



TOWN OF FAIRFAX

STAFF REPORT

December 6, 2017

TO: Mayor and Council

FROM: Ben Berto, Planning Director *BT*

SUBJECT: Report on Study of Commercial Cannabis Uses and Adoption of an Urgency Interim Zoning Ordinance Extending for 10 Months and 15 Days the Temporary Moratorium on the Establishment, Creation or Expansion of Commercial Cannabis Uses, With Exceptions, Pending the Completion of Studies and the Preparation of an Update to the Town's Municipal and Zoning Codes. Effective from November 1, 2017 through October 31, 2018. CEQA categorically exempt, §§ 15308, 15060(c)(2), and 15061(b)(3)

RECOMMENDATION

1. Receive a report on efforts to study the issue of commercial cannabis uses in the Town; and
2. Conduct the public hearing; and
3. Introduce by title, waive further reading and adopt:

AN URGENCY INTERIM ZONING ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858 EXTENDING FOR A PERIOD OF TEN (10) MONTHS AND FIFTEEN (15) DAYS THE TEMPORARY MORATORIUM IN ALL ZONING DISTRICTS ON THE ESTABLISHMENT, CREATION OR EXPANSION OF ANY AND ALL COMMERCIAL CANNABIS USES, WITH EXCEPTIONS, PENDING THE COMPLETION OF STUDIES AND THE PREPARATION OF AN UPDATE TO THE TOWN'S MUNICIPAL AND ZONING CODES

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

On November 1, 2017, the Town Council adopted Urgency Ordinance No. 809 pursuant to Government Code Section 65858 establishing a forty-five (45) day moratorium on commercial cannabis uses, as defined, pending the completion of studies and the preparation of an update to the Town's municipal and zoning codes. Pursuant to California Government Code Section 65858(d), the Town must provide a written report describing measures taken to alleviate the condition which led to the adoption of the ordinance. This report shall serve in that capacity.

DISCUSSION

If left unregulated, commercial cannabis uses can create problems relating to public health and safety, crime, traffic/parking, water and air quality, and energy consumption. Cannabis uses can potentially create nuisance activity such as loitering as well as criminal activity due to the large quantities of product and/or cash. Cultivation can create air quality, energy, and water quality damage and impair building

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maintenance and safety. For example, inadequate ventilation combined with the use of pesticides and fertilizers in an enclosed space can lead to chemical contamination within structures or create odor problems.

California's three cannabis licensing authorities, the Department of Consumer Affairs' Bureau of Cannabis Control, the Department of Public Health's Manufactured Cannabis Safety Branch and the Department of Food and Agriculture's CalCannabis Cultivation Licensing program issued a notice of new draft regulations to implement MAUCRSA under the emergency rule making process on November 16, 2017. The notice published on November 16th serves as notice that within at least five working days the agencies intend to submit the proposed emergency regulations to the Office of Administrative Law (OAL). Once submitted to OAL, interested persons will have five calendar days to submit comments to OAL. Thereafter, OAL will have 10 calendar days to review and make a decision on adoption.

Town staff, in addition to the Town Attorney's office, are continuing to study the potential effects of various commercial uses in the Town as well as the pending state regulations that may address those potential effects.

Previously, the Council directed staff to put together a panel discussion/workshop and on-line forum surveys to gather community input on the issues. The on-line survey was posted on the Town website on November 20, 2017. The deadline to complete the survey is January 2, 2018. Staff has also scheduled a panel discussion on commercial cannabis scheduled for December 11, 2017 at 6:30pm in the Women's Club. We anticipate beginning discussions of an ordinance with the Planning Commission in the first quarter of 2018, with Council consideration of the ordinance in spring 2018.

While the Town continues its study of these issues, Town staff believes it is critical that the moratorium be extended in accordance with Government Code Section 65858. The ordinance is currently set to expire on December 15, 2017. Staff recommends extending the ordinance for 10 months and 15 days.

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.

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 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 maintains current levels of development.

ATTACHMENT

A. Proposed Ordinance

ORDINANCE NO. _____

AN URGENCY INTERIM ZONING ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858 EXTENDING FOR A PERIOD OF TEN (10) MONTHS AND FIFTEEN (15) DAYS THE TEMPORARY MORATORIUM IN ALL ZONING DISTRICTS ON THE ESTABLISHMENT, CREATION OR EXPANSION OF ANY AND ALL COMMERCIAL CANNABIS USES, WITH EXCEPTIONS, PENDING THE COMPLETION OF STUDIES AND THE PREPARATION OF AN UPDATE TO THE TOWN'S MUNICIPAL AND ZONING CODES

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, on November 16, 2017, the State's three licensing authorities issued a notice of new draft regulations to implement MAUCRSA under the emergency rule making process. The notice published on November 16th serves as notice that within at least five working days the agencies intend to submit the proposed emergency regulations to the Office of Administrative Law (OAL). Once submitted to OAL, interested persons will have five calendar days to submit comments to OAL. Thereafter, OAL will have 10 calendar days to review and make a decision on adoption; and

WHEREAS, the State's implementation date for the issuance of medical and adult-use commercial cannabis licenses remains January 1, 2018, and 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 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 pending 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, 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; and

WHEREAS, on November 1, 2017 the Town Council adopted Urgency Ordinance No. 809 pursuant to Government Code Section 65858 establishing a forty-five (45) day moratorium on commercial cannabis uses, as defined, in the Town pending the completion of studies and the preparation of an update to the Town's municipal and zoning codes; and

WHEREAS, Town staff and the Town Attorney's office are continuing to conduct research into the possible and likely impacts of allowing, regulating and/or prohibiting commercial cannabis uses in the Town in order to mitigate such impacts; and

WHEREAS, Town staff is continuing to gather factual data regarding the impacts experienced by other jurisdictions that permit commercial cannabis uses and the desires and consensus of the community; and

WHEREAS, as a result, the Town Council desires to extend the moratorium for a period of ten (10) months and fifteen (15) days to allow staff and the Town Council the opportunity to continue research and select the best course of action for the Town's citizens and the community at large; and

WHEREAS, the Town Council has determined that the circumstances and conditions that led to the adoption of Urgency Ordinance No. 809, which are set in the recitals and findings of Urgency Ordinance No. 809 have not been alleviated as of the date of this Ordinance and continue to create the concerns described in Urgency Ordinance No. 809; and

WHEREAS, it is the present intention of the Town Council to keep this Urgency Ordinance in effect only until the adoption of appropriate ordinance(s) establishing regulations regarding commercial cannabis uses in the Town.

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 extending the 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 and in place as of 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 extend this moratorium may result in significant irreversible changes to neighborhood and community character, and may conflict with the 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 ordinance extending the moratorium 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 and extends for ten (10) months and fifteen (15) days the moratorium adopted by Ordinance No. 809 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 extension of the 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.

PASSED AND ADOPTED THIS 6TH DAY OF DECEMBER 2017, BY THE FOLLOWING VOTE:

AYES:

NOES:

Mayor

ATTEST:

Michele Gardner, Town Clerk