionally permitted in the Town. Specifically:

- A. This moratorium does not apply to indoor or outdoor cultivation of medical marijuana/cannabis for personal use permitted and regulated by Fairfax Municipal Code, Chapter 17.138, Article III, as may be amended.
- B. The moratorium does not apply to indoor or outdoor cultivation of up to six cannabis plants per private residence for personal use authorized by State law, Health and Safety Code 11362.1 et seq. Persons engaging in indoor or outdoor cultivation must comply with all existing or future adopted state and local laws regarding fire safety, water use, electrical wiring, buildings, and indoor or outdoor cultivation and personal use of cannabis.
- C. This moratorium does not apply to the establishment or operation of a medical marijuana dispensary in full compliance with Chapter 17.110 of the Fairfax Municipal Code and state law.
- D. This moratorium does not apply to delivery of medical cannabis and cannabis products from medical marijuana dispensaries or medical cannabis retailers, with a premises from



which cannabis delivery services are conducted which is physically located outside of the Town of Fairfax, provided that such delivery services otherwise comply with the Fairfax Municipal Code and do not establish, create, or expand to commercial cannabis uses covered by this moratorium.

- E. This moratorium does not apply to the activities of a qualified patient or a primary caregiver that are exempt from state licensure pursuant to Business and Professions Code, Section 26033.

**Section 4. Definitions.**

For purposes of this Ordinance, the following definitions shall apply.

- (a) “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” also includes marijuana as defined by Section 11018 of the Health and Safety Code. Cannabis also includes “cannabis” as defined in Business and Professions Code, Section 26001. For purposes of this Ordinance, “cannabis” includes both medical and non-medical/adult-use cannabis.
- (b) “Cannabis cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- (c) “Cannabis delivery” means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a cannabis retailer of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
- (d) “Cannabis distribution” means the procurement, sale, and transport of cannabis and cannabis products and any other activity allowed under the state distributor license(s), including, but not limited to, cannabis storage, quality control and collection of state cannabis taxes.
- (e) “Cannabis manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. Cannabis manufacture includes the production, preparation, propagation, or compounding of manufactured 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 medical cannabis or cannabis products or labels or relabels its container.
- (f) “Cannabis products” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis products includes “cannabis products” as defined in Business

and Professions Code, Section 26001. For purposes of this Ordinance, “cannabis” includes both medical and non-medical cannabis products.

- (g) “Cannabis retailer” means a facility where cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale or conducts sales exclusively by delivery (non-storefront retailer). For purposes of this Ordinance, cannabis retailer includes microbusinesses as well as nonprofits licensed pursuant to Business and Professions Code, Section 26070.5.
- (h) “Cannabis testing laboratory” means a facility, entity, or site in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:
  - (1) Accredited by an accrediting body that is independent from all other persons involved in the commercial cannabis activity in the state; and
  - (2) Licensed by the Bureau of Cannabis Control.
- (i) “Commercial cannabis use” includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis use includes “commercial cannabis activity” as defined in Business and Professions Code, Section 26001, and includes any activity that requires a license from a state licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10) as may be amended from time to time. “Commercial cannabis use” does not include possession or cultivation of cannabis for personal use that is not sold and in strict accordance with Health and Safety Code, Section 11362.1 et seq.
- (j) “Medical marijuana dispensary” shall have the meaning set forth in Fairfax Municipal Code, Section 17.110.020.

**Section 5. CEQA Finding.**

The Town Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and establishment of a moratorium on the establishment or creation of commercial cannabis uses within the Town of Fairfax, will have a significant effect on the environment because the Ordinance will maintain current levels of development. It is therefore exempt from any California Environmental Quality Act (CEQA) review pursuant to Sections 15060(c)(2), 15061(b)(3) and 15308 of Title 14 of the California Code of Regulations.

**Section 6. Severability.**

If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

**Section 7. Effective Date.**

This Interim Ordinance shall become effective immediately and shall remain in force and effect from and including November 1, 2017 through and including December 16, 2017, unless extended prior to its expiration by further action of Town Council.

**PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2017, BY THE FOLLOWING VOTE:**

AYES:

NOES:

\_\_\_\_\_  
John Reed, Mayor

ATTEST:

\_\_\_\_\_  
Michele Gardner, Town Clerk