

**TOWN OF FAIRFAX  
STAFF REPORT**

**To:** Planning Commission

**From:** Garrett Toy, Town Manager  
Amanda Charne, Assistant Town Attorney

**Date:** October 18, 2018

**Subject:** Consideration of an Ordinance of the Town Council of the Town of Fairfax to Permit Certain Medical Marijuana Dispensaries to Conduct Adult-Use Cannabis Deliveries and Making CEQA Findings of Exemption Pursuant to CEQA Guidelines Sections 15061(B)(3), 15183 and 15301.

**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. On December 6, 2017, the Town Council adopted Urgency Ordinance No. 812 extending the temporary moratorium for 10 months and 15 days until October 31, 2018.

On October 3, 2018, the Town Council adopted Urgency Ordinance No.820 to extend the temporary moratorium for one additional year to enable the Town Planning Commission to complete its study of commercial cannabis uses. Unless action is taken to repeal it earlier, the moratorium will expire on October 31, 2019. Government Code Section 65858 limits the duration of a temporary interim zoning ordinance to two years total, so there are no further extensions of the moratorium available.

During the Town Council's consideration of the moratorium extension on October 3, 2018, the Council also directed Town Staff to prepare an ordinance to permit certain existing medical marijuana dispensaries to conduct adult-use cannabis deliveries during the moratorium period.

**DISCUSSION**

The attached ordinance is intended to allow any medical marijuana dispensary in any commercial district, that was operating legally as of April 3, 2018 and was permitted to operate a medical marijuana delivery service, to operate as a permitted use, an adult-use cannabis delivery service from its existing premises, as long as any such business applies for and is granted a cannabis delivery permit.

The proposed ordinance has the following key requirements:

- A. The dispensary shall, prior to conducting any adult-use cannabis deliveries, obtain and maintain at all times:
  1. A valid state cannabis license authorizing adult-use cannabis deliveries.
  2. A Town issued commercial cannabis business permit.
- B. No adult-use cannabis retail sales shall be permitted at the premises of any such medical marijuana dispensary.
- C. All cannabis deliveries must conform to State laws and regulations.
- D. No adult-use customers shall be permitted to access or remain in the premises of a medical marijuana dispensary.
- E. Allows adult-use cannabis deliveries within the State buffer zone.
- F. The moratorium remains in place for all other uses.

No conditional use permit (CUP) or use permit amendment would be required for an existing medical marijuana dispensary to conduct recreational cannabis delivery services.

With regard to the above mentioned requirement for a commercial cannabis business permit, staff will be proposing to the Town Council cannabis delivery permit requirements for medical marijuana dispensaries engaging in adult-use cannabis deliveries. This will be established by ordinance in Chapter 5 ("Business taxes, Licenses, and Regulations) of the Town's Municipal Code. At this time, we envision the proposed ordinance will allow the Town Council to establish the application requirements and terms of the permit by resolution.

Although not legally required, the Planning Commission may provide general comments or recommendations to staff in drafting the proposed cannabis delivery permit requirements. The key policy issues would include the following:

- A. The dispensary must apply for a Town issued permit allowing adult-use cannabis delivery service.
- B. The Town Manager would be authorized to approve the application and issue an adult use cannabis delivery-only permit pursuant to guidelines adopted by the Town Council.
- C. Requiring the adult-use cannabis delivery service to operate out of the same commercial space as the existing medical marijuana dispensary.
- D. Establishing restrictions for on-premise signage similar to those in place for medical marijuana dispensaries.
- E. No business identification signage on vehicles.
- F. Compliance with all State regulations governing adult-use cannabis delivery.
- G. Establishing application submittal requirements and review/approval process.
- H. Establishing/imposing application/permit fees.
- I. No transferability of the permit.
- J. Establishing an annual renewal process.

**RECOMMENDATION**

Staff recommends the Planning Commission adopt Resolution No. 2018-17 recommending the Town Council adopt Ordinance No. 18-XX.

**FISCAL IMPACTS**

None at this time.

**ATTACHMENTS**

Attachment A – Resolution No. 2018-17  
Attachment B – Proposed Ordinance  
Attachment C – citizen correspondence



RESOLUTION NO. 2018-17

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX  
RECOMMENDING THE TOWN COUNCIL ADOPT ORDINANCE NO. \_\_\_\_ ENTITLED “AN  
ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX TO PERMIT CERTAIN  
MEDICAL MARIJUANA DISPENSARIES TO CONDUCT ADULT-USE CANNABIS  
DELIVERIES AND MAKING CEQA FINDINGS OF EXEMPTION PURSUANT TO CEQA  
GUIDELINES SECTIONS 15061(b)(3), 15183 AND 15301”**

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

**WHEREAS**, Senate Bill 94 (“SB 94”) amended AUMA to consolidate the State licensing laws 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**, MAUCRSA specifically provides that local jurisdictions may adopt and enforce local ordinances that regulate licensed cannabis businesses, including, but not limited to, local zoning and land use requirements, business license requirements, or to completely prohibit the establishment or operation of one or more types of businesses licensed under MAUCRSA within the local jurisdiction (Business and Professions Code, § 26200); and

**WHEREAS**, the Town Council of the Town of Fairfax has expressed its desire to permit certain existing medical marijuana dispensaries to conduct adult-use cannabis deliveries while comprehensive local commercial cannabis regulations are developed and adopted, and has directed staff to prepare ordinances providing for the conduct of such adult-use cannabis deliveries for consideration by this body and by the Council; and

**WHEREAS**, staff has prepared such an ordinance, a true and correct copy of which is attached hereto as **Attachment 1** (the “proposed Ordinance”), which, if adopted, will amend the Town’s zoning ordinance, found at Title 17 of the Town Code; and

**WHEREAS**, in accordance with the State Planning and Zoning Law, the Planning Commission is tasked with considering whether any proposed amendment to the Town’s zoning ordinance would be in conformance with the terms of the Town’s general plan, and the Planning Commission has determined that the proposed Ordinance would, in fact, conform to the Town’s General Plan on the basis of the following:

- The proposed Ordinance permits certain existing medical marijuana dispensaries that currently conduct medical marijuana/cannabis delivery services to also conduct adult-use cannabis delivery services. By addressing existing business, this Ordinance is consistent with Fairfax General Plan Land Use Element Goal LU-5 to “manage future growth while preserving the area’s natural resources” and with Policy LU-5.1.1, which provides that “[n]ew and renewed development shall occur primarily as infill development;” and
- By promoting local existing businesses, the proposed Ordinance is also consistent with Fairfax General Plan Conservation Element, Program CON-1.3.1.4: Educate

citizens on primary means to reduce GHG emissions, such as transportation choices and supporting the local economy, including locally-grown foods and local businesses, to reduce GHG emissions; and

- The proposed Ordinance permits certain existing medical marijuana dispensaries that currently conduct medical marijuana deliveries to expand delivery services to adult-use cannabis customers. This is consistent with Fairfax General Plan Circulation Element Goal C-6, which seeks to “promote less reliance on single-occupant vehicles” because private delivery services can potentially reduce the need for “errand-running” trips, thereby potentially reducing traffic congestion (General Plan, p. C-3); and

**WHEREAS**, the adoption of the proposed ordinance is exempt from the California Environmental Quality Act (codified at California Public Resources Code §§ 21000, *et seq.*, and 14 California Code of Regulations §§ 15000, *et seq.*, collectively, “CEQA”) under the Class 1 exemption (14 CCR § 15301) because it would permit certain existing medical marijuana dispensaries that currently conduct medical cannabis deliveries to conduct adult-use cannabis deliveries, therefore this project involves negligible or no expansion of use. Additionally, this Ordinance is categorically exempt from environmental review under State CEQA Guidelines Section 15183 as a project consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, and under the general rule that the project will not result in any significant changes to the environment within the meaning of State CEQA Guidelines, Section 15061(b)(3); and

**WHEREAS**, the Planning Commission has conducted a duly-noticed public hearing to consider the draft ordinance, hear the presentation of a staff report, and receive public comment on the matter.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Commission of the Town of Fairfax as follows:

**SECTION 1.** The recitals set forth above are adopted as further findings of the Planning Commission.

**SECTION 2.** The Planning Commission has reviewed the draft ordinance attached hereto as **Attachment 1** and finds that it is consistent with the Town General Plan, as set forth above.

**SECTION 3.** The Planning Commission hereby recommends that the Town Council adopt **Attachment 1** hereto in order to amend Title 17 of the Fairfax Town Code to adopt regulations to permit certain medical marijuana dispensaries to conduct adult-use cannabis deliveries.

The forgoing Resolution was duly passed and adopted at a regular meeting of the Planning Commission of the Town of Fairfax held in said Town on the 18th day of October 2018 by the following vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Mimi Newton, Chair

Attest:

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Ben Berto, Secretary





ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX  
TO PERMIT CERTAIN MEDICAL MARIJUANA DISPENSARIES TO CONDUCT  
ADULT-USE CANNABIS DELIVERIES AND MAKING CEQA FINDINGS OF  
EXEMPTION PURSUANT TO CEQA GUIDELINES SECTIONS 15061(b)(3), 15183  
AND 15301**

**WHEREAS**, the Town of Fairfax, California (the “Town”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

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

**WHEREAS**, Senate Bill 94 (“SB 94”) amended AUMA to consolidate the State licensing laws 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**, MAUCRSA recognizes, preserves and does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that regulate licensed cannabis businesses, including, but not limited to, local zoning and land use requirements, business license requirements, or to completely prohibit the establishment or operation of one or more types of businesses licensed under MAUCRSA within the local jurisdiction (Business and Professions Code, § 26200); and

**WHEREAS**, MAUCRSA prohibits the location of a commercial cannabis business premises within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius (Business and Professions Code, § 26054); and

**WHEREAS**, on November 1, 2017 the Town Council adopted, and later extended for one year, a temporary moratorium on commercial cannabis uses, as defined, pending the completion of studies and the preparation of a comprehensive update to the Town’s municipal and zoning codes to regulate commercial cannabis activities; and

**WHEREAS**, during the period of December, 2017 to September, 2018, the Town has held numerous policy discussions and public study sessions pertaining to commercial cannabis uses within the Town of Fairfax and gained significant community input and factual information; and

**WHEREAS**, at a special meeting on August 15, 2018, the Town Council referred the matter to the Town Planning Commission for additional input and policy consideration, particularly on the issues relating to commercial medical and adult use retail uses; and

**WHEREAS**, on October 3, 2018, the Town Council adopted a final, one-year extension of the moratorium on commercial cannabis uses to enable the Town Planning Commission to complete its study of commercial cannabis uses and also directed Town Staff to prepare an ordinance to permit certain existing medical marijuana dispensaries to conduct adult-use cannabis deliveries; and

**WHEREAS**, the goals of this Ordinance are to promote the local economy for existing business while comprehensive local commercial cannabis regulations are developed and adopted, and to test the potential primary and secondary impacts of recreational cannabis deliveries within the Town, if any; and

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

**SECTION 1.** Section 17.110.230, entitled “Adult-Use Cannabis Deliveries by Certain Existing Medical Marijuana Dispensaries” is hereby added to Chapter 17.110 of the Fairfax Municipal Code which shall read as follows:

**“§ 17.10.230 ADULT-USE CANNABIS DELIVERIES BY CERTAIN EXISTING MEDICAL MARIJUANA DISPENSARIES.**

- A. A medical marijuana dispensary that was legally operating as of April 3, 2018 and is permitted to operate a medical marijuana delivery service, may operate as a permitted use in any commercial district, an adult-use cannabis delivery service from its existing premises, subject to each of the following conditions:
  - 1. The dispensary shall, prior to conducting any adult-use cannabis deliveries, obtain and maintain at all times:
    - (a) A valid state cannabis license authorizing adult-use cannabis deliveries issued by the appropriate state licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (California Business and Professions Code, Division 10);
    - (b) A commercial cannabis business permit pursuant to Title 5, Division II, Chapter 5.56 of this Code; and
    - (c) Any other state and local licenses or permits required by this Code or state law.
  - 2. All cannabis deliveries must conform to State laws and regulations adopted pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act.
  - 3. No adult-use customers shall be permitted to access or remain in the premises of a medical marijuana dispensary.
- B. No adult-use cannabis retail sales shall be permitted to occur at the premises of a medical marijuana dispensary. Pursuant to California Business and Professions Code Section 26054(b), as may be amended, the Town finds that no setback or radius is necessary for

the conduct of adult-use cannabis deliveries by an eligible, existing medical marijuana dispensary pursuant to this section, beyond the zoning regulations contained herein.

- C. This Section is not intended to give any person or entity independent legal authority to operate an adult-use cannabis non-storefront retail delivery service, it is intended only to clarify the zoning restrictions regarding certain existing medical marijuana dispensaries that may conduct adult-use cannabis deliveries in the Town pursuant to this Code and state law. This Section is in addition to any other business license and regulatory requirements imposed on medical marijuana dispensaries and non-storefront retail cannabis delivery services by this Code or other applicable state law.

**SECTION 2. Moratorium On Commercial Cannabis Uses.** Except as amended by this Ordinance regarding adult-use cannabis deliveries by certain existing medical marijuana dispensaries, all other provisions of Urgency Ordinance No. 809, as extended by Town Council by Ordinance No. 812 and No. 820, remain in effect, and nothing contained herein shall be construed to otherwise repeal the existing moratorium on the establishment, creation or expansion of any and all commercial cannabis uses.

**SECTION 3.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 4.** The Town Council hereby determines that this Ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21000 et seq.) pursuant to State CEQA Guidelines Sections 15061(b)(3), 15183 and 15301, each as separate and independent bases. This Ordinance qualifies for the Class 1 exemption because it would permit certain existing medical marijuana dispensaries that currently conduct medical cannabis delivery services to conduct adult-use cannabis delivery services, therefore this project involves negligible or no expansion of use (14 CCR §15301). Additionally, this Ordinance is categorically exempt from environmental review under State CEQA Guidelines, Section 15183 as a project consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, and under the general rule that the project will not result in any significant changes to the environment within the meaning of State CEQA Guidelines, Section 15061(b)(3). The Town Council hereby directs the Town Manager or his/her designee to prepare and file a Notice of Exemption within five business days following adoption of this Ordinance.

**SECTION 5.** This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

**SECTION 6.** Filing. The City Clerk shall submit a copy of this ordinance to the Bureau of Cannabis Control as provided by Business and Professions Code, Section 26055.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the \_\_th day of November, 2018, and duly adopted at the next regular meeting of the Town Council on the \_\_ day of December, 2018, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:

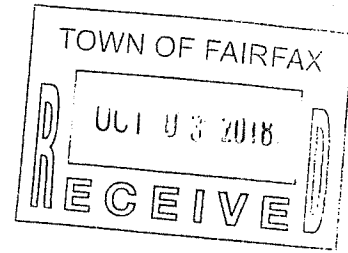
\_\_\_\_\_  
Peter Lacques, Mayor

Attest:

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

\_\_\_\_\_  
Date

To the Members of the Fairfax Town Council  
And The Members of the Planning Commission



From Alice Ducayet, 30 Claus Circle  
October 3, 2018

The Planning Commission did a thoughtful job of pursuing many issues around sale of marijuana in town.

However, owing to the seductive quandary of saving a business that is becoming obsolete (The Alliance), all members ended up proceeding as if there will be retail sales of marijuana in Fairfax, which skews the argument away from the very popular option of NO RETAIL SALES.

We voted to decriminalize, not to provide it. I have heard the members use this vote as indication that the public in general wants to sell marijuana in town.

Please continue to consider a policy of no retail sales in town.

Respectfully,

Alice Ducayet