

TOWN OF FAIRFAX

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DATE: November 29, 2018

TO: Planning Commission

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

SUBJECT: Continued Discussion/Consideration of Cannabis Regulations

RECOMMENDATION

Discuss/consider local cannabis regulatory policy options, provide direction to staff, and continue the item to the next 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, 2019. 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.

The Town began its formal review of commercial cannabis in December 2017, with a community survey and an expert panel discussion. Since that time the Town Council has considered cannabis policies and regulations six times. The Council provided the Planning Commission with general policy direction to begin your process of developing cannabis regulations, and also provided direction on permitting existing medical cannabis businesses to conduct adult-use deliveries.

On September 20th the Planning Commission started general discussions regarding commercial cannabis. The Commission discussed the policy issues at length and at the conclusion of the meeting took a straw poll of its members' positions on the key policy issues.

On October 25th, the Commission considered a draft ordinance permitting existing medical cannabis businesses to conduct adult-use deliveries, and forwarded its recommendations to the Town Council.

On November 15, the Commission continued its general cannabis discussions, restated/confirmed its position on some issues and requested additional information on others. The Commission followed the same format as discussed at its September 20th meeting.

AGENDA ITEM # _____

The Commission's discussion focused on the following categories:

- a) Eliminated categories of uses
- b) Eliminating temporary cannabis events
- c) Commercial medical retailers
- d) Personal/medical cultivation limits
- e) Cannabis Deliveries (outside retailers)
- f) Non-medical cannabis retailers and the number of retailers
- g) Buffer zones/locations
- h) Standards
- i) Permit process
- j) Existing medical marijuana dispensary
- k) Tax revenues

DISCUSSION

Below is a summary of the Commission's current policy position on the cannabis policy issues outlined above. To the extent possible, the following is noted:

- a) If the Planning Commission confirmed a previous position or reached a consensus/majority on an issue based on its November 15th meeting.
- b) If the Commission majority was leaning a particular way, but the issue still requires Commission direction.
- c) The Council's position on the issue.
- d) Staff recommendations regarding a specific policy or criteria/standards for the Commission to consider to facilitate their policy discussion.

Our objective for this meeting is to confirm the Commission position on key issues and help facilitate the Commission's discussion of the remaining key policy issues.

1. Eliminated Categories of Use

The Planning Commission supported the Council's elimination of the below uses from further consideration:

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

However, a majority of the Commission expressed interest in exploring microbusinesses and the ability of the Town to place limitations on microbusinesses to address the Town Council's concerns regarding such uses. At its November 15th meeting, the Commission also requested additional information on the regulations for the manufacturing of cannabis products.

Commercial Manufacturing

The California Department of Public Health (CDPH), through its Manufactured Cannabis Safety Branch, is responsible for regulating commercial cannabis manufacturing. Attached is a CDPH fact sheet on the existing emergency

regulations for cannabis manufacturing. Please note the section on License Categories and Types. There are four license types for both the adult-use and medicinal markets:

- Extraction using volatile solvents
- Extraction using non-volatile solvents
- Infusions
- Packaging and labeling.

The Town Council determined that these type of uses would not be suitable for the Town due to potential health and safety concerns, the complexity of trying to regulate such uses, and the additional burden it would place on limited staff resources to permit and monitor such uses.

The State's proposed manufacturing regulations are over a hundred pages and can be found at the following website (www.cdph.ca.gov/Programs/CEH/DFDCS/MCSB). Staff suggests that if the Commission is interested in further exploring a specific type of manufacturing, it direct staff to return with more information on the specific use to narrow the discussion.

Microbusinesses

The Commission expressed interest in further exploring micro-businesses. The Town Council had previously received additional information on microbusiness licenses and discussed the issue at length. Attached is a memo from the Town Attorney's office regarding microbusiness requirements.

A microbusiness is a license designation created under state law that allows a licensee to engage in multiple commercial cannabis activities at one location under one license. Under the Bureau of Cannabis Control's (BCC) regulations, a microbusiness must engage in at least three of the following activities:

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

As noted, all activities performed by the microbusiness must occur on the same licensed premises. Attached for your reference is Chapter 4 of the BCC's proposed regulations for micro-business.

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. However, other Councilmembers indicated they were open to the concept of a limited-scope microbusiness, such as no cultivation. At the end of their discussions, the Council reached consensus that the complexity and potential for a large scale micro-business would be difficult to regulate locally and would place an additional burden on limited staff resources to

permit and monitor such uses.

2. Eliminate Cannabis Temporary Events Category of Use

The Commission confirmed it supported the Council's ban on cannabis temporary events. As clarification, the Town currently allows cannabis information tables at events. However, no samples or purchases of any cannabis product is allowed.

3. Continue to allow commercial medical cannabis dispensaries/retailers

The Commission reaffirmed it supported the Council's position of continuing to allow medical cannabis dispensaries in Town.

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

The majority of Commissioners supported the Council's suggested 6 plant per parcel limit. As clarification, state law allows up to 6 plants indoor in all private residences. The Town Code will need to be amended to reflect State law. The Town Council acknowledged that the existing regulations for medical marijuana cultivation, which currently allows cultivation of up to 18 outdoor mature plants per property will need to be revised.

The Commission had the following comments on personal cultivation:

- The Town should continue to apply the current Town Code standards and exceptions for outdoor medical marijuana cultivation.
- Requested additional information on the number of large multi-family complexes (e.g., 10 or more units) in Town.
- Agreed to use the State's definition of "mature plant," which means flowering plant, toward the limit.
- Some Commissioners suggested establishing a per property plant limit for outdoor cultivation. Staff indicated the existing Town Code standards may restrict the number of plants as a matter of practice.
- How should cultivation on a multifamily property be addressed? For example, should plants be allowed to be grown on balconies?

Staff is in the process of obtaining a list of multifamily properties (excluding those with accessory dwelling units) in Fairfax, and will have it for the meeting. Preliminarily, staff recommends continuing to apply the screening requirements already contained in Zoning Ordinance §17.138.330 et seq (attached). Other multifamily residential cultivation factors include landowner permission, and applying the similar restrictions as smoking tobacco.

5. Allow cannabis deliveries in Town, including from retailers outside Town limits

The Commission confirmed its support of the Council's position to allow adult-use cannabis deliveries in Town. Staff previously reported that it would be difficult for the Town to enforce delivery standards on businesses located outside the Town. However, the Town can establish standards for delivery businesses located in Town. Staff noted the BCC standards regulating delivery are very comprehensive and we do not recommend that the Town establish its own delivery standards at this time.

6. Allow some form of non-medical cannabis retail and limit the number of retail uses

The Commissioners 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 a physical store and purchase cannabis. A delivery-only business could not make sales in the store, instead can only make deliveries. According to the Bureau of Cannabis Control (BCC), no customers can enter the premises of delivery-only businesses.

At its November 15th meeting, the Commissioners shared their general impressions on the issue, but no consensus was reached regarding adult-use storefronts and delivery in Fairfax.

Key Policy Issues

- Number of businesses- How many and what type?

Consistent with the Town Council, there were a range of opinions on the number, with a general consensus being between 1 and 3 total adult-use retail and/or delivery businesses. The type of business could be either medical retail, adult-use retail, a combination of medical and adult use retail, and/or delivery-only businesses of either medical or adult-use cannabis, or both. It has been stated that under current economic and regulatory circumstances, a purely medical cannabis dispensary is unlikely to be viable, particularly under the Town's current medical marijuana requirements contained in Chapter 17.110 of the zoning regulations.

The Commission on October 25 recommended an ordinance to the Council to allow existing medical marijuana dispensaries to operate an adult-use delivery-only business.

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

This is a key policy issue for Commission consideration. The following criteria was developed to help assist the Commission in its decision-making.

Criteria to Consider

The Commission may want to consider the following criteria that would affect the possible locations of such cannabis businesses which in turn may assist the Commission with its decision-making process.

- Impacts on youth

Many public comments that were received concerned the potential adverse impact of cannabis businesses, especially storefront retail, on youth. State regulations require a default mandatory 600-foot setback buffer distance to a school, day-care, or youth-center.

The Commission should discuss which cannabis business could have more of a potential impact on youth than others. This discussion may help guide the locational decisions for cannabis businesses. Staff is prepared to share its informal findings on youth congregation locations at the meeting.

- Consider office standards similar to the CC zone (e.g., second floor, rear portion of building)

One suggestion was to allow cannabis businesses to only locate on the second floor or on the ground floor if the entrance is not facing the street. These requirements would limit the potential location of businesses since there are a limited number of commercial buildings which meet these standards.

- Traffic

The Commission may wish to consider traffic impacts of cannabis businesses. One way to do this is require that a business provide a traffic study with a circulation plan to assess overall traffic impacts and how customers would access their facility. However, it may be difficult to predict traffic impacts for cannabis businesses because it is a relatively new type of traffic-generating use, and cannabis businesses in other communities may not reflect similar impacts in Fairfax. A simplified approach would be to require that any location be on a main arterial such as Sir Francis Drake or Broadway.

- Parking

The Commission may want to consider criteria that requires a location to have off-street parking, and establish a specific parking standard such as 1 parking space per 200 sq. ft. of gross floor area (restaurant standards). This criteria alone would eliminate many possible locations in Town since many properties do not have off-street parking and, if they do, they may not meet the desired parking ratio. The Commission may also want to consider potential parking impacts on nearby residential areas.

- Town Code

At present, Fairfax Municipal Code, Chapter 17.110 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).

7. Where to allow cannabis uses? (Setback buffers/locations)

The majority of the Commission appeared to support maintaining the default State setback buffer for both adult-use and medicinal. No other consensus was reached.

Staff clarified that the proposed BCC permanent regulations allow communities to permit commercial cannabis uses within the State’s 600-foot buffer distance from a school, day care, or youth center. Technically, the Town would not be modifying the State buffer distance, but rather permitting certain cannabis uses within the 600-foot setback, subject to local regulations.

While the Council did not specifically discuss this issue other than to review the map of the commercial areas, some Councilmembers indicated they would consider reduced buffer zones for certain cannabis uses such as delivery-only. However, they would want the buffer zone to apply to storefront operations.

Cannabis businesses can only be located within the following commercial zoning districts:

- CC (Central Commercial)
- CH (Highway Commercial)
- CL (Light Commercial)

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 does not currently allow non-medical cannabis retailers because retail uses are not permitted. The CL zone would allow adult-use delivery-only operations since that is similar to professional office uses. The CL zone

would need to be amended to allow non-medical storefront 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.

As stated above, current State regulations require a default mandatory 600-foot setback buffer distance to a school, day-care, or youth-center. However, the State regulations do not list parks and ballfields as a youth facility for which a setback is required. The Commission could consider additional uses to the setback area.

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?

Staff suggests the Commission consider eliminating properties in the CL-zone from consideration for commercial cannabis uses, with the exception of medical dispensaries and adult-use delivery (only). Two CL-zoned sites are located outside of the downtown commercial area and are surrounded by residential zones. The one CL-zoned exception is the School Street Plaza site.

Another factor in determining whether and what types of commercial cannabis uses might be acceptable in the CL-zone is that allowing retail adult-use cannabis would require changing the CL zoning regulations to allow retail, which in turn might open the door to other types of retail uses.

A request was made for a map to add the CL zone for Deer Park Villa. Staff is working to provide this for the meeting.

Staff believes that the Commission discussion of the above criteria will assist in determining which type of businesses should be permitted in the State setback buffer.

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

The Commission supported the Council's preference to use the Town's existing cannabis regulations for medical dispensaries, to the extent possible, as the basis for regulating non-medical cannabis retailers. There are substantial differences between the current State regulations governing storefront retail and delivery versus the Town's medical marijuana dispensary storefront and delivery requirements. Modifications would be required to the existing code for medical dispensaries to make it consistent with current State law.

Staff also recommends simplifying the zoning regulations for medical marijuana dispensaries. The State's requirements are very comprehensive in addressing all the same operational issues (e.g., security, inventory) that the Town Code tries to

address. Please note that when the Town Code was adopted such State regulations did not exist. Continuing to include operational provisions in the Town Code would be an unnecessary duplication of effort and could create conflicts with future revisions to State regulations.

Similarly, we believe the State regulations address the vast majority of potential topics and concerns relating to storefront cannabis adult-use retail and/or delivery operations. However, there are areas where State regulations are silent such as business size, formula businesses, signage, storefront design, traffic, and parking.

Staff recommends the Commission focus on areas where State regulations are silent, or local circumstances and desires might be unique to our situation. For example, the Commission may want to discuss the applicability and potential impacts of the Town's formula business requirements to cannabis businesses. Fairfax's formula business regulations are contained in Zoning Code Chapter 17.040.220 et seq.

9. Require a Use Permit for all commercial cannabis uses (no consensus)

The Commission was split on the issue of requiring businesses to apply for the use permit versus a cannabis business permit. The Commission was also undecided on whether there should be a "pre-application" process to ensure applications for use permits or business permits meet minimum standards. The Council also did not reach consensus on these issues.

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 with no Town review if no substantial operational changes are requested.
- A business permit can be tailored to expire after a certain period and require an annual renewal process. A business permit can include operational requirements and terms similar to the conditions of approval of a use permit.
- At its November 5th meeting, the Council discussed a cannabis business permit process for existing medical marijuana dispensaries to apply for an adult-use delivery-only permit from the Town. This permit is business specific and expires if the business is closed or sold.
- 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?
 - The objective of a pre-application process is to establish a threshold for applications to move on in the process. This is useful if you should receive numerous applications.
 - Would a successful pre-applicant subsequently 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 (attached). Perhaps the State’s (BCC and other state bureaus) 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? This implies that all applicants would have a lease (or letter of intent to lease), which in turn would likely substantially reduce the volume of applicants relative to a pre-application process (unless that didn’t require a lease, etc.).
- Would business permits be approved administratively or by the Commission?

10. Allow existing medical marijuana dispensaries to have a non-medical cannabis retail component.

Proceeding from the Commission’s ordinance recommendations at its October 25 meeting, the Town Council is in the process of adopting cannabis business permit regulations with standards on how an existing medical marijuana dispensary may operate an adult-use delivery-only business.

The issue of whether existing medical marijuana dispensaries should be allowed to have a storefront retail operation is still outstanding. Staff recommends that this discussion be incorporated into the Commission’s broader discussion of where such businesses should be allowed.

11. Tax Revenues

The Council deferred this discussion until there is an ordinance prepared for the Council’s consideration. The Commission agreed not to hold any taxation or revenue-related discussions at this time.

NEXT STEPS

At the next Commission meeting, staff will again summarize the Commission’s direction and continue the discussion of outstanding issues or, if the Commission has provided

sufficient policy direction, staff in conjunction with the Town Attorney would begin to prepare the zoning regulations for consideration by the Commission. Ultimately, the Commission will recommend regulations for Town Council consideration.

ATTACHMENTS:

- A. Planning Commission 11-15-18 draft minutes
- B. Memo on microbusinesses
- C. BCC's microbusiness regulations
- D. CDPH regulations for Cannabis Manufacturing
- E. Town Code § 17.138 Article III regarding medical marijuana cultivation
- F. Map of Fairfax commercial cannabis businesses State-mandated buffer area.
- G. San Rafael application screening process
- H. Map of Fairfax commercial districts relative to State buffer setback, including Deer Park Villa
- I. List of multi-family projects in Town

(Note: Due to the Thanksgiving Holiday, attachments A., H., and I. will be distributed prior to the Commission meeting)

PC cannabis 112918 rpt fnl



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Memorandum

To: Fairfax Town Council **File No.:** 38072.00001
From: Janet Coleson, Town Attorney
Amanda Charne, Assistant Town Attorney
Date: July 26, 2018
Re: Cannabis Microbusinesses

PURPOSE

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

ANALYSIS:

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

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

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

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



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

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



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

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

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

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

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



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

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

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

CONCLUSION

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

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

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

cc: Garrett Toy, Town Manager

~~(d) For the purposes of this section, a customer number is a distinct number assigned by a licensed retailer to a customer that would allow the licensed retailer to identify the customer in documents or records using the customer number rather than the customer's full name. A licensed retailer shall be able to identify the customer associated with each customer number upon request from the Bureau.~~

~~Authority: Section 26013, Business and Professions Code. Reference: Section 26160, Business and Professions Code.~~

§ 5426. Records

All licensed retailer-specific records in this chapter shall be maintained in accordance with section 5037 of this division.

Authority: Section 26013, Business and Professions Code. Reference: Section 26160, Business and Professions Code.

§ 5427. Retailer Premises to Retailer Premises Transfer

(a) A licensee who holds multiple retail licenses may arrange for the transfer of cannabis goods from one licensed retail premises to another licensed retail premises if both retail licenses are held under the same ownership.

(b) Cannabis goods transferred to a licensed retail premises under subsection (a) of this section may be sold by the licensed retailer receiving the cannabis goods only if the cannabis goods comply with all requirements found in the Act and this division.

(c) The transportation of cannabis goods under this section must comply with all requirements found within the Act and this division.

(d) Any movement of cannabis goods under this section shall be properly entered into the state track and trace system.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

Chapter 4. MICROBUSINESS

§ 5500. Microbusiness

(a) In order to hold a microbusiness license, a licensee must engage in at least three (3) of the following commercial cannabis activities: cultivation, manufacturing, distribution, and retail sale. License types created by the California Department of Food and Agriculture or the State Department of Public Health in regulation shall not be considered qualifying commercial cannabis activities for purposes of obtaining a microbusiness license, except for the Type N manufacturing license.

(b) An applicant for a microbusiness license shall indicate on the application for licensure which commercial cannabis activities the applicant intends to engage in.

(c) An application for a microbusiness license shall include:

ATTACHMENT C

(1) For an application indicating that the applicant intends to engage in cultivation under the microbusiness license, all the required information under sections 5002, 5501, 5502 and 5503 of this division.

(2) For an application indicating that the applicant intends to engage in manufacturing under the microbusiness license, all the required information under sections 5002, and 5504 5506 of this division.

(3) For an application indicating that the applicant intends to engage in distribution under the microbusiness license, all the required information for an application seeking a distributor license.

(4) For an application indicating that the applicant intends to engage in distribution, transport-only under the microbusiness license, all the required information for an application seeking a distributor, transport-only license.

(5) For an application indicating that the applicant intends to engage in retail sale under the microbusiness license, all the required information for an application seeking a retailer license.

(6) For an application indicating that the applicant intends to engage in non-storefront retail sale under the microbusiness license, all the required information for an application seeking a non-storefront retailer license.

(d) All cultivation, manufacturing, distribution, and retail activities performed by a licensee under a microbusiness license shall occur on the same licensed premises.

(e) A holder of a microbusiness license shall comply with the following:

(1) A holder of a microbusiness license engaged in cultivation shall comply with all the rules and requirements applicable to the cultivation license type suitable for the cultivation activities of the licensee.

(2) A holder of a microbusiness license engaged in manufacturing shall comply with all the rules and requirements applicable to a Manufacturer 1 license in Division 1 of Title 17 of the California Code of Regulations.

(3) A holder of a microbusiness license engaged in distribution shall comply with all the rules and requirements applicable to a distributor license in this division.

(4) A holder of a microbusiness license engaged in retail sale shall comply with all the rules and requirements applicable to a retailer license, or a non-storefront retailer license if retail sales are conducted by delivery only in this division.

(f) A holder of a microbusiness license may only engage in the commercial cannabis activity requested in the license application and approved by the Bureau at the time the license is issued. If the holder of a microbusiness license wants to engage in an additional commercial cannabis activity after the license is issued, the licensee shall submit a request for a modification of the licensed premises pursuant to section 5027 of this division.

(g) A holder of a microbusiness license shall comply with all the security rules and requirements applicable to the corresponding license type suitable for the activities of the licensee.

(h) Areas of the licensed premises for manufacturing and cultivation shall be separated from the distribution and retail areas by a wall and all doors between the areas shall remain closed when not in use.

(i) A suspension or revocation of a microbusiness licensee shall affect all commercial cannabis activities allowed pursuant to that license.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26050, 26051.5, and 26070, Business and Professions Code.

§ 5501. Microbusiness Applications Including Cultivation Activities

In addition to the information required in section 5002 of this division, an application for a microbusiness license to engage in cultivation shall include the following:

(a) Evidence of enrollment with the applicable Regional Water Quality Control Board or State Water Resources Control Board for water quality protection programs or written verification from the appropriate Board that enrollment is not necessary.

(b) Evidence that the applicant has conducted a hazardous materials record search of the EnviroStor database for the proposed premises. If hazardous sites were encountered, the applicant shall provide documentation of protocols implemented to protect employee health and safety.

(c) For indoor and mixed-light cultivation, identification of all power sources for cultivation activities, including, but not limited to: illumination, heating, cooling, and ventilation.

(d) A premises diagram pursuant to section 5006 of this division that shall also include:

(1) All roads and water crossings on the property.

(2) If the applicant is proposing to use a diversion from a waterbody, groundwater well, or rain catchment system as a water source for cultivation, the following locations on the property diagram with locations also provided as coordinates in either latitude and longitude or the California Coordinate System:

(A) Sources of water used, including the location of waterbody diversion(s), pump location(s), and distribution system; and

(B) Location, type, and capacity of each storage unit to be used for cultivation.

(e) A proposed cultivation plan pursuant to section 5502 of this division.

(f) Identification of all water sources used for cultivation activities and the applicable supplemental information for each source as required by section 5503 of this division:

(1) A retail water supplier;

(2) A groundwater well;

(3) A rainwater catchment system; or

(4) A diversion from a surface waterbody or an underground stream flowing in a known and definite channel.

(g) A copy of any final lake or streambed alteration agreement issued by the California Department of Fish and Wildlife, pursuant to Fish and Game Code sections 1602 and 1617, or written verification from the California Department of Fish and Wildlife that a lake and streambed alteration agreement is not required.

(h) An attestation that the applicant entity is an "agricultural employer" as defined by the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975; Division 2, Part 3.5 (commencing with Section 1140) of the Labor Code.

(i) An attestation that the local fire department has been notified of the cultivation site if the applicant entity is an indoor license type.

(j) An acknowledgement that the applicant understands that the information provided in the application that is relevant to the cultivation operation may be shared with the Department of Food and Agriculture for purposes of evaluating the applicant's qualifications for licensure. If the Department of Food and Agriculture corresponds directly with the applicant on matters related to the application, the applicant shall agree to cooperate. The applicant shall further agree that the Department of Food and Agriculture may conduct inspections on the areas of the premises related to their respective oversight authority.

(k) If applicable, a detailed description of any fines or penalties for cultivation or production of a controlled substance on public or private land pursuant to Fish and Game Code section 12025 or 12025.1 against the applicant or a business entity in which the applicant was an owner or officer within 3 years preceding the date of application.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26050, 26051.5, and 26070, Business and Professions Code.

§ 5502. Cultivation Plan Requirements

A cultivation plan shall include all of the following:

(a) A detailed premises diagram showing all cultivation activity areas, boundaries, and dimensions in feet. The total area of the following cultivation activity areas shall be less than 10,000 square feet as provided in Business and Professions Code section 26070.

(1) Canopy area(s) (which shall contain mature plants, at any point in time), including aggregate square footage if the canopy areas are noncontiguous;

(2) Area(s) outside of the canopy where only immature plants shall be maintained, if applicable;

(3) Designated pesticide and other agricultural chemical storage area(s);

(4) Designated processing area(s) if the licensee will process on site;

(5) Designated packaging area(s) if the licensee will package products on site;

(6) Designated composting area(s) if the licensee will compost plant or cannabis waste on site;

(7) Designated secured area(s) for cannabis waste if different than subsection (a)(6) of this section;

(8) Designated area(s) for harvested cannabis storage;

(9) Designated research and development area(s) which may contain mature plants for nursery only;

(10) Designated seed production area(s) which may contain mature plants for nursery only; and

(b) For purposes of subsection(a)(1) in this section, canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all areas(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries. Canopy may be noncontiguous, but each unique area included in the total canopy calculation shall be separated by an identifiable boundary which include, but are not limited to: interior walls, shelves, greenhouse walls, hoop house walls, garden benches, hedgerows, fencing, garden beds, or garden plots. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation. Immature plants for cultivation activities of a microbusiness shall have the same definition as defined by the California Department of Food and Agriculture in regulation.

(c) For indoor and mixed-light cultivation, a lighting diagram with the following information shall be included:

(1) Location of all lights in the canopy area(s); and

(2) Maximum wattage, or wattage equivalent, of each light.

(d) A pest management plan which shall include, but not be limited to, the following:

(1) Product name and active ingredient(s) of all pesticides to be applied to cannabis during any stage of plant growth; and

(2) Integrated pest management protocols including chemical, biological, and cultural methods the applicant anticipates using to control or prevent the introduction of pests on the cultivation site.

~~(e) Cannabis waste procedures meeting the requirements of section 5002(c)(29)(E) of this division.~~

Authority: Section 26013, Business and Professions Code. Reference: Sections 26050, 26051.5, and 26070, Business and Professions Code.

§ 5503. Supplemental Water Source Information

The following information shall be provided for each water source identified by the applicant:

(a) Retail water supply sources:

(1) If the water source is a retail water supplier, as defined in Water Code section 13575, identify the retail water supplier.

(2) If the water source is a small retail water supplier, such as a delivery service, and is subject to Business and Professions Code section 26060.1(a)(1)(B):

(A) If the retail water supplier contract is for delivery or pickup of water from a surface water body or an underground stream flowing in a known and definite channel, provide all of the following:

(i) The name of the retail water supplier under the contract;

(ii) The geographic location coordinates in either latitude and longitude or the California Coordinate System of any point of diversion used by the retail water supplier to divert water delivered to the applicant under the contract;

(iii) The authorized place of use of any water right used by the retail water supplier to divert water delivered to the applicant under the contract; and

(iv) The maximum amount of water delivered to the applicant for cannabis cultivation in any year.

(B) If the retail water supplier contract is for delivery or pickup of water from a groundwater well, provide all of the following:

(i) The name of the retail water supplier;

(ii) The geographic location coordinates for any groundwater well used to supply water delivered to the applicant, in either latitude and longitude or the California Coordinate System;

(iii) The maximum amount of water delivered to the applicant for cannabis cultivation in any year; and

(iv) A copy of the well log filed with the Department of Water Resources pursuant to Water Code section 13751 for each percolating groundwater well used to divert water delivered to the applicant. If no well log is available, the applicant shall provide evidence from the Department of Water Resources indicating that the Department of Water Resources does not have a record of the well log. When no well log is available, the State Water Resources Control Board may request additional information about the well.

(b) If the water source is a groundwater well:

(1) The groundwater well's geographic location coordinates in either latitude and longitude or the California Coordinate System; and

(2) A copy of the well log filed with the Department of Water Resources pursuant to Water Code section 13751. If no well log is available, the applicant shall provide evidence from the Department of Water Resources indicating that the Department of Water Resources does not have a record of the well log. If no well log is available, the State Water Resources Control Board may request additional information about the well.

(c) If the water source is a rainwater catchment system:

(1) The total square footage of the catchment footprint area(s);

- (2) The total storage capacity, in gallons, of the catchment system(s); and
- (3) A detailed description of the type, nature, and location of each catchment surface. Examples of catchment surfaces include a rooftop and greenhouse.
- (d) If the water source is a diversion from a waterbody, provide any applicable statement, application, permit, license, or small irrigation use registration identification number(s); and either:
 - (1) A copy of any applicable registrations, permits, or licenses or proof of a pending application, issued under Part 2 (commencing with Section 1200) of Division 2 of the Water Code as evidence of approval of a water diversion by the State Water Resources Control Board;
 - (2) A copy of any statements of diversion and use filed with the State Water Resources Control Board before October 31, 2017, detailing the water diversion and use; or
 - (3) A copy of documentation submitted to the State Water Resources Control Board before October 31, 2017, demonstrating that the diversion is authorized under a riparian right and that no diversion occurred in any calendar year between January 1, 2010, and January 1, 2017.
 - (4) If the applicant has claimed an exception from the requirement to file a statement of diversion and use pursuant to Water Code section 5101 the applicant shall provide a copy of the documentation submitted to the State Water Resources Control Board before January 1, 2019, demonstrating that the diversion is subject to Water Code section 5101, subdivision (a), (c), (d), or (e).

Authority: Section 26013, Business and Professions Code. Reference: Sections 26050, 26051.5, and 26070, Business and Professions Code; and Section 13149, Water Code.

§ 5504. License Issuance in an Impacted Watershed

If the State Water Resources Control Board or the Department of Fish and Wildlife finds, based on substantial evidence, that a licensed microbusiness' cannabis cultivation is causing significant adverse impacts on the environment in a watershed or other geographic area, the Bureau shall not issue new microbusiness licenses that include cultivation activities or increase the total number of plant identifiers within that watershed or area.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26011.5, 26055, and 26070, Business and Professions Code.

§ 5505. Cultivation Records for Licensees Engaging in Cultivation Activities

In addition to the records required by section 5037 of this division, a licensed microbusiness engaging in cultivation activities shall maintain the following records:

- (a) Cultivation plan(s);
- (b) All records evidencing compliance with the environmental protection measures required in sections 5501, 5502, 5503, and 5504 of this division; and

(c) All unique identifiers (UID) assigned to product in inventory and all unassigned UIDs. UIDs associated with product that has been retired from the track and trace system must be retained for six (6) months after the date the tags were retired.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26069, 26160, and 26161, Business and Professions Code.

§ 5506 Microbusiness Applications Including Manufacturing Activities

In addition to the information required in section 5002 of this division, an application for a microbusiness license that engages or will engage in manufacturing, shall include the following:

- (a) The type of activity conducted at the premises (extraction, infusion, packaging, and/or labeling);
- (b) The types of products that will be manufactured, packaged, or labeled;
- (c) The name, title, and phone number of the on-site individual who manages the operation of the premises;
- (d) The name, title, and phone number of an alternate contact person for the premises;
- (e) The number of employees at the premises;
- (f) The following information:
 - (1) A description of inventory control procedures sufficient to demonstrate how the applicant will comply with the requirements of Section 40282 of Title 17 of the California Code of Regulations, or a copy of the standard operating procedure addressing inventory control;
 - ~~(2) A copy of the product quality plan that meets the requirements of section 40253 of Title 17 of the California Code of Regulations description of quality control procedures sufficient to demonstrate how the applicant will comply with all of the applicable requirements specified in Sections 40232-40268 of Title 17 of the California Code of Regulations, or a copy of the standard operating procedure addressing quality control; and~~
 - (3) A description of security procedures sufficient to demonstrate how the applicant will comply with the requirements of Section 40200 of Title 17 of the California Code of Regulations, or a copy of the standard operating procedure addressing security procedures;
 - ~~(4) A description of the waste disposal procedures sufficient to demonstrate how the applicant will comply with the requirements of Section 40290 of Title 17 of the California Code of Regulations, or a copy of the standard operating procedure addressing waste management.~~
- ~~(g) Any manufacturer submitting operating procedures and protocols to the Department pursuant to the Act and this chapter may claim such information as a trade secret or confidential by clearly identifying such information as "confidential" on the document at the time of submission. Any claim of confidentiality by a manufacturer must be based on the manufacturer's good faith belief that the information marked as confidential constitutes a trade secret as defined in Civil Code~~

~~section 3426.1(d) or is otherwise exempt from public disclosure under the California Public Records Act in Government Code section 6250 et seq.~~

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26050, 26051.5, 26055, and 26070, Business and Professions Code.

§ 5506.1 Microbusiness Failed Manufactured Cannabis Product Batches

A microbusiness licensee that engages or will engage in manufacturing shall handle failed manufactured cannabis product batches in accordance with the following:

(a) A finished manufactured cannabis product batch that fails any laboratory testing requirement established by the Bureau pursuant to Business and Professions Code section 26100 shall be destroyed unless a corrective action plan for remediation or reprocessing is approved by the Bureau pursuant to subsection (d) of this section.

(b) Remediation or reprocessing of a failed manufactured cannabis product batch or the use of a harvest batch that has failed any laboratory test shall comply with the requirements and procedures established by the Bureau in section 5727 of this division.

(c) Edible cannabis products that fail laboratory testing requirements shall not be remediated or reprocessed and shall be destroyed. If any edible cannabis product that has failed laboratory testing is remediated, reprocessed, or otherwise mixed with another batch of cannabis product, such action shall render the final cannabis product adulterated, as defined in Business and Professions Code section 26131, regardless of the defect level of the final cannabis product.

(d) A manufactured cannabis product batch or a harvest batch that fails laboratory testing or quality assurance review shall not be remediated or reprocessed unless the Bureau has approved a corrective action plan submitted by the microbusiness licensee. The corrective action plan shall include, at minimum, a description of how the product or harvest batch will be remediated so that the product or harvest batch, or any product produced therefrom, will meet all laboratory testing and quality assurance requirements. Corrective action plans will be reviewed by the Bureau on a case-by-case basis.

(e) All remediation of harvest or manufactured cannabis product batches shall be documented in the microbusiness' manufacturing records. Remediated products, harvest batches, or products produced therefrom, shall be tested and undergo quality assurance review in accordance with the requirements established by the Bureau in Chapter 2 of this division.

(f) Notwithstanding subsection (c) of this section, if the edible cannabis products are orally-dissolving products, as defined in section 5700 of this division, and fail laboratory testing because the per package limit of THC for adult-use products has been exceeded, the orally-dissolving products may be remediated by repackaging the orally-dissolving products as medicinal products in accordance with the following:

(1) A corrective action plan pursuant to subsection (d) of this section shall be submitted to and approved by the Bureau;

(2) The orally-dissolving edible cannabis products batch is returned to the licensed microbusiness that packaged the products;

(3) The orally-dissolving edible cannabis products are not altered in any way; and

(4) The orally-dissolving edible cannabis product is labeled to accurately state the contents.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26050, and 26070, Business and Professions Code.

§ 5507 Microbusiness Records for Licensees Engaging in Manufacturing Activities

In addition to the records required by section 5037 of this division, a licensed microbusiness engaging in manufacturing activities shall maintain all records required to be maintained by manufacturers under Chapter 13, Division 1 of Title 17 of the California Code of Regulations. the following records:

~~(a) Records related to quality of raw materials and ingredients, per section 40252 of Title 17 of the California Code of Regulations.~~

~~(b) Records related to manufacturing operations, per section 40254 of Title 17 of the California Code of Regulations.~~

~~(c) Records related to written hazard analysis, per section 40256 of Title 17 of the California Code of Regulations.~~

~~(d) Records related to preventative controls, per section 40258 of Title 17 of the California Code of Regulations.~~

~~(e) Records related to the master manufacturing protocol, per section 40262 of Title 17 of the California Code of Regulations.~~

~~(f) Batch production record, per section 40264 of Title 17 of the California Code of Regulations.~~

~~(g) Records related to product complaints, per section 40266 of Title 17 of the California Code of Regulations.~~

~~(h) Records related to recalls, per section 40268 of Title 17 of the California Code of Regulations.~~

Authority: Section 26013, Business and Professions Code. Reference: Sections 26160, Business and Professions Code.

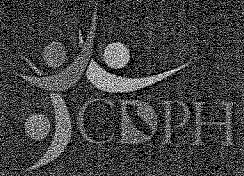
Chapter 5. CANNABIS EVENTS

§ 5600. Cannabis Event Organizer License

~~(a) To obtain a temporary cannabis event license, the event organizer must first apply for and obtain a cannabis event organizer license.~~

EMERGENCY REGULATIONS

SUMMARY FOR CANNABIS MANUFACTURING



The California Department of Public Health (CDPH) is one of three state licensing authorities charged with licensing and regulating commercial cannabis activity in California. CDPH is responsible for regulation of the *manufacturing* component of the industry, which it will do through the Manufactured Cannabis Safety Branch.

In November 2017, CDPH released Emergency Regulations that outline the standards and licensing procedures for both medicinal and adult-use commercial cannabis manufacturing and products. These replace the medicinal regulations released in April 2017 developed in response to previous versions of state law.

Key Components of Cannabis Manufacturing Emergency Regulations

Temporary Licenses

CDPH will issue temporary licenses that allow a business to engage in commercial cannabis activity. Once issued, these licenses will be valid for 120 days and may be extended for additional periods of 90 days, if the business has submitted a complete annual license application. The application will be available on the CDPH website and can be submitted by mail or email. City or county authorization to conduct commercial cannabis activity must be submitted with the temporary license application. Once the application is received, CDPH will contact the city or county to verify the local authorization, and the office will have 10 days to respond. There is no fee for the temporary license.

Annual Licenses

Applications for annual licenses will be accepted through an online licensing system that will launch in December 2017. This application will require information on the business, owners and financial interest holders, and operating premises, as well as descriptions of procedures for waste disposal, inventory and quality control, transportation and security. Businesses in operation under the Compassionate Use Act prior to September 1, 2016, will receive priority application review. Applicants must be in compliance with city or county ordinances. During the application review process, CDPH will contact the city or county to verify the local authorization. If the applicant does not provide a copy of their local authorization, the local office will have 60 days to respond. If the applicant includes a copy of their local authorization with their application, the local office will have 10 days to respond.

License Categories & Types

Anyone conducting commercial cannabis manufacturing must obtain a license from CDPH. Each license issued will have one category and one type.

The two license categories are:

A-License

Cannabis products for sale in the adult-use market

M-License

Cannabis products for sale in the medicinal market

A business may hold both M- and A-Licenses at the same premises as long as separate applications are completed.

The four license types are:

Type 7

Extraction using volatile solvents (ex: butane, hexane, pentane)

Type 6

Extraction using a non-volatile solvent or mechanical method (ex: food-grade butter, oil, water, ethanol, or carbon dioxide)

Type N

Infusions (ex: using pre-extracted oils to create edibles, beverages, capsules, vape cartridges, tinctures or topicals)

Type P

Packaging and labeling only

Operational Requirements

Licenses must have written procedures for inventory control, quality control, transportation, security and cannabis waste disposal. Descriptions of these procedures or Standard Operating Procedures (SOPs) must be submitted with the annual license application. Cannabis waste cannot be sold, must be placed in a secured area and be disposed of according to applicable waste management laws.

Good manufacturing practices must be followed to ensure production occurs in a sanitary and hazard-free environment, cannabis products are contaminant free and THC levels are consistent throughout the product and within required limits.

Extractions using CO2 or a volatile solvent must be conducted using a closed-loop system, certified by a California-licensed engineer. Volatile, hydrocarbon-based solvents must have at least 99% purity. Finally, volatile solvent, CO2 and ethanol extractions must be certified by the local fire code official.

Product Standards and Prohibited Products

Products cannot be infused with nicotine or alcohol or have added caffeine. Edible products cannot be shaped like a human, animal, insect, or fruit. Some potentially-hazardous foods, such as meat and seafood, and other products requiring refrigeration, are prohibited for sale as cannabis products. Juice and dried meat made in accordance with requirements are allowed. Perishable ingredients, such as eggs and milk, may be used as long as the final product meets regulatory standards.

THC Limits

Edible products are limited to a maximum of 10 mg of THC per serving and 100 mg of THC per package. Other cannabis products, such as tinctures, capsules and topicals, are limited to a maximum of 1,000 mg per package for the adult-use market and 2,000 mg of THC per package for the medicinal-use market.

Packaging & Labeling

Cannabis product packaging cannot resemble traditionally available food packages, and edibles packaging must be opaque. All manufactured products must be packaged before they are released to a distributor. In addition to these requirements, statute requires that cannabis product packaging not be attractive to children and be tamper-evident, re-sealable if the product includes multiple servings, and child-resistant.

Cannabis product labels must include an ingredient list, some nutritional facts and the CDPH-issued universal symbol. The label may not refer to the product as a candy. In addition to these requirements, statute requires that labels not be attractive to individuals under age 21 and include mandated warning statements and the amount of THC content.

Annual License Fees

Application Fee – Processing fee of \$1,000.00 per license

License Fee – Scaled according to the gross annual revenue of the licensed premises. These fees are intended to cover costs of administering the manufactured cannabis safety program and range from \$2,000 to \$75,000.

Transition Period

The state licensing authorities have established a transition period, from January 1 until July 1, 2018, to support a smooth transition into a newly regulated market. During this period, product will be allowed to move between A- and M-licensees. Products manufactured prior to January 1, 2018, can be packaged in secondary packaging that is child resistant, and stickers may be used for the government warning statement and amount of THC/CBD per serving. All products manufactured on or after January 1, 2018 must meet THC limits and product restrictions.

Shared Manufacturing Facilities

CDPH is currently developing an additional license type, Type S, which will allow businesses to share facility space. This license type will reduce barriers to entry into the legal, regulated market and ensure that cannabis products are manufactured in clean, regulated facilities. This license type should be ready to be issued in early 2018.

Other Laws to Know:

California Business & Professions Code – Includes requirements set forth by MAUCRSA

Commerce Regulations released by the Director of Public Health – Includes specific requirements for retailers, distributors, third-party testing laboratories and microbusinesses

Commerce Regulations released by the Director of Public Health – Includes specific requirements for cultivators and the track-and-trace system

California Code of Regulations

California Department of Public Health
Manufactured Cannabis Safety Branch

www.cdph.ca.gov/mcsb mcsb@cdph.ca.gov
www.cannabis.ca.gov



(3) The town shall not condition approval of an application on the approval of an association, as defined in Cal. Civil Code § 4080. Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost. (Ord. 794, passed 10-7-2015)

§ 17.138.270 INSPECTIONS.

(A) Only one inspection shall be required and performed by the Planning and Building Department for small residential rooftop solar energy systems eligible for expedited review.

(B) The inspection shall be done in a timely manner.

(C) If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized but need not conform to the requirements of this subchapter. (Ord. 794, passed 10-7-2015)

ARTICLE III: MEDICAL MARIJUANA CULTIVATION

§ 17.138.310 PURPOSE.

It is the purpose of this article to regulate the cultivation of marijuana within the Town of Fairfax; to require that the indoor cultivation of marijuana occur only in appropriately secured, enclosed, and ventilated structures so as not to be visible to the general public; to provide for the health, safety and welfare of the public; to prevent odor created by marijuana plants from impacting adjacent properties; and to ensure that marijuana grown for medical purposes remains secure and does not find its way to nonpatients or illicit markets. Nothing in this article is intended to impair any defenses available to qualified patients or primary caregivers under the applicable state law or require such patients to receive a local

license to cultivate. Nothing in this article is intended to authorize the cultivation, possession, or use of marijuana in violation of state or federal law. (Ord. 797, passed 8-3-2016)

§ 17.138.320 DEFINITIONS.

As used in this article, the following definitions shall apply:

AREA USED TO CULTIVATE MARIJUANA. The aggregate area of vegetative growth of live marijuana plants on the premises, pursuant to Cal. Health and Safety Code § 11362.777(g).

CULTIVATION. The planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.

FULLY ENCLOSED AND SECURE STRUCTURE. A space within a dwelling unit that complies with the California Building Code, as adopted in the town ("CBC"); or, if exempt from the permit requirements of the CBC, an accessory structure, on a lot or site containing a dwelling unit, having a complete roof and enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. In order to qualify as a fully enclosed and secure structure, the walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two-inch by four-inch or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials.

INDOORS. Within a fully enclosed and secure structure.

OUTDOOR. Any location exposed to the open air not within an enclosed structure or building.

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 (CO₂, 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)

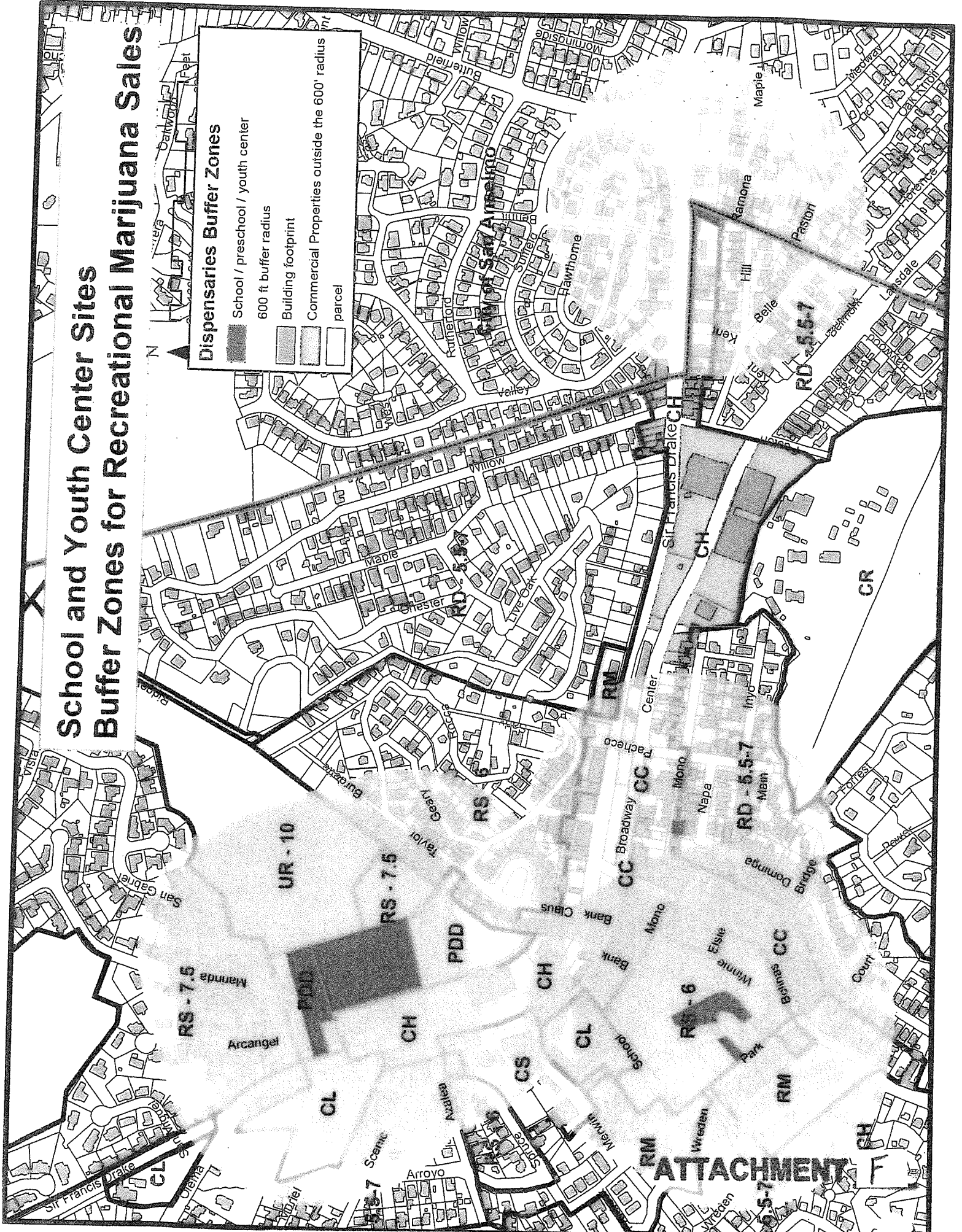
§ 17.138.380 LIABILITY.

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)

School and Youth Center Sites Buffer Zones for Recreational Marijuana Sales

Dispensaries Buffer Zones

-  School / preschool / youth center
-  600 ft buffer radius
-  Building footprint
-  Commercial Properties outside the 600' radius parcel



ATTACHMENT F

MEDICAL CANNABIS

Pilot Licensing Process

CITY OF SAN RAFAEL

ATTACHMENT 9

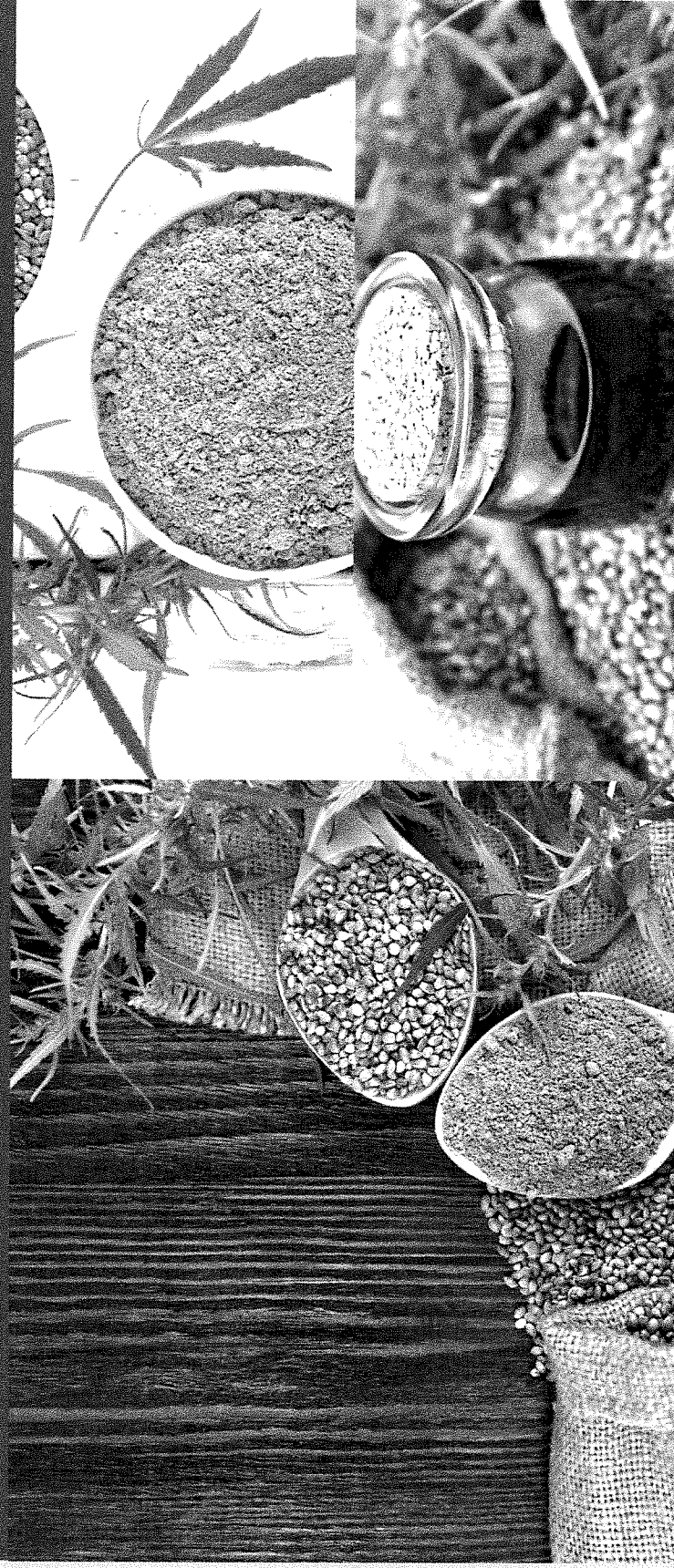
WHAT ARE WE LICENSING?

The City of San Rafael is creating a pilot operator licensing program for medicinal cannabis operators. This is a new program for us, so we are starting small and evaluating along the way. To start, San Rafael will be offering a limited amount of medicinal licenses in the following categories:

- *Infused Product Manufacturers: 8 licenses available
(State License Type N)*
- *Delivery Non-storefront: 4 licenses available
(State License Type 9)*
- *Cannabis Testing Labs: 4 licenses available
(State License Type 8)*
- *Distribution: 2 licenses available
(State License Type 11)*

HOW DO WE CHOOSE?

We are looking for strong business acumen with a capable and passionate team. We want to help create a local ecosystem of small craft purveyors, who exemplify the artisan quality Marin County is known for.



WHAT ARE WE EVALUATING?

Business Executive Summary (20 POINTS - MAXIMUM)

Think business plan meets executive summary. We want to learn about your mission and vision, your organizational structure, market analysis, sales and financial projections.

Safety & Security (20 POINTS - MAXIMUM)

We realize you may not have a location yet, but we are looking for a general understanding of how safety and security will work with your business. Compliance track and trace standards, cash management strategies, odor control, burglary and employee loss prevention.

Patient & Benefit Education (20 POINTS - MAXIMUM)

There is a lot to learn about medical cannabis for patients, how will you educate them? What type of data security and patient privacy methods will you employ?

Local Enterprise (10 POINTS - MAXIMUM)

There is a sliding point scale for local businesses in the North Bay, specifically the counties of Marin, Sonoma and Napa.

Qualifications of Principals (20 POINTS - MAXIMUM)

This is where you get to break down how awesome your team is! Tell us about your management team's experience and expertise.

Community Benefits (10 POINTS - MAXIMUM)

Share what unique attributes your business will bring to the community.

APPLICATION INTAKE

Online application window opens

6/1/2018*

Similar to the State of California's online cannabis licensing system, you will be able to apply, upload supporting documents, and pay the non-refundable application fee online.

Live Scan Background checks for applicants must be scheduled with the San Rafael Police Department by email: 236@srpd.org

* 6/1/2018 start date is our goal, pending any unforeseen configuration delays with the online application system, we should make this start date. Thank you for your patience.

IMPORTANT DATES

Online application window open from

6/1 - 6/15

Schedule Background
Check Appointment
with San Rafael Police
Department

Prescreen - Background check review

6/18 - 6/20

Committee Review & Ranking

6/19 - 6/22

Operator Interviews - Final Selection

6/25 - 6/29

APPLICATION COST & DETAILS

\$3600 non-refundable application fee

Application Review Panel includes:

- Economic Development Director
- Economic Development Coordinator
- Police Chief
- Fire Chief
- Community Development Director
- Department of Public Works Representative

License application ranking evaluation points:

- Business Executive Summary (20 POINTS - MAXIMUM)
- Safety and Security Plan (20 POINTS - MAXIMUM)
- Patient Benefits & Education (20 POINTS - MAXIMUM)
- Local Enterprise Preference (10 POINTS - MAXIMUM)
- Qualifications of Principals (20 POINTS - MAXIMUM)
- Community Benefits (10 POINTS - MAXIMUM)

An application is required to receive a total of 85 points to move forward. The Committee will rank all the applications and will issue a written decision for each application. The Committee shall serve a copy of its written decision on each applicant by email.

THANK YOU

We look forward to learning more about you.

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