

## **TOWN OF FAIRFAX**

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**DATE:** September 20, 2018

**TO:** Planning Commission

**FROM:** Garrett Toy, Town Manager  
Ben Berto, Planning Director

**SUBJECT:** Commercial Cannabis Regulations

### **RECOMMENDATION**

Discuss/consider local cannabis regulatory policy options, provide direction to staff, and continue the item to the October Planning Commission meeting.

### **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 Town time to be able to determine what types of commercial cannabis businesses and associated regulations are desired for Fairfax.

In December 2017, the Town sponsored a panel discussion on cannabis, consisting of five experts representing the commercial cannabis industry, government cannabis regulators, and health experts. The Town also completed an on-line survey of cannabis issues (see attached survey results).

At its March 7<sup>th</sup> 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 30<sup>th</sup> 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 18<sup>th</sup> meeting, the Council received more public comment and discussed general policy issues regarding cannabis. For each general policy issue, staff presented the key "policy

considerations” for the Council. The objective was to obtain Council direction on each “policy consideration” and narrow the discussion, and this approach appeared helpful in doing so.

At its August 1<sup>st</sup> meeting, the Council confirmed and clarified its previous positions on several issues as well as received more public comment. The Council continued the discussion to a special August 15<sup>th</sup> Council meeting.

At the August 15<sup>th</sup>, the Council completed its policy discussions and forwarded the matter to the Planning Commission to begin the process of developing cannabis regulations.

For background, the August 15<sup>th</sup> Council meeting staff report is attached to this report.

## **DISCUSSION**

The following summarizes the Council direction, from its August 15<sup>th</sup> meeting, to the Planning Commission on the following policy issues:

1. Eliminated categories of uses
2. Eliminating temporary cannabis events
3. Commercial medical retailers
4. Personal/medical cultivation limits
5. Cannabis Deliveries (outside retailers)
6. Non-medical cannabis retailers and the number of retailers
7. Buffer zones/locations
8. Standards
9. Permit process
10. Existing medical marijuana dispensary
11. Tax revenues

To the extent possible, the following is noted:

- a) if Council consensus/majority (e.g., 5-0, 4-1) was reached on an issue,
- b) if the Council majority was leaning a particular way, but no decision rendered,
- c) if the Council established general parameters for the PC to consider in its discussion on specific policy issues, and
- d) if no general parameters were established, the range of options discussed by the Council

For this first meeting, a general topical overview and policy discussion is proposed, with requests for additional information directed to staff. At the next PC meeting, staff would return with information and answers to questions, for further policy discussion. As noted above, Amanda Charne, Deputy Town Attorney will attend the Commission’s October meeting.

Below is the Town Council’s direction on the following key cannabis policy issues

1) Eliminated Categories of Use (5-0)

The Council eliminated the following uses from further consideration.

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

2) Eliminate Cannabis Temporary Events Category of Use (4-1)

3) Continue to allow commercial medical cannabis dispensaries/retailers (5-0)

4) Allow up to 6 cannabis plants to be cultivated for personal use, whether for medical or non-medical purposes, and whether grown indoors and/or outdoors. The total number of plants would not to exceed 6 plants per property (5-0)

The Council acknowledged that the existing regulations for medical marijuana cultivation, which currently allows cultivation of up to 18 plants per property, will need to be revised. Staff recommended that the PC discuss the specific details such as plant definition, outdoor restrictions, and how to treat parcels that have multiple residential units (e.g., apartments).

5) Allow cannabis deliveries in Town, including from retailers outside Town limits (5-0)

The Commission could either develop local standards or adopt state standards. Existing Town Code for medical marijuana (see attached) does not have delivery standards. Delivery standards for the existing medical marijuana dispensary (Marin Alliance for Medical Marijuana) were adopted as part of the conditions of approval for its dispensary permit.

6) Allow some form of non-medical cannabis retail and limit the number of retail uses (5-0)

The Council supported some form of non-medical cannabis retail use and limiting the number of storefront retailers and delivery-only businesses. As clarification, storefront adult-use retail means any adult (over 21 years of age) can go into the store and purchase cannabis. A delivery-only business could not make sales in the store, instead would only make deliveries. According to the Bureau of Cannabis Control (BCC), no customers can enter the premises of delivery-only businesses.

The Council did not take a formal position on this topic, but discussed the following options:

- No retail storefronts but allow for delivery-only.
- Allow 1 medical marijuana operation with ability to apply for adult-use
- Up to 2-3 retail storefronts whether medical and/or non-medical
- Up to 2-3 retail delivery-only businesses whether non-medical and/or medical (separate from limit for retail storefronts)

- Allow for a slow measured approach which would phase-in the number of uses

At present, Fairfax Municipal Code, Chapter 17.110 (see attached), allows up to three medical cannabis dispensaries to operate in certain commercial zones with a two-year dispensary permit. The Council indicated any numerical limit in the number of businesses should include both medical and non-medical uses and should “count” the existing marijuana dispensary toward the maximum limits. The majority of the Council supported considering allowing combination retail businesses (i.e., that would sell both medical and non-medical cannabis).

Factors the Council considered in establishing a limit included: encouraging competition and avoid an oversaturation of similar businesses. The Commission’s recommendation on this issue is requested.

The specific types and limitations on retail business could be influenced by other policy issues such as the following:

7) Where to allow cannabis uses? (Buffer zones/locations)

At its July 18<sup>th</sup> meeting the Council requested the creation of a map, without the State buffer zones, which identifies the potential commercial areas for cannabis uses and identifies schools, day care, parks, and youth centers near the commercial areas (see attached). The Council wanted to see if there were commercial locations that might be more appropriate for certain cannabis uses than what is allowed using the State’s default 600-foot buffer setback distance from a school, day care, or youth center.

At the August 15<sup>th</sup> meeting, the Council did not specifically discuss this issue other than to review the map of the commercial area. Some Councilmembers indicated they would consider reduced buffer zones for certain cannabis uses such as delivery-only, but would want the buffer zone to apply to storefront operations.

Staff clarified that the proposed BCC permanent regulations allows communities to permit commercial cannabis uses within the State’s 600-foot buffer setback area. Technically, the Town would not be modifying the State buffer distance, but rather permitting certain cannabis uses within the buffer area, subject to local regulations.

The Commission is tasked with determining the preferred locations for the approved cannabis uses. The key policy issue is: Should the Town allow certain commercial cannabis uses (such as delivery-only) to be located within the State 600-foot buffer setback area? If so, which uses, and on what basis?

To facilitate the Commission’s discussion, staff has attached the list entitled “Potential Location Criteria for Cannabis Businesses” that was provided to the Council.

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. It is noted that the buffer area maps attached to this report do not show Deer Park Villa, which is zoned CL.

8) Modify the existing standards for medical dispensaries to apply to non-medical uses

The Council indicated it would prefer to use the Town's existing cannabis regulations for medical dispensaries, to the extent possible, as the basis for regulating non-medical cannabis retailers. Presumably, some modifications would be required to make it consistent with current State law. If desired, provisions would need to be added to allow delivery businesses (with requirements), as well as other minor revisions. One base assumption is that any commercial cannabis uses would only be allowed in commercially zoned areas.

9) Require a Use Permit for all commercial cannabis uses

The Council stated it wanted to require use permits for the allowed uses. Use permits are discretionary approvals currently granted by the Commission based on four findings. The Council also suggested considering a "pre-application" process to ensure applications for use permits meet minimum standards. Some Councilmembers did not want a competition for applications.

Key considerations include:

- Would the Town be better served approving a marijuana license that is business specific and expires if the business closes or is sold? Under State law and legal precedent, use permits run with the property (land), not with a particular business owner. If a business is sold, the new owner can operate under the existing use permit.
- The existing Town code for medical marijuana dispensaries requires the Planning Commission approve a dispensary permit which has different criteria from a standard use permit. A dispensary permit also requires renewal every two years.
- The regulations will need to set forth review criteria. As stated above, it may be possible to use as a basis and modify the existing regulations for medical marijuana dispensaries, to apply to non-medical retail uses.
- The Commission will need to evaluate whether or not to use a "pre-application" process. Factors that could be considered in whether to apply this process include:
  - Should an interested party need to have a lease (or a letter of intent to lease) for a location in order to pre-apply?
  - What is the objective of a pre-application process?
  - Would a successful pre-applicant be allowed to simply apply for a business license or some other non-discretionary permit?

- What application criteria should be applied? We could consider the criteria used by San Rafael to evaluate their applications. Perhaps the State's (BCC and other state bureau's) application requirements can be used?
- Should there be an initial deadline for pre-applications? Presumably, those applications meeting the threshold would be allowed to apply for a use permit or license.
- Should the application and approval process simply be first come, first serve?

10) Allow Existing Medical Marijuana Dispensary (Marin Alliance for Medical Marijuana) to have a non-medical cannabis retail component.

While no consensus was taken, the Council appeared supportive of the concept of allowing the existing Marin Alliance for Medical Marijuana (MAMM) to have some type of retail component for non-medical marijuana. MAMM has a use permit to operate a medical marijuana dispensary that predates the Town Code regarding medical marijuana dispensaries.

However, as noted above, retail uses are not allowed in the CL zone, so a zoning ordinance amendment will be required. Note that zoning regulations must be uniform for each class or kind of use of land throughout each zone. However, the regulations in one type of zone may differ from those in other types of zones.

The key policies for PC consideration:

- What type of non-medical uses, if any, should be allowed for MAMM: storefront or delivery-only?
- Currently, MAMM is within the State's 600-foot buffer setback area for youth uses. To allow a non-medical retail use in the same location would require provisions in the Town code to allow such uses in the State buffer setback. Otherwise MAMM would be required to move if it wanted both medical and non-medical retail uses.
- Should MAMM be required to apply to modify its existing use permit or apply for a permit/license per the application process discussed above?
- Should MAMM'S existing business and approval of a new or modified use or other permit or license apply toward any overall limits for such uses?

11) Tax Revenues

The Council deferred this discussion until there is an ordinance prepared for the Council's consideration.

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 previously recommended that 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. Staff therefore recommends that the Commission not hold any taxation or revenue-related discussions at this time.

## **NEXT STEPS**

At the next Commission meeting, staff will return with requested information and responses to questions. Amanda Charne, Deputy Town Attorney, will attend the Commission's October meeting to help provide information and answer questions.

Once the PC 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.

## **ATTACHMENTS:**

- A. Zoning Ordinance Chapter 17.110 Medical Marijuana Dispensaries
- B. Zoning Ordinance Chapter 17.138 Article III Medical Marijuana Cultivation
- C. January 16, 2018 Council staff report on Fairfax Online Cannabis Survey
- D. August 15, 2018 Council staff report
- E. Map of Fairfax commercial cannabis businesses with State-mandated buffer area.
- F. Map of Fairfax commercial districts without State buffer
- G. Potential locational criteria for cannabis businesses





## CHAPTER 17.110: MEDICAL MARIJUANA DISPENSARIES

### Section

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17.110.180	Separate offense for each day
17.110.190	Hold harmless
17.110.200	Public nuisance
17.110.210	Severability
17.110.220	Judicial review

### (B) *Interpretation and applicability.*

(1) No part of this chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. 800 *et seq.*, or to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The distribution of medical cannabis in the Town of Fairfax is controlled by the provisions of this chapter of the Fairfax Town Code.

(2) Nothing in this chapter is intended, nor shall it be construed, to limit the provisions of Chapter 9.16 of the Fairfax Town Code, or to limit the right to use or possess marijuana for medical purposes, or to limit any defense to criminal prosecution otherwise afforded by California law.

(3) Provided compliance is maintained with this chapter, nothing in this chapter is intended, nor shall it be construed, to preclude a landlord from limiting cannabis cultivation, smoking or other related activities by tenants otherwise permitted by law.

(4) Nothing in this chapter is intended, nor shall it be construed, to exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.

(5) Nothing in this chapter is intended, nor shall it be construed, to make legal any cultivation, transportation, sale, or other use of cannabis that is otherwise prohibited under California law.

### § 17.110.010 PURPOSE AND INTENT.

(A) It is the purpose and intent of this chapter to regulate medical marijuana (cannabis) dispensaries in order to promote the health, safety, morals, and general welfare of residents and businesses within the town.

(6) All sale and distribution of medical cannabis within town limits shall be subject to the provisions of this chapter, regardless if the processing or distribution existed or occurred prior to adoption of this chapter.

(Ord. 759, passed 6-1-2011)

#### § 17.110.020 DEFINITIONS.

For the purpose of this chapter, the following words and phrases shall apply.

**ACCESSORY BUILDING.** Shall have the same meaning as set forth in Town Code § 17.08.020.

**APPLICANT.** A person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

#### **DISPENSARY.**

(1) 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 of the following: a primary caregiver and/or a qualified patient, in strict accordance with Cal. Health and Safety Code §§ 11362.5 *et seq.*

(2) A **DISPENSARY** shall not include dispensing by primary caregivers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Cal. Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Cal. Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Cal. Health and

Safety Code, residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Cal. Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Cal. Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Cal. Health and Safety Code §§ 11362.5 *et seq.*, or a qualified patient's or caregiver's place of residence.

**IDENTIFICATION CARD.** Shall have the same definition as Cal. Health and Safety Code § 11362.7, and as may be amended.

**MEDICAL CANNABIS DISPENSING COLLECTIVE.** Shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, retail distribution of medical cannabis.

**MEDICAL CANNABIS PATIENT COLLECTIVE.** Shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, but not retail, distribution of medical cannabis.

**PERMITTEE.** The person:

(1) To whom a dispensary permit is issued, and

(2) Who is identified in Cal. Health and Safety Code § 11362.7, subdivision (c), (d), (e) or (f).

**PERSON.** Any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

**PERSON WITH AN IDENTIFICATION CARD.**

Shall have the same definition as set forth in Cal. Health and Safety Code §§ 11362.5 *et seq.*, and as it may be amended from time to time.

**PHYSICIAN.** Shall include licensed medical doctors (M.D.) and doctors of osteopathic medicine (D.O.) as defined in the Cal. Bus. and Prof. Code.

**PRIMARY CAREGIVER.** Shall have the same definition as set forth in Cal. Health and Safety Code § 11362.7, and as it may be amended from time to time.

**QUALIFIED PATIENT.** Shall have the same definition as set forth in Cal. Health and Safety Code §§ 11362.7 *et seq.*, and as it may be amended from time to time.

**SCHOOL.** Any public or private school providing instruction in kindergarten or grades one to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

**TOWN.** The Town of Fairfax.

**TOWN MANAGER.** The Town Manager of the Town of Fairfax or the authorized representative thereof.  
(Ord. 759, passed 6-1-2011)

**§ 17.110.030 DISPENSARY PERMIT REQUIRED TO OPERATE.**

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the town the operation of a dispensary unless the person first obtains and continues to maintain in full force and effect a dispensary use permit from the town as required in this chapter.  
(Ord. 759, passed 6-1-2011)

**§ 17.110.040 TERM OF PERMITS AND RENEWALS REQUIRED.**

(A) A use permit issued under this chapter shall expire two years following the date of its issuance.

(B) A use permit may be renewed by the Director of Planning for additional two-year periods upon application by the permittee, unless the permit is suspended or revoked in accordance with the provisions of this chapter.

(C) Applications for renewal shall be made at least 45 days before the expiration date of the permit and shall be accompanied by a nonrefundable application fee as specified in § 17.110.060. Applications for renewal shall be acted upon in the same manner provided herein for applications for permits.

(D) Applications for renewal made less than 45 days before the expiration date shall not stay the expiration date of the permit.

(E) Permits may be revoked or suspended by the town, as provided in this chapter and the Town Code. (Ord. 759, passed 6-1-2011)

**§ 17.110.050 GENERAL TAX LIABILITY.**

As a prerequisite to obtaining a permit pursuant to the terms of this chapter, an operator of a dispensary shall also be required to apply for and obtain a business license as required by the State Board of Equalization. Dispensary sales shall be subject to sales tax consistent with California law. (Ord. 759, passed 6-1-2011)

**§ 17.110.060 IMPOSITION OF FEES.**

Every application for a permit or renewal shall be accompanied by an application fee, the amount of such fee to be established and revised from time to time by resolution of the Town Council. This

application or renewal fee shall not include the cost of fingerprinting, photographing, and background checks, which shall be in addition to any other business license fee or permit fee imposed by this code or other governmental agencies.  
(Ord. 759, passed 6-1-2011)

#### § 17.110.070 LIMITATIONS ON NUMBER OF DISPENSARIES.

The Planning Commission may not grant or cause to be granted more than three permits for medical cannabis dispensaries in the town, in compliance with the provisions of this chapter, and/or prior to adoption of the provisions of this chapter.  
(Ord. 759, passed 6-1-2011)

#### § 17.110.080 LIMITATION ON LOCATION OF DISPENSARY.

(A) A dispensary shall be located only within a Central Commercial CC, Highway Commercial CH, and Light Commercial CL area, as designated in the General Plan and zoning map.

(B) The primary entrance shall be located and maintained free of barriers, landscaping and similar obstructions so that it is visible from public streets, sidewalks or driveways.

(C) A dispensary shall not be allowed in the following areas at the time of its permitted establishment:

- (1) Within 600 feet of a school; or
- (2) Within any residentially-zoned parcel or within any parcel with a primarily residential land use; or
- (3) On a parcel directly abutting a residentially-zoned property, unless there is a fence or an intervening natural landform between the commercial property and the residential property such as a creek or significant undeveloped parcel of land.

(D) The distance between a dispensary and areas of the above listed uses shall be made in a straight line from the boundary line of the property on which the dispensary is located to the boundary of the property on which the facility, building or structure, or portion of the building or structure of the above listed use is located.

(E) A waiver of the provisions in division (C)(2) or (C)(3) of this section may be granted if, on plans and materials presented for review, the applicant demonstrates and the Planning Commission determines that a physical barrier or similar condition exists which achieves the same purpose and intent as the distance separation requirements established herein.  
(Ord. 759, passed 6-1-2011)

#### § 17.110.090 OPERATING REQUIREMENTS.

Dispensary operations shall be established and managed only in compliance with the following standards:

(A) *Criminal history.* No applicant, his or her agent or employees, volunteer workers, or any person exercising managerial authority of a dispensary on behalf of the applicant shall have been convicted of a felony, or of a misdemeanor involving moral turpitude, or is on probation for a drug offense, or engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of no contest. The Police Chief, in his or her discretion, may require a dispensary to conduct annual criminal background checks for all employees to ensure compliance with this division (A).

(B) *Minors.*

(1) It is unlawful for any permittee, operator, or other person in charge of any dispensary to employ any person who is not at least 18 years of age.

(2) Persons under the age of 18 shall not be allowed on the premises of a dispensary unless they are a qualified patient, and they are in the presence of their parent or guardian.

(3) The entrance to a dispensary shall be clearly and legibly posted with a notice indicating that any person under the age of 18 is precluded from entering the premises unless such person is a qualified patient and is in the presence of his or her parent or guardian.

(C) *Operating hours.* Unless the reviewing authority imposes more restrictive hours due to specific considerations for a particular application, a dispensary shall only be operated within the following days and hours:

(1) 9:00 a.m. to 9:00 p.m.

(2) Christmas Day, Thanksgiving Day, New Years Day, Memorial Day, Labor Day, and 4th of July: closed.

(D) *Dispensary size and access.*

(1) The dispensary size shall not exceed 1,500 square feet exclusive of restroom facilities, unless specifically authorized by the approving authority. Dispensary size shall be limited, as deemed appropriate and necessary, to best serve patient needs within the intent of this chapter and to reduce potential adverse impacts that might otherwise occur on surrounding neighborhoods, businesses and town services.

(2) A dispensary shall not be increased in size without a prior approval amending the existing dispensary permit.

(3) Dispensary personnel shall monitor site activity, control loitering and site access.

(4) Only dispensary staff, primary caregivers, qualified patients and persons with bona

fide purposes for visiting the site shall be permitted at a dispensary.

(5) Potential patients or caregivers shall not visit a dispensary without first having obtained a valid written recommendation from their physician recommending use of medical cannabis.

(6) Only a primary caregiver and qualified patient shall be permitted in the designated dispensing area with dispensary personnel. All other authorized visitors shall remain outside, or in a designated waiting area in the front entrance/lobby.

(E) Adequate parking will be provided in accordance with Town Code § 17.052.030(F) for retail and personal service stores at a rate of three spaces for the first 500 square of gross floor area and one space for each additional 500 square feet thereafter.

(F) *Dispensary supply.* A dispensary may possess no more than one ounce of dried cannabis per qualified patient or primary caregiver. However, if a qualified patient or primary caregiver has a physician's recommendation that this quantity does not meet the qualified patient's medical needs, the dispensary may possess an amount of cannabis consistent with the patient's needs.

(G) *Dispensing operations.*

(1) A dispensary, existing or new, shall only dispense to qualified patients or caregivers with:

(a) A currently valid California Medical Marijuana Identification Card issued by the State of California, a county or a county-designated entity in accordance with Cal. Health and Safety Code § 11362.7 ("Identification Card"); or

(b) A current, written physician's recommendation and valid photo identification that is confirmed by telephone or by electronic means. The permittee shall maintain a written record of the

telephone or by electronic means. Additionally, the dispensary is required to check with the State of California to ensure that the physician who issued the recommendation has a valid medical license of the appropriate type. The permittee shall maintain records of these verifications.

(2) A dispensary shall not have a physician on-site to evaluate patients and provide a recommendation for medical cannabis.

(H) *Record keeping.*

(1) *Patient records.* Patient records shall be maintained and verified as needed by a HIPPA compliant medical professional appointed by the Police Chief or his or her designee. The dispensary shall comply fully with HIPAA and any other federal or state law protecting the privacy of medical records and information on patient health conditions.

(2) *Employee records.* Each owner or operator of a dispensary shall maintain a current register of the names of all volunteers and employees currently working at or employed by the dispensary, and shall disclose such registration for inspection by any town officer or official for purposes of determining compliance with the requirements of this section. In addition, all employees shall have a valid form of identification issued by the State of California while present at the dispensary.

(3) *Stock.* The permittee will record the total gross weight of all marijuana possessed at the dispensary that is no longer affixed to any living marijuana plant at the close of each business day. In addition, the permittee shall record the total numbers of cloned live marijuana plants being stored or offered for sale.

(4) *Receipts.* The permittee, or his or her employee, shall record upon an individual receipt the membership number of the person obtaining the marijuana, the amount of marijuana purchased, the amount paid for the marijuana, and the time and date the marijuana was dispensed.

(5) *Financial records.*

(a) Permittee shall maintain financial records identifying information for all savings accounts, checking accounts, investment accounts and trusts associated with the operation of the dispensary. Permittee shall maintain ledgers documenting all credits and debits affecting said accounts. Permittee shall maintain records documenting all parties involved in, amounts of and purposes, for all cash transactions.

(b) Permittee shall maintain records of all transactions related to the operation of the dispensary, including but not limited to rent, utilities, inventory, insurance and payroll.

(6) *Cultivation sites.* Permittee shall maintain the records regarding the actual address, including Assessor's Parcel Number, of each site within the town limits where medicinal marijuana is cultivated, grown and/or harvested on behalf of the dispensary. The cultivation site(s) identified pursuant to this section shall not be in areas zoned as residential, as more specifically outlined in § 17.110.080.

(7) *Storage of records.* Permittee shall maintain all of the required records at the dispensary site or in secured, accessible storage at all times. Patient records shall be maintained and verified as needed by a HIPPA compliant medical professional appointed by the Police Chief or his or her designee.

(8) *Audit.* As an alternative to police inspection, the town may request that an audit of receipts be conducted by a certified public accountant (CPA) chosen by the town and paid for by the permittee. The permittee shall provide a summary of the report to the town.

(I) *Consumption restrictions.* Cannabis shall not be consumed by patients on the premises of the dispensary. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other surroundings within 200 feet of the dispensary's entrance.

(J) *Retail sales.*

(1) Only immature, non-flowering, cloned, live marijuana plants measuring less than 12 inches in height may be stored and sold on site.

(2) Except for the immature nursery stock cannabis plants described above, the dispensary shall not cultivate, store, or sell live cannabis plants.

(3) With the approval of the Planning Commission a dispensary may conduct or engage in the commercial sale of specific products, goods or services ancillary to the provision of medical cannabis and other items permitted by these regulations on terms and conditions consistent with this chapter and applicable law.

(4) If food products are sold the site must be inspected and approved for food sales by the Marin County Health Department.

(5) Display and sales of devices necessary for administering medical cannabis, shall be limited to including but not limited to rolling papers and related materials and devices, pipes, water pipes, and vaporizers. Such devices may only be provided to qualified patients or primary caregivers and only in accordance with Cal. Health and Safety Code § 11364.5.

(6) A dispensary shall not distribute or sell medical cannabis for a profit.

(7) A dispensary shall not pay any supplier(s) of medical cannabis more than the costs incurred for cultivation and preparation.

(8) A dispensary shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to Cal. Health and Safety Code §§ 11362.5 *et seq.*

(K) *Operating plans.*

(1) *Floor plan.* A dispensary shall have a lobby waiting area at the entrance to receive clients, and a separate and secure designated area for dispensing medical cannabis to qualified patients or designated caregivers. The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

(2) *Storage.* A dispensary shall have suitable locked storage on premises, identified and approved as a part of the security plan, for after-hours storage of medical cannabis.

(3) *Minimum staffing levels.* The premises shall be staffed with at least one person during hours of operation that shall not be responsible for dispensing medical cannabis.

(4) *Odors control.* A dispensary shall have an air treatment system that ensures off-site odors shall not result.

(5) *Security plans.* A dispensary shall provide adequate security on the premises, and be reviewed by the Planning Commission, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

(6) Any dispensary shall be equipped with an operable alarm system that at a minimum will protect the perimeter of the dispensary and the location within the structure where medicinal marijuana is stored, packaged or dispensed.

(7) *Alarm system.* Professionally monitored robbery alarm and burglary alarm systems shall be installed and maintained in good working condition.

(8) *Emergency contact.* A dispensary shall provide the Chief of Police, Town Manager and the Director of Planning and Building Services with the name, phone number and facsimile number of an on-site community relations staff person to whom one

can provide notice if there are operating problems associated with the dispensary. The dispensary shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the town.

(L) *Signage and notices.*

(1) A notice shall be clearly and legibly posted in the dispensary indicating that smoking, ingesting or consuming cannabis on the premises or in the vicinity of the dispensary is prohibited.

(2) Signs on the premises shall not obstruct the entrance or windows.

(3) Address identification shall comply with Fire Department illuminated address signs requirements.

(4) Business identification signage shall contain the business name only, be limited to that information needed for identification only, and shall consist of a single window sign or wall sign that shall not exceed six square feet in area. Signs shall comply with all ordinances and not contain any logos or information that identifies, advertises or lists the services or products offered.

(M) *Staff training.* Dispensary staff shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with state and local law, and security personnel shall be properly trained.

(N) *Compliance with other requirements.* The operator shall comply with all provisions of all local, state or federal laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.

(O) *Alcoholic beverages.* No dispensary shall hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the premises that

sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

(P) No person shall operate, or own a financial interest in, more than one dispensary within the town. (Ord. 759, passed 6-1-2011)

**§ 17.110.100 CRITERIA FOR REVIEW.**

The Planning Commission shall consider the following criteria in determining whether to grant or deny a dispensary permit, and renewals:

(A) That the dispensary permit is consistent with the intent of Proposition 215 and related California law, the provisions of this chapter and the Town Code, including the application submittal and operating requirements herein.

(B) That the dispensary location is not identified as having significant crime issues (e.g., based upon crime reporting district/statistics as maintained by the Police Department).

(C) That there have not been significant numbers of calls for police service, crimes or arrests in the area or to an existing dispensary location.

(D) That an applicant or employee is not under 18 years of age.

(E) That all required application materials have been provided and/or the dispensary has operated successfully in a manner that shows it would comply with the operating requirements and standards specified in this chapter.

(F) That all required application or annual renewal fees have been paid and reporting requirements have been satisfied in a timely manner.

(G) That an appropriate limit on size of the dispensary has been established and the requested permit would not exceed limitations on number of permits allowed by this chapter.



(H) That the location is not prohibited by the provisions of this chapter or any local or state law, statute, rule or regulation and no significant nuisance issues or problems have resulted or are anticipated.

(I) That the site plan, floor plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems as specified in the operating requirements section. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

(J) That no dispensary use, owner, permittee, agent, or employee has violated any provision of this chapter including grounds for suspension, modification or revocation of a permit.

(K) That all reasonable measures have been incorporated into the plan and/or consistently taken to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, cannabis use in public, or creation of a public or private nuisance, or interference of the operation of another business.

(L) That the dispensary would not adversely affect the health, peace or safety of persons living or working in the surrounding area, overly burden a specific neighborhood with special needs or high impact uses, or contribute to a public nuisance; or that the dispensary has resulted in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passers-by, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours; lewd conduct, or police detentions or arrests.

(M) That any provision of the Town Code or condition imposed by a town-issued permit, or any provision of any other local or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws has not been violated.

(N) That the applicant has not violated any local or state law, statute, rule or regulation respecting the distribution, possession, or consumption of cannabis.

(O) That the applicant has not knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.

(P) That the applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant, has not been convicted of a felony, or of a misdemeanor involving moral turpitude, or has engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*.

(Q) That the applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

(R) A preference will be given to local ownership.

(S) A dispensary shall strive to procure local and organically grown medical marijuana.  
(Ord. 759, passed 6-1-2011)

#### § 17.110.110 INVESTIGATION AND ACTION ON APPLICATION.

After the making and filing of a complete application for the dispensary permit and the payment of the fees, the Police Department shall conduct a background check of the applicant and all employees and conduct an investigation of the application, and take action as follows:

(A) The Planning Department shall refer the application to any other town departments as necessary to complete the review of the application.

(B) Following the provision of complete application materials and inter-departmental review, the Planning Department shall schedule the use permit for Planning Commission review. The Commission shall either grant or deny the application in accordance with the provisions of this chapter.

(C) In approving a dispensary permit, the Planning Commission may impose conditions, restrictions or require revisions to the proposal to comply with the purpose and intent of this chapter.

(D) The Planning Department shall cause a written notice of the Commission's decision to issue or deny a permit to be mailed to the applicant by U.S. mail.

(Ord. 759, passed 6-1-2011)

#### **§ 17.110.120 APPEAL FROM PLANNING COMMISSION DETERMINATION.**

(A) An applicant may appeal any determination of staff to the Planning Commission.

(B) An applicant aggrieved by the Planning Commission's decision to issue or deny a permit may appeal such decision to the Town Council by filing an appeal pursuant to Chapter 17.320 of the Town Code. (Ord. 759, passed 6-1-2011)

#### **§ 17.110.130 EFFECT OF DENIAL.**

When the Planning Commission shall have denied or revoked any permit provided for in this chapter and the time for appeal to the Council shall have elapsed or, if after appeal to the Council, the decision of the Planning Commission has been affirmed by the Council, no new application for a permit shall be accepted from the applicant and no such permit shall

be issued to such person or to any corporation in which he shall have any beneficial interest for a period of three years after the action denying or revoking the permit.

(Ord. 759, passed 6-1-2011)

#### **§ 17.110.140 SUSPENSION AND REVOCATION.**

(A) Consistent with Chapter 17.250, any permit issued under the terms of this chapter may be suspended or revoked by the Planning Commission when it shall appear to the Commission that the permittee has violated any of the requirements of this chapter or the dispensary is operated in a manner that violates the provisions of this chapter, including the criteria for review and operating requirements sections, or conflicts with California law.

(B) Except as otherwise provided in this chapter, no permit shall be revoked or suspended by virtue of this section until written notice of the intent to consider revocation or suspension of the permit has been served upon the person to whom the permit was granted at least five days prior to the date set for such review. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Notice may be given either by personal delivery to the person to be notified, or by depositing it in the U.S. mail in a sealed envelope, postage prepaid, return receipt requested, addressed to the person to be notified at his or her address as it appears in his or her application for a permit.

(C) If any person holding a permit or acting under the authority of such permit under this chapter is convicted of a public offense in any court for the violation of any law which relates to his or her permit, the Town Manager may revoke such permit forthwith without any further action thereof, other than giving notice of revocation to the permittee.

(Ord. 759, passed 6-1-2011)

**§ 17.110.150 TRANSFER OF PERMITS.**

(A) A permittee shall not operate a dispensary under the authority of a dispensary permit at any place other than the address of the dispensary stated in the application for the permit.

(B) A permittee shall not transfer ownership or control of a dispensary or transfer a dispensary permit to another person unless and until the transferee obtains a use permit.

(C) No permit may be transferred when the Planning Director has notified the permittee that the permit has been or may be suspended or revoked.

(D) Any attempt to transfer a permit either directly or indirectly in violation of this section is declared void, and the permit shall be deemed revoked.

(Ord. 759, passed 6-1-2011)

**§ 17.110.160 VIOLATIONS.**

(A) It is unlawful for any person, individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character to violate any provision or fail to comply with any of the requirements of this chapter.

(B) A violation of this chapter shall be subject to the criminal, civil, or administrative penalties specified in Town Code Chapter 1.10.

(Ord. 759, passed 6-1-2011)

**§ 17.110.170 REMEDIES CUMULATIVE.**

All remedies prescribed under this chapter shall be cumulative and the use of one or more remedies by the town shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

(Ord. 759, passed 6-1-2011)

**§ 17.110.180 SEPARATE OFFENSE FOR EACH DAY.**

Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly. (Ord. 759, passed 6-1-2011)

**§ 17.110.190 HOLD HARMLESS.**

As a condition of approval of any permit for medical cannabis cultivation, processing or distribution, the permittee shall indemnify, defend and hold harmless the Town of Fairfax and its agents, officers, elected officials and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to permitted uses or operations, and in the case of dispensaries, for any claims brought by any of the permittee's clients or employees for problems, injuries, damages, or liabilities of any kind that may arise out of the permitted activities.

(Ord. 759, passed 6-1-2011)

**§ 17.110.200 PUBLIC NUISANCE.**

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is declared a public nuisance and may be summarily abated by the town.

(Ord. 759, passed 6-1-2011)

**§ 17.110.210 SEVERABILITY.**

The provisions of this chapter are declared to be severable. If any provision, clause, word, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter.

(Ord. 759, passed 6-1-2011)

**§ 17.110.220 JUDICIAL REVIEW.**

Judicial review of a decision made under this chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the Cal. Code of Civil Procedure § 1094.5. Any such petition shall be filed within 90 days after the day the decision becomes final as provided in Cal. Code of Civil Procedure § 1094.6 which shall be applicable for such actions.  
(Ord. 759, passed 6-1-2011)

**PRIMARY CAREGIVER.** A “primary caregiver” as defined in Cal. Health and Safety Code § 11362.7, as amended.

**QUALIFIED PATIENT.** A “qualified patient” or a “person with an identification card” as defined in Cal. Health and Safety Code § 11362.7, as amended.

**TOWN.** The Town of Fairfax.  
(Ord. 797, passed 8-3-2016)

#### § 17.138.330 CULTIVATION OF MARIJUANA.

(A) *Outdoor cultivation.* Except as may otherwise be provided by this article, it is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any lot or site within any zoning district in the town to cause or allow such lot or site to be used for the outdoor cultivation of more than 18 mature marijuana plants.

(B) *Indoor cultivation.* Except as may otherwise be provided by this article, it is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any dwelling unit within any zoning district in the town to cause or allow for the indoor cultivation of marijuana plants. When authorized by this article, indoor cultivation may only occur within a fully enclosed and secure structure.

(C) Only qualified patients or primary caregivers shall be permitted to cultivate marijuana under this article.

(D) Any marijuana cultivation that would require a license or permit from the State of California per the Medical Marijuana Regulation and Safety Act of 2015 is prohibited within the Town of Fairfax. Nothing in this article is intended to abrogate any existing section of the Town Code including, but not limited to, Chapter 17.110 Medical Marijuana Dispensaries.  
(Ord. 797, passed 8-3-2016)

#### § 17.138.340 STANDARDS FOR CULTIVATION OF MARIJUANA.

(A) Outdoor marijuana plants shall be located a minimum of five feet from property lines.

(B) Outdoor marijuana plants shall be located only in the rear and side yards of a lot or site, and are not permitted to be located in front yards of any lot or site.

(C) Outdoor marijuana plants shall be screened from public view as follows:

(1) No marijuana plants cultivated under this article shall be visible from a public right-of-way.

(2) No marijuana plants cultivated under this article shall exceed seven feet in height.

(3) Any lot or site upon which marijuana plants are cultivated under this article shall have fencing of no more than six feet in height surrounding the lot or site or that portion of the lot or site upon which the plants are cultivated. In no event shall netting or plastic screening be used in conjunction with marijuana cultivation.

(D) Indoor grow lights shall not exceed 1,200 watts and comply with the California Building, Electrical, Plumbing and Fire Codes as adopted by the town. Gas products (CO<sub>2</sub>, butane, propane, natural gas, kerosene, etc.) or generators may not be used indoors or outdoors.

(E) All electrical equipment used in the cultivation or processing of medical marijuana (e.g. lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation or processing of medical marijuana is prohibited.

(F) A qualified patient cultivating marijuana pursuant to this article shall limit the area of cultivation of any premises used to 100 square feet or less; shall cultivate only for his or her personal

medical use; and shall not sell, distribute, donate, or provide marijuana to any other person or entity, per Cal. Health and Safety Code § 11362.777(g).

(G) A primary caregiver cultivating medical marijuana pursuant to this article shall limit the area of cultivation of any premises used to 500 square feet or less, subject to no more than 100 square feet or less per qualified patient; cultivate medical marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver (within the meaning of Cal. Health and Safety Code § 11362.7), and shall not receive remuneration for such cultivation, except for compensation provided in full compliance with Health and Safety Code § 11362.765(c), per Health and Safety Code § 11362.777(g).

(H) Medical marijuana cultivation by a qualified patient or primary caregiver shall only occur on a parcel within a zoning district that permits residential uses and upon which an occupied dwelling exists. Either the qualified patient or primary caregiver shall reside in the residence where any medical marijuana cultivation occurs. Outdoor cultivation is prohibited on parcels within 200 feet of any public or private preschool, elementary, or middle school.

(I) Except as may otherwise be authorized in § 17.138.350 below, an individual qualified patient shall only be allowed to cultivate medical marijuana at his or her private residence, and a primary caregiver shall cultivate medical marijuana only at the residence of a qualified patient for whom he or she is the primary caregiver, or at the primary caregiver's residence.

(1) If cultivation or processing is to be conducted by a primary caregiver, documentation of the legally-required relationship shall be maintained at the cultivation premises.

(2) A copy of documentation of qualified patient status must be maintained at any location at which medical marijuana cultivation occurs.

(3) No primary caregiver shall cultivate medical marijuana for any qualified patient who is also cultivating medical marijuana at his or her private residence.

(J) Any residence at which medical marijuana is cultivated under this article shall maintain kitchen, bathrooms, and bedrooms for their intended use and not be used primarily for medical marijuana cultivation.

(K) All medical marijuana cultivation areas shall be in compliance with the current, adopted edition of the California Building Code as regards mechanical ventilation.

(L) No medical marijuana cultivation area shall be maintained or operated in such a way as to:

(1) Adversely affect the health or safety of the nearby residents in any manner, including but not limited to by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes; or

(2) Adversely affect the health or safety of the occupants of the residence or users of the accessory building in which it is cultivated, or occupants or users of nearby properties in any manner, including but not limited to creation of mold or mildew.

(Ord. 797, passed 8-3-2016)

#### § 17.138.350 EXCEPTIONS.

(A) Any qualified patient or primary caregiver may seek a medical marijuana administrative exception to §§ 17.138.340 and 17.138.330 of this article, except for § 17.138.340(F) or (G), from which no exceptions shall be granted.

(B) Any request for an exception to this article shall be submitted to the Town Manager, along with

documentation, such as a physician's recommendation, information regarding space limitations, or verification of more than one qualified patient living in the residence, demonstrating why a standard required by this article is not feasible.

(C) The Town Manager who may grant a medical marijuana administrative exception only if the following findings can be made:

(1) The requested exception is not to § 17.138.340(F) or (G);

(2) The individual requesting the exception can demonstrate a medical need for the exception, as evidenced by the written recommendation of a treating physician;

(3) The requested exception shall not constitute a public nuisance, as set forth in § 17.138.360.

(4) At a minimum, any interior medical marijuana cultivation area shall be constructed with a one-hour firewall assembly if required by the Building Official.

(5) For indoor cultivation, the Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers and code-compliant electrical systems.

(6) The indoor cultivation of no more than six (6) mature marijuana plants shall be authorized through a medical marijuana administrative exception.

(C) The Town Manager, or his or her designee, shall prepare a written approval or denial of any request for an exception within ten business days of its submission to the town. Approval of the requested exception may be made subject to conditions designed to lessen the impact of the exception on neighboring uses and the community generally.

(D) Any exception granted under this section shall be personal to the party to whom such exception was granted and shall not run with the land or otherwise be transferable.

(E) Notwithstanding any other provision of the Town Code, any person aggrieved by the decision of the Town Manager, or his or her designee, with respect to an exception requested under this § 17.138.350 may appeal said decision within ten days of the date of the decision to the Planning Commission. Upon review, the Planning Commission shall issue the requested exception if it meets the requirements of divisions (A) and (B) above, and subject to any conditions imposed per division (C) above.  
(Ord. 797, passed 8-3-2016)

#### § 17.138.360 PUBLIC NUISANCE PROHIBITED.

It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any lot, site, dwelling unit, and/or fully enclosed and secure structure within the town to create a public nuisance in the course of cultivating marijuana plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces: (a) odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public, (b) repeated responses to the parcel from law enforcement officers, (c) repeated disruption to the free passage of persons or vehicles in the neighborhood, (d) excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public, or (e) any other impacts on the neighborhood which are disruptive of normal activity in the area.

(Ord. 797, passed 8-3-2016)

**§ 17.138.370 ENFORCEMENT.**

(A) *Public nuisance.* The violation of this section is hereby declared to be a public nuisance and may be enforced pursuant to the provisions of Chapter 1.12 of the Fairfax Town Code.

(B) *Seizure and destruction of marijuana.* Except as otherwise expressly stated in this section, all marijuana seized by the town police in the enforcement of this article shall be seized, retained and destroyed in the same manner and subject to the same procedures as are provided in California Health and Safety Code §§ 11472 through 11479, for marijuana possessed in violation of Division 10 of the Health and Safety Code.

(C) *Right of entry.* The Code Enforcement Officer, Building Official, Planning Director, Chief of Police, Fire Inspector, or a designee is authorized to enter upon and inspect private properties to ensure compliance with the provisions of this section. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other person in lawful possession of the property. If consent cannot for any reason be obtained, an inspection warrant shall be obtained from a court of law prior to any such entry and inspection. In those cases where consent is denied, the town may seek to recover the costs it incurs in obtaining a warrant from the property owner and/or person in lawful possession of the property.

(D) *Abatement.* The Town Attorney, in the name of and on behalf of the town and/or the people of the town, may bring a civil action in a court of competent jurisdiction to enforce any provision of this section, or to restrain or abate any violation of the provisions of this section as a public nuisance pursuant to the procedures set forth in Chapter 1.12 of the Town Code.

(E) *Violation.* Cultivation of marijuana that does not comply with this section constitutes a violation of

the zoning ordinance and is subject to the penalties and enforcement as provided in Chapter 17.004 of the Town Code.

(F) *Penalties not exclusive.* The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the town from using any other remedy at law or in equity which may be available to enforce this section or to abate a public nuisance. (Ord. 797, passed 8-3-2016)

**§ 17.138.380 LIABILITY.**

The provisions of this article shall not be construed to protect the property owner(s) of record for property associated with the cultivation of marijuana, or their lessees, tenants or participants in the cultivation of marijuana, from prosecution pursuant to any laws that prohibit the cultivation, sale and/or possession of marijuana. In particular, the possession or cultivation of marijuana remains illegal under any circumstances pursuant to the laws of the United States, and this section is not intended to protect the above-described persons from arrest or prosecution pursuant to the laws of the United States. The property owner(s) of record for property associated with the cultivation of marijuana, or their lessees, tenants and other participants in the cultivation of marijuana, assumes any and all risk and all liability that may arise or result under state and federal criminal laws from the cultivation of marijuana. (Ord. 797, passed 8-3-2016)






# **TOWN OF FAIRFAX**

## **STAFF REPORT**

### **January 16, 2018**

**TO:** Mayor and Council

**FROM:** Ben Berto, Planning & Building Services Director 

**SUBJECT:** Report on cannabis panel workshop and results of cannabis on-line survey

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#### **RECOMMENDATION**

Accept staff report

#### **DISCUSSION**

This is a report on the panel discussion regarding cannabis and the results of the on-line survey regarding cannabis-related activities.

#### **PANEL DISCUSSION**

The Town conducted a panel-led cannabis workshop at the Women's Club on December 11. The panel featured five speakers: Danielle O'Leary, San Rafael Economic Development and Innovation Director, Beth Greene, Berkeley Senior Planner and Cannabis Commission Secretary, Gary Federoff, Sunny Hills Services Program Director, Matt Willis, Marin County Public Health Officer, and Aaron Burke, CEO Monk Provisions, who spoke on a wide range of health, governmental, and industry-related topics relating to the post-Proposition 64 environment. The workshop was well attended by about 80 members of the public, and in addition was live webcast. A recording of the webcast is available at: [http://townoffairfax.org/recordings/2017/jt\\_council\\_pc\\_broadcast\\_121117.html](http://townoffairfax.org/recordings/2017/jt_council_pc_broadcast_121117.html).

#### **ONLINE SURVEY**

The results are in from the Town's online cannabis survey. The public comment period closed on January 2, 2018. A total of 385 responses were submitted, of which 163 were registered responses. Staff considers registered responses the most useful, because it identifies who lives in Town and who does not, and ensures registrants do not vote more than once. Of the 163 registered responses, 121 were Fairfax residents and 42 were not. There is no way to ascertain to what extent unregistered respondents were Fairfax residents or not.

There were 222 unregistered survey respondents. As will be seen from the following summary of the survey questions and responses, in general registered respondents were 10+ percentage points more supportive of various non-prohibition cannabis options than unregistered survey respondents.

Survey responses are summarized as follows:

1. Should outdoor recreational cannabis cultivation be allowed?

Registered respondents	73% yes
Unregistered respondents	60% yes
Combined respondents	66% yes

2. If yes, should the number of outdoor plants allowed per residence be:

6 plants (as allowed by the state)

Registered respondents	46% yes
Unregistered respondents	41% yes
Combined respondents	43% yes

16 plants (same as what the Town allows for medical marijuana)

Registered respondents	27% yes
Unregistered respondents	21% yes
Combined respondents	24% yes

3. Should retail sale of recreational marijuana to adults be allowed in Fairfax?

Registered respondents	63% yes
Unregistered respondents	50% yes
Combined respondents	55% yes

4. Should the State-mandated buffer distance to certain youth-related locations be increased?

Registered respondents	41% yes	53% no
Unregistered respondents	56% yes	36% no
Combined respondents	49% yes	44% no

5. If yes, what should the buffer distance be increased to?

Registered respondents	39 miles
Unregistered respondents	228 million miles(!)

Note: in essence not in Town

6. Should a buffer zone for commercial recreational cannabis be added to other areas in Town?

Registered respondents	52% yes
Unregistered respondents	62% yes
Combined respondents	59% yes

7. Suggested additional buffer locations include parks, playgrounds, fields, areas near children, and downtown.
8. Should there be a limit on the number of recreational cannabis retail stores?
- |                          |         |
|--------------------------|---------|
| Registered respondents   | 77% yes |
| Unregistered respondents | 85% yes |
| Combined respondents     | 82% yes |
9. If there is a limit on the number of cannabis stores, should the number be:
- Total of 3 stores including medical?
- |                          |         |
|--------------------------|---------|
| Registered respondents   | 33% yes |
| Unregistered respondents | 27% yes |
| Combined respondents     | 30% yes |
- 3 or less recreational stores?
- |                          |         |
|--------------------------|---------|
| Registered respondents   | 26% yes |
| Unregistered respondents | 34% yes |
| Combined respondents     | 31% yes |
10. Should retail stores be allowed to make deliveries?
- |                          |         |
|--------------------------|---------|
| Registered respondents   | 62% yes |
| Unregistered respondents | 48% yes |
| Combined respondents     | 54% yes |
11. Should retail stores be allowed to make deliveries only with no storefront sales?
- |                          |        |
|--------------------------|--------|
| Registered respondents   | 62% no |
| Unregistered respondents | 65% no |
| Combined respondents     | 64% no |
12. Should commercial cultivation of recreational cannabis be allowed?
- |                          |        |
|--------------------------|--------|
| Registered respondents   | 60% no |
| Unregistered respondents | 65% no |
| Combined respondents     | 62% no |
13. Should commercial cannabis testing labs be allowed?
- |                          |         |        |
|--------------------------|---------|--------|
| Registered respondents   | 44% yes | 40% no |
| Unregistered respondents | 37% yes | 51% no |
| Combined respondents     | 40% yes | 46% no |

14. Should commercial manufacture of cannabis products be allowed?

Registered respondents	41% yes	50% no
Unregistered respondents	31% yes	58% no
Combined respondents	37% yes	55% no

15. Should commercial distribution/transportation of recreational cannabis be allowed?

Registered respondents	46% yes	42% no
Unregistered respondents	39% yes	54% no
Combined respondents	42% yes	49% no

16. Would you be willing to support a tax on recreational and/or medical marijuana?

Tax on recreational only

Registered respondents	37% yes
Unregistered respondents	33% yes
Combined respondents	35% yes

Tax on recreational and medical

Registered respondents	48% yes
Unregistered respondents	39% yes
Combined respondents	43% yes

No tax on both

Registered respondents	10% yes
Unregistered respondents	16% yes
Combined respondents	13% yes

## CONCLUSIONS

Not surprisingly for a community that led Marin in percentage of voters supporting the passage of Proposition 64, the results from registered survey respondents is substantially supportive of cannabis.

In terms of specific results, almost three-fourths (73%) of registered respondents support allowing personal recreational cannabis cultivation outdoors. The number of cannabis plants recommended per residence appears to be generally consistent with State guidelines and current Town regulations: 6 recreational plants and 16 medical plants.

In terms of storefront sale of recreational cannabis, almost two-thirds (63%) of registered respondents support, while 50% of unregistered respondents support, and 55% combined registered and unregistered support.

There appears to be interest to include additional type of uses in the buffer zone from cannabis businesses, specifically parks, playground, and locations where children generally congregate.

The distance for buffers didn't quite register meaningful responses in the manner hoped for – unregistered respondents apparently prefer a buffer to be over twice the distance to the sun! In essence, the responses were to increase the distance of the buffer zone to preclude any locations in Town.

Both registered and unregistered respondents overwhelmingly prefer (77% and 85% respectively) a cap on total number of cannabis retail stores. Specifically, 59% of registered respondents and 61% of unregistered respondents support a total of 3 of either type or 3 of each type (6 total).

Almost two-thirds (62%) of registered respondents support allowing retail stores to make deliveries (only 48% of unregistered respondents do). Both registered and unregistered respondents (62% and 65% respectively) do not support only allowing retail delivery without a storefront operation.

In terms of other commercial enterprises, neither registered nor unregistered respondents ((60% and 65% respectively) support commercial cannabis cultivation. Neither group supports commercial manufacturing of cannabis products (only 41% of registered respondents and 31% of unregistered respondents support).

Registered respondents are split (44% yes and 40% no) on whether to allow commercial testing laboratories. Unregistered respondents are more opposed – 37% yes and 51% no.

Similarly, registered respondents are slightly supportive (46% yes versus 42% no) of allowing commercial transport and distribution of recreational cannabis, while unregistered respondents are more opposed (39% yes versus 49% no).

Registered respondents surveyed 37% yes on a recreational cannabis tax and 48% yes on a recreational and medical tax. Less than 10% were not supportive of any tax on either recreational or medical. Of unregistered respondents, thirty three percent (33%) support a tax on recreational cannabis, 39% support a tax on recreational and medical cannabis, and 16% preferred no tax on either recreational or medical.

### **RECOMMENDATION**

Staff will return to the Council in March to seek general direction on the Town's cannabis policies. Based on that direction, staff would prepare an ordinance addressing non-medical marijuana regulations for Planning Commission (PC) consideration. We anticipate the PC would be able to recommend an ordinance for Council consideration this summer.

### **FISCAL IMPACT**

N/A

### **ATTACHMENTS**

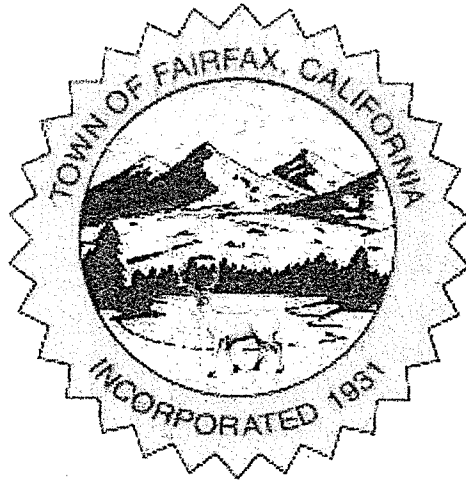
- A. Cannabis survey registered respondents results
- B. Cannabis survey unregistered respondents results
- C. Cannabis survey combined respondents results

# Non-Medical (Recreational) Cannabis Survey

*How do you think the Town should regulate recreational (non-medical) cannabis uses?*

All Registered Responses sorted chronologically

As of January 2, 2018, 10:47 AM



*Community Forum is not a certified voting system or ballot box. As with any public comment process, participation in Community Forum is voluntary. The responses in this record are not necessarily representative of the whole population, nor do they reflect the opinions of any government agency or elected officials.*

**ATTACHMENT** A

# Non-Medical (Recreational) Cannabis Survey

*How do you think the Town should regulate recreational (non-medical) cannabis uses?*

As of January 2, 2018, 10:47 AM, this forum had:

Attendees: 537

Registered Responses: 163

Hours of Public Comment: 8.2

This topic started on November 16, 2017, 3:10 PM.

## Non-Medical (Recreational) Cannabis Survey

How do you think the Town should regulate recreational (non-medical) cannabis uses?

### Responses

Should outdoor non-commercial cultivation of cannabis for adult personal recreational use be allowed in Fairfax?

	%	Count
Yes	73.3%	118
No	26.1%	42
Don't know/no opinion	0.6%	1

If so, should the number of outdoor plants allowed per residence be:

	%	Count
6 plants (the same as allowed to be grown indoors under current State law)	46.4%	70
18 plants (the same as allowed for medical marijuana under Town Code)	27.2%	41
No plants	17.9%	27
Other	7.3%	11
Don't know/no opinion	1.3%	2

Should the retail sale to adults of recreational cannabis be allowed in Fairfax?

	%	Count
Yes	62.6%	102
No	36.2%	59
Don't know/no opinion	1.2%	2

Under State law, the current buffer zone for recreational cannabis commercial operations (retail stores)



## Non-Medical (Recreational) Cannabis Survey

How do you think the Town should regulate recreational (non-medical) cannabis uses?

is 600 feet from a school, daycare, or youth center. Should the buffer zone be increased?

		%	Count
Yes		40.7%	66
No		53.1%	86
Don't know/no opinion		6.2%	10

If yes, what distance:

Average	205896.12
Total	10,088,910.00
Count	49
Skipped	114

Should a buffer zone for recreational cannabis commercial operations be added to other areas in Town (for example, a park)?

		%	Count
Yes		52.2%	84
No		42.9%	69
Don't know/no opinion		5.0%	8

If yes, which areas?

Answered	81
Skipped	82

all any anywhere area **areas** away ball bars baseball centers children  
 don etc **fields** from **kids** more near **out park parks** people peri  
 places **playgrounds** present **public** recreational

## Non-Medical (Recreational) Cannabis Survey






How do you think the Town should regulate recreational (non-medical) cannabis uses?

**restaurants** s **school** **schools** shops stores t teens **town** use  
where youth

Should there be a limit on the number of retail stores in Fairfax that sell recreational cannabis?

		%	Count
Yes		77.0%	124
No		19.9%	32
Don't know/no opinion		3.1%	5

If so, what should the limit be?

		%	Count
3 or fewer (similar to the restriction for medical marijuana dispensaries)		25.5%	39
Combine the limit for both medical and recreational dispensaries to max of 3		33.3%	51
No limit		11.1%	17
Other		26.1%	40
Don't know/no opinion		3.9%	6

Should retail stores also be allowed to make deliveries?

		%	Count
Yes		62.3%	101
No		25.9%	42
Don't know/no opinion		11.7%	19

## Non-Medical (Recreational) Cannabis Survey




How do you think the Town should regulate recreational (non-medical) cannabis uses?

### Comments:

Answered 27  
Skipped 136

**adults** alcohol available **believe** cannabis **children** could deal  
**deliveries** delivery **do** don **drugs** enforced fairfax friends  
having into liquor **make** marijuana medical more **need only**  
**people** pot recreational risk **sales** stores **t** teens they **think** town  
use **using** which youth

Should retail stores only be allowed to make deliveries, with no storefront sales?

		%	Count
Yes		26.1%	42
No		62.1%	100
Don't know/no opinion		11.8%	19

### Comments:




Answered 28  
Skipped 135

**abuse** all children **deliveries** delivery drug exposed **high**  
**hours** id **impact** its look marijuana marin medical **need** negative **only**  
open **pot** proper **public** recreational **retail s** **sales** sense smoke  
**store** storefront **storefronts** stores **t** they town traffic unless  
very want

## Non-Medical (Recreational) Cannabis Survey

How do you think the Town should regulate recreational (non-medical) cannabis uses?

Should commercial cultivation of recreational cannabis be allowed in Fairfax?

		%	Count
Yes		33.7%	55
No		59.5%	97
Don't know/no opinion		6.7%	11




### Comments:

Answered 26

Skipped 137

adult allowed any area **commercial** community cultivation d do  
don fairfax grow isn local m marijuana more new  
operations own personal pesticide potential re **recreational** residents S scale  
sense supply sure t they think **town USE** very was water where

Should commercial testing laboratories for recreational cannabis be allowed in Fairfax?

		%	Count
Yes		43.8%	71
No		40.1%	65
Don't know/no opinion		16.0%	26

### Comments:

Answered 15

Skipped 148

all **also** area away better business cannabis **commercial** don fairfax


## Non-Medical (Recreational) Cannabis Survey

How do you think the Town should regulate recreational (non-medical) cannabis uses?

from good how m more **operations** other **pot** product **quality** S so sure t  
testing **town** use what

Should commercial manufacturing of recreational cannabis products be allowed in Fairfax?

% Count

Yes		41.4%	67
No		50.0%	81
Don't know/no opinion		8.6%	14




### Comments:

Answered 9  
Skipped 154

**cannabis** facility manufacturing ok products **scale small** town

Should commercial distribution/transportation of recreational cannabis be allowed in Fairfax?

% Count

Yes		45.9%	73
No		41.5%	66
Don't know/no opinion		12.6%	20

### Comments:

Answered 13  
Skipped 150

**cannabis commercial** differ distribution **do** does fairfax from how **marijuana mean**  
**question recreational** retail sale sales size **town transportation** what

## Non-Medical (Recreational) Cannabis Survey

How do you think the Town should regulate recreational (non-medical) cannabis uses?

Would you be willing to support a tax on recreational and/or medical cannabis?

	%	Count
Yes, but only on recreational	36.9%	59
Yes, but only on medical	1.9%	3
Yes for both	48.1%	77
No for both	9.4%	15
Don't know/no opinion	3.8%	6

### Comments:

Answered 32

Skipped 131

50 alcohol any believe between business cannabis community don drug education  
fairfax from general increased kids like marijuana medical  
money need people pot public recreational revenue revenues  
s sales service smoking so state t tax taxed taxes then though  
town

# Non-Medical (Recreational) Cannabis Survey

*How do you think the Town should regulate recreational (non-medical) cannabis uses?*

As of January 4, 2018, 3:59 PM, this forum had:

Attendees: 539

Unregistered Responses: 222

All Responses: 385

Hours of Public Comment: 19.3

This topic started on November 16, 2017, 3:10 PM.

## Heads Up!

You may see responses that don't meet the guidelines for civility in the unregistered channel.

When an uncivil response is submitted in the registered channel (on the public website), Peak

Democracy moves the response into the unregistered channel and moves it back only after the company

resolves the issue with the author.

When an uncivil response is submitted in the unregistered channel, Peak

Democracy is unable to

contact the anonymous author to resolve the issue. This response stays in the unregistered channel.

In either case, any uncivil responses will be found in the unregistered channel.

All Unregistered Responses sorted chronologically

As of January 4, 2018, 3:59 PM <http://www.peakdemocracy.com/5685> Page 2 of 675

# Non-Medical (Recreational) Cannabis Survey

*How do you think the Town should regulate recreational (non-medical) cannabis uses?*

## Responses

**Should outdoor non-commercial cultivation of cannabis for adult personal recreational use be allowed in Fairfax?**

**% Count**

Yes 60.0% 132

No 38.6% 85

Don't know/no opinion 1.4% 3

**If so, should the number of outdoor plants allowed per residence be:**

**% Count**

6 plants (the same as allowed to be grown indoors under current State law)

**ATTACHMENT B**

40.8% 84

18 plants (the same as allowed for  
medical marijuana under Town  
Code)

21.4% 44

No plants 32.0% 66

Other 4.4% 9

Don't know/no opinion 1.5% 3

**Should the retail sale to adults of recreational cannabis be allowed in Fairfax?**  
**% Count**

Yes 50.0% 109

No 48.6% 106

Don't know/no opinion 1.4% 3

**Under State law, the current buffer zone for recreational cannabis commercial  
operations (retail stores)**

## **Non-Medical (Recreational) Cannabis Survey**

How do you think the Town should regulate recreational (non-medical) cannabis uses?

All Unregistered Responses sorted chronologically

As of January 4, 2018, 3:59 PM <http://www.peakdemocracy.com/5685> Page 3 of 675

**is 600 feet from a school, daycare, or youth center. Should the buffer zone be  
increased?**

**% Count**

Yes 55.5% 122

No 36.4% 80

Don't know/no opinion 8.2% 18

**If yes, what distance:**

Average 1204833285619.35

Total 100,001,162,706,406.00

Count 83

Skipped 139

**Should a buffer zone for recreational cannabis commercial operations be added  
to other areas in Town  
(for example, a park)?**

**% Count**

Yes 65.5% 144

No 28.6% 63

Don't know/no opinion 5.9% 13

**If yes, which areas?**

Answered 117

Skipped 105

- adults **all** any areas around banks **bus** centers  
**children** community



**downtown fairfax gas kids library lots movie**  
near **park**

**parking parks people places pot public**

**restaurants S schools**

## Non-Medical (Recreational) Cannabis Survey

How do you think the Town should regulate recreational (non-medical) cannabis uses?

All Unregistered Responses sorted chronologically

As of January 4, 2018, 3:59 PM <http://www.peakdemocracy.com/5685> Page 4 of 675

**smoke stations stops stores t theaters town trails**

**want where**

**who**

**Should there be a limit on the number of retail stores in Fairfax that sell recreational cannabis?**

**% Count**

Yes 85.0% 187

No 13.6% 30

Don't know/no opinion 1.4% 3

**If so, what should the limit be?**

**% Count**

3 or fewer (similar to the restriction  
for medical marijuana dispensaries)  
34.4% 72

Combine the limit for both medical  
and recreational dispensaries to  
max of 3

26.8% 56

No limit 10.0% 21

Other 27.3% 57

Don't know/no opinion 1.4% 3

**Should retail stores also be allowed to make deliveries?**

**% Count**

Yes 47.7% 104

No 44.5% 97

Don't know/no opinion 7.8% 17

## Non-Medical (Recreational) Cannabis Survey

How do you think the Town should regulate recreational (non-medical) cannabis uses?

All Unregistered Responses sorted chronologically

As of January 4, 2018, 3:59 PM <http://www.peakdemocracy.com/5685> Page 5 of 675

**Comments:**

Answered 36

Skipped 186

access **adults** alcohol **being** cannabis card

**children** creates

delivered **deliveries** delivery don from get just

**kids** local

make **marijuana** medical minors more

need only

**people** pot regulate **s** safe selling so stores t teens **they**

town under up

**use** youth

Should retail stores only be allowed to make deliveries, with no storefront sales?

% Count

Yes 24.4% 53

No 65.4% 142

Don't know/no opinion 10.1% 22

**Comments:**

Answered 32

Skipped 190

access **alcohol** allowed any **cannabis** card children

**deliveries**

**delivery** drug especially good having **how** increase **just** kids **like**

makes

marijuana more one **only** option **people**

**pot** public

**retail** risk **sales** see **store** **storefront** storefronts  
**stores** t

teens **want** young youth

Non-Medical (Recreational) Cannabis Survey

How do you think the Town should regulate recreational (non-medical) cannabis uses?

All Unregistered Responses sorted chronologically

As of January 4, 2018, 3:59 PM <http://www.peakdemocracy.com/5685> Page 6 of 675

**Should commercial cultivation of recreational cannabis be allowed in Fairfax?**

**% Count**

Yes 27.5% 60

No 64.2% 140

Don't know/no opinion 8.3% 18

**Comments:**

Answered 32

Skipped 190

again any anywhere being **cannabis** children

**commercial** considering

crime **crop** **cultivation** don energy **fairfax** farm  
from

growing home **illegal** increase intensive **kids** like more  
much near

**need** neighborhood **only** other out permitted **pot** s t

too town use

want zero

Should commercial testing laboratories for recreational cannabis be allowed in Fairfax?

**% Count**

Yes 36.8% 81

No 50.9% 112

Don't know/no opinion 12.3% 27

**Comments:**

Answered 19

## Non-Medical (Recreational) Cannabis Survey

How do you think the Town should regulate recreational (non-medical) cannabis uses?

All Unregistered Responses sorted chronologically

As of January 4, 2018, 3:59 PM <http://www.peakdemocracy.com/5685> Page 7 of 675

Skipped 203

**access all** another **any** business **cannabis** don fairfax get  
**lab labs** let live

manufacturing more near **pot** s so **t testing they** think **town** want  
**why**

**Should commercial manufacturing of recreational cannabis products be allowed in Fairfax?**

**% Count**

Yes 31.2% 68

No 57.8% 126

Don't know/no opinion 11.0% 24

**Comments:**

Answered 14

Skipped 208

**cannabis clean done explosions** get growers **let**

manufacturing people S scale

**shops** small sure they weed **what** where

**Should commercial distribution/transportation of recreational cannabis be allowed in Fairfax?**

**% Count**

Yes 38.5% 84

No 53.7% 117

Don't know/no opinion 7.8% 17

**Comments:**

Answered 6

Skipped 216

## Non-Medical (Recreational) Cannabis Survey

How do you think the Town should regulate recreational (non-medical) cannabis uses?

All Unregistered Responses sorted chronologically

As of January 4, 2018, 3:59 PM <http://www.peakdemocracy.com/5685> Page 8 of 675

**cannabis**

**Would you be willing to support a tax on recreational and/or medical cannabis?**

**% Count**

Yes, but only on recreational 32.7% 72

Yes, but only on medical 1.4% 3

Yes for both 38.6% 85

No for both 16.4% 36

Don't know/no opinion 10.9% 24

**Comments:**

Answered 23

Skipped 199

adults alcohol all **allow** also any **been** being business

cannabis do don

**drug** drugs fairfax help into law live **marijuana**

money **more**

**need** only people **plants** point pot residence **S**

system **t** tax

taxes then **they** think town use who

# Non-Medical (Recreational) Cannabis Survey

*How do you think the Town should regulate recreational (non-medical) cannabis uses?*

All Responses sorted chronologically

As of January 9, 2018, 4:38 PM



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**ATTACHMENT** C

# Non-Medical (Recreational) Cannabis Survey

*How do you think the Town should regulate recreational (non-medical) cannabis uses?*

As of January 9, 2018, 4:38 PM, this forum had:

Attendees: 541

All Responses: 385

Hours of Public Comment: 19.3




This topic started on November 16, 2017, 3:10 PM.

## Non-Medical (Recreational) Cannabis Survey






How do you think the Town should regulate recreational (non-medical) cannabis uses?

### Responses




Should outdoor non-commercial cultivation of cannabis for adult personal recreational use be allowed in Fairfax?

		%	Count
Yes		65.6%	250
No		33.3%	127
Don't know/no opinion		1.0%	4

If so, should the number of outdoor plants allowed per residence be:

		%	Count
6 plants (the same as allowed to be grown indoors under current State law)		43.1%	154
18 plants (the same as allowed for medical marijuana under Town Code)		23.8%	85
No plants		26.1%	93
Other		5.6%	20
Don't know/no opinion		1.4%	5

Should the retail sale to adults of recreational cannabis be allowed in Fairfax?

		%	Count
Yes		55.4%	211
No		43.3%	165
Don't know/no opinion		1.3%	5




Under State law, the current buffer zone for recreational cannabis commercial operations (retail stores)



## Non-Medical (Recreational) Cannabis Survey

How do you think the Town should regulate recreational (non-medical) cannabis uses?




is 600 feet from a school, daycare, or youth center. Should the buffer zone be increased?

		%	Count
Yes		49.2%	188
No		43.5%	166
Don't know/no opinion		7.3%	28

If yes, what distance:

Average	757584642388.76
Total	100,001,172,795,316.00
Count	132
Skipped	253

Should a buffer zone for recreational cannabis commercial operations be added to other areas in Town (for example, a park)?

		%	Count
Yes		59.8%	228
No		34.6%	132
Don't know/no opinion		5.5%	21

If yes, which areas?

Answered	198
Skipped	187




adults **all** any anywhere areas banks **bus** centers **children**  
**downtown** **fairfax** fields gas kids library lots movie near out **park**  
parking **parks** people **places** playgrounds pot **public** restaurants

## Non-Medical (Recreational) Cannabis Survey






How do you think the Town should regulate recreational (non-medical) cannabis uses?

**s schools smoke stops stores t teens town want where who**  
**youth**




Should there be a limit on the number of retail stores in Fairfax that sell recreational cannabis?

		%	Count
Yes		81.6%	311
No		16.3%	62
Don't know/no opinion		2.1%	8

If so, what should the limit be?

		%	Count
3 or fewer (similar to the restriction for medical marijuana dispensaries)		30.7%	111
Combine the limit for both medical and recreational dispensaries to max of 3		29.6%	107
No limit		10.5%	38
Other		26.8%	97
Don't know/no opinion		2.5%	9

Should retail stores also be allowed to make deliveries?

		%	Count
Yes		53.9%	205
No		36.6%	139
Don't know/no opinion		9.5%	36

## Non-Medical (Recreational) Cannabis Survey

How do you think the Town should regulate recreational (non-medical) cannabis uses?

### Comments:




Answered 63

Skipped 322

able access adults alcohol allowed being cannabis children could

**deliveries delivery do** don get having just **kids** make  
**marijuana medical** minors **more need** only people  
 pot recreational risk s sales stores t teens they think town under up use  
 youth

Should retail stores only be allowed to make deliveries, with no storefront sales?

		%	Count
Yes		25.1%	95
No		64.0%	242
Don't know/no opinion		10.8%	41

### Comments:

Answered 60




Skipped 325

above access alcohol all any cannabis children **deliveries delivery**  
 drug good how **just** like makes **marijuana** marin more need  
**only** open option **people** pot public recreational **retail s**  
**sales** see store storefront storefronts stores t then they  
 town want who

## Non-Medical (Recreational) Cannabis Survey

How do you think the Town should regulate recreational (non-medical) cannabis uses?

Should commercial cultivation of recreational cannabis be allowed in Fairfax?

		%	Count
Yes		30.2%	115
No		62.2%	237
Don't know/no opinion		7.6%	29




### Comments:

Answered 58

Skipped 327

allowed any cannabis commercial community crime  
cultivation d don fairfax farm from grow growing kids law  
like local m marijuana more much near need only operations other  
own pot recreational S so t they too town use very want where

Should commercial testing laboratories for recreational cannabis be allowed in Fairfax?

		%	Count
Yes		39.8%	152
No		46.3%	177
Don't know/no opinion		13.9%	53

### Comments:

Answered 34




Skipped 351

## Non-Medical (Recreational) Cannabis Survey

How do you think the Town should regulate recreational (non-medical) cannabis uses?

access **all** also any away **better** business **cannabis**  
**commercial** **don** **fairfax** from **get** good how just **lab** laboratories  
**labs** live manufacturing **more** **must** near operations other **pot** product quality  
**s** so sure **t** testing they town use want **what** why

Should commercial manufacturing of recreational cannabis products be allowed in Fairfax?




		%	Count
Yes		35.5%	135
No		54.5%	207
Don't know/no opinion		10.0%	38

### Comments:

Answered 23  
 Skipped 362

again **cannabis** **clean** do done exactly **explosions** facility **fairfax** get  
 growers let like long manufacturing **more** ok people perhaps production  
**products** s **scale** shops **small** sure they town weed **what** where

Should commercial distribution/transportation of recreational cannabis be allowed in Fairfax?

		%	Count
Yes		41.6%	157
No		48.5%	183
Don't know/no opinion		9.8%	37

## Non-Medical (Recreational) Cannabis Survey






How do you think the Town should regulate recreational (non-medical) cannabis uses?

### Comments:

Answered 19  
Skipped 366

again cannabis **commercial** differ **distribution** do **does fairfax** from how  
**marijuana** mean question recreational retail sale sales **size town** transportation  
**what**

Would you be willing to support a tax on recreational and/or medical cannabis?

		%	Count
Yes, but only on recreational		34.5%	131
Yes, but only on medical		1.6%	6
Yes for both		42.6%	162
No for both		13.4%	51
Don't know/no opinion		7.9%	30

### Comments:

Answered 55  
Skipped 330

alcohol allow **also any** been being cannabis community **don** drug drugs  
fairfax from help into kids **marijuana** medical money more  
need **people** plants pot recreational revenue **S** sales SO state **t**  
**tax taxed taxes** then they **think town** use who



# **TOWN OF FAIRFAX**

## **STAFF REPORT**

**August 15, 2018**

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager  
Ben Berto, Planning and Building Director

**SUBJECT:** Discuss/consider of Local Cannabis Regulatory Options and Provide Direction to the Planning Commission

---

### **RECOMMENDATION**

Continue to 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 conducted an on-line survey of cannabis issues.

At its March 7<sup>th</sup> 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 30<sup>th</sup> 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 18<sup>th</sup> meeting, the Council spent most of the meeting (approx. 3.5 hours) discussing general policy issues regarding cannabis. For each general policy issue, 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 approach appeared to be effective in allowing the Council to make key policy decisions without getting bogged down in the details.

## **DISCUSSION**

At its August 1<sup>st</sup> meeting, the Council confirmed and clarified its previous positions on several issues as well as received more public comment. However, due to the lateness of the hour, the Council continued the discussion to a special Council meeting.

The August 1<sup>st</sup> staff report specifically divided the policy discussion into the following categories:

1. Eliminated categories of uses
2. Commercial medical retailers
3. Cannabis Temporary Events
4. Personal/medical cultivation
5. Cannabis Deliveries (outside retailers)
6. Microbusinesses
7. Non-medical cannabis retailers
8. Limit the number of retailers
9. Buffer zones/locations
10. Standards- defer discussion
11. Tax revenues- defer discussion

This staff report summarizes the Council *Direction* on each of the above policy matters. To the extent possible, we noted: a) if Council consensus/majority was reached and which meeting date; 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.

Similar to previous meetings, it would be helpful for the Council to confirm or modify staff's understanding of the Council's *Direction* on each issue.

Some actions taken by other Marin agencies that may be of interest to the Council in its discussions are: The City of San Rafael recently approved 16 medical cannabis licenses: 5 delivery only, 8 infused product manufacturing, and 3 distributors and the County of Marin is currently reviewing 15 applications it received for its Medicinal Cannabis Delivery-Only Retailer program.

### **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



Direction: At its July 18<sup>th</sup> meeting, the Council confirmed the elimination of the above cannabis uses from further consideration. However, at its August 1<sup>st</sup> meeting, one Councilmember wanted to further explore the Council's reasoning for eliminating testing laboratories as an allowed use.

Attached is a memo prepared by the Town Attorney regarding the regulations for testing labs. We also included an FAQ regarding labs.

Some reasons for not allowing testing labs would be compatibility with adjacent uses, safety, and security. The City of San Rafael indicated they did not receive any qualified applicants for testing labs, perhaps related to "higher barriers" for labs, such as equipment cost.

## 2) Commercial medical cannabis dispensaries/retailers

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

Direction: At its July 18<sup>th</sup> and August 1<sup>st</sup> meetings, the Council confirmed 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?

Direction: At its July 18<sup>th</sup> meeting, the Council indicated it wanted to prohibit temporary events. At its August 1<sup>st</sup> meeting, the Council (3-2) reconfirmed the prohibition on temporary events. (Note: after the meeting, one of the Councilmembers indicated he wished to change his vote.)

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: At its August 1<sup>st</sup> meeting, the Council reached consensus to allow up to 6 cannabis plants, whether for medical or non-medical uses, to be grown indoors and/or outdoors, so long as the total number of plants does not exceed 6 plants per parcel. The Council acknowledged that the existing regulations for medical marijuana will need to be revised

The Council also discussed whether "plant" should be defined as "mature female plant." The current code regarding medical marijuana cultivation sets an 18 "mature" plant limit. The existing code also sets minimum distance requirements (200 ft) from certain uses (e.g., school) for outdoor medical cultivation. Another issue to consider is how to treat parcels that have multiple residential units (e.g., apartments). Staff would recommend that these issues be referred to the PC for discussion and recommendation to the Council.

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?

Direction: At its July 18th meeting, the Council confirmed 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. Staff suggested at the Council's August 1<sup>st</sup> meeting that this issue should be discussed in conjunction with the non-medical retail policy consideration.

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?

Direction: At its August meeting, the Council received additional information on microbusiness licenses and continued the discussion to this meeting.

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?

Direction: There was no Council consensus on this issue as it was continued to this meeting. 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.

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?

Direction: At its July 18<sup>th</sup> meeting, the majority of the Council expressed an interest to set a limit somewhere between 2-4 retailers and allowing a specific number of retailers to be both medical and non-medical retailers. The Council continued the discussion of this issue to this meeting. Staff suggests this issue, along with whether these limits would also apply to non-storefront retailers, 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.

Should the Council limit the number of businesses, then presumably the Town would establish criteria and a process by which to evaluate applicants for the limited licenses. Attached is an overview, prepared by the City of San Rafael, outlining its pilot licensing process and the criteria to be used to evaluate applications. Presumably, Fairfax would use a similar process to evaluate applicants. Staff would discuss the process with the PC for recommendation to the Council.

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: At its July 18<sup>th</sup> meeting 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, parks, 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 Council continued this discussion from its August 1<sup>st</sup> meeting.

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.

Policy consideration: Defer this discussion until the Council provides 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.

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

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

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. Memo on testing labs
- C. FAQ's regarding labs
- D. Location criteria for cannabis businesses
- E. City of San Rafael pilot licensing process
- F. Commercial area map for medical and non-medical cannabis