



TOWN OF FAIRFAX

142 Bolinas Road, Fairfax, California 94930
(415) 453-1584 / Fax (415) 453-1618

DATE: December 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 and provide direction to staff.

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.

On November 29th, the PC continued its general discussions, restated/confirmed its position on some issues and requested additional information on others. The PC followed the same format as discussed at its previous meetings.

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 from previous meetings.
- b) If the Commission majority was leaning a particular way, but the issue still requires Commission direction.
- c) 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

At its November 29th meeting, the PC confirmed its 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. The PC also requested additional information on the regulations for the manufacturing of cannabis products.

Staff previously recommended that the PC defer the discussion of microbusiness and manufacturing to a future meeting due to the complexities of the issues. We would suggest the PC continue the Council's ban on microbusiness and manufacturing uses and inform the Council that the PC would like to "revisit" the ban regarding these uses next year.

Commercial Manufacturing

The California Department of Public Health (CDPH), through its Manufactured Cannabis Safety Branch, is responsible 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 types 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 proposed regulations for manufacturing are over a hundred pages (www.cdph.ca.gov/Programs/CEH/DFDCS/MCSB). Staff suggests that if the PC is interested in further exploring a specific type of manufacturing, the PC request staff to return with more information on the specific use to narrow the discussion.

Microbusinesses

The PC expressed interest in further exploring micro-businesses. The Town Council had previous 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 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.

BCC Section 5500 (a) states "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." The "Type N" license is for manufacturers that produce cannabis products other than extracts or concentrates that are produced through extraction. A Type N licensee may also:

- (A) Package and label cannabis products on the licensed premises; and

(B) Register and operate the licensed premises as a shared-use facility in accordance with Article 6 (commencing with Section 40190) of Subchapter 2.

This implies that the Town could not limit manufacturing to the Type P license—packaging/labeling because such a requirement would not allow a business to qualify for a microbusiness license.

One item of note is that 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, some Councilmembers indicated they were open to the concept of limiting the scope of 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 PC 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 PC 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 PC 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.
- 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.
- It is unclear whether plants should be allowed to be grown on balconies visible from the public right-of-way.

Staff is informally surveying larger multi-family complexes regarding their position on marijuana cultivation. The preliminary responses have been that the properties will not allow personal cultivation or will “take a wait and see” approach. Perhaps the issue of outdoor cultivation in multi-family complexes requires no further regulations as the existing standards may be sufficient and/or apartment owners will self-regulate.

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

The Commission confirmed it was supportive 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 indicated the BCC standards regulating delivery is very comprehensive and that we do not see the need for the Town to 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 the 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 and 29th meetings, the Commissioners shared their general impressions on the issue, but no consensus was reached regarding adult-use storefronts and delivery in Fairfax.

Key Policy Issue- Number of businesses- How many and what type?

The PC did not reach consensus on this issue, but did offer the following comments:

- Allow 2 businesses with any combination of retail business types. The type of business could be either medical retail, adult-use retail, both medical and adult use, and/or delivery-only businesses.
- Allow 1 business of each of use: 1 medical delivery 1 adult-use delivery, 1 adult use retail storefront operation.
- Allow 3 businesses of any combination of retail business type.
- Only allow 1 business which is the current medical dispensary operation which will be allowed to make adult-use deliveries.

- Allow up to 3 of each type of business: medical retail, adult-use retail, and delivery. Under this concept, one business could theoretically represent 3 of the uses.

Should the PC be unable to reach a consensus on this issue, the PC could just recommend a range for the number of businesses as well as the type of business to allow.

Locational Criteria to Consider

The PC may want to consider criteria that would affect the possible locations of such cannabis businesses which in turn may assist the PC with its decision-making process. Towards that end, staff has listed below comments received from the PC regarding locational criteria.

One approach for the PC to consider is to take a “straw poll” of the concepts listed below to determine if a consensus or majority can agree on the specific concept. The PC may find that it needs to further refine some concepts that could be in conflict with others or that some options are too limiting when combined with others. This approach may help the PC narrow the options for consideration.

- Maintain the State Buffer Zone.

State regulations require a default mandatory 600-foot setback buffer distance to a school, day-care, or youth-center. However, the State does allow municipalities to establish exceptions to the rule. A majority of the PC seem to support this concept. The Commissioners were aware that this would preclude the existing dispensary from operating an adult-use storefront retail business. The attached buffer zone maps show the possible locations in Town. If the PC selects this option, there may not be a need to further discuss the other locational criteria, unless the PC wants to further restrict possible locations.

- Do not allow adult use in CL (limited-commercial) zones.

The CL zones currently allows medical marijuana uses.

- Only allow in CH and CC zones.

In essence, this is the downtown area.

- Allow certain cannabis uses to be less than 600 ft from Day Care facilities.

This concept would need to be expanded to identify which type of uses would be allowed. Specifically, the PC would need to 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.

- Do not allow on Bolinas Rd.
- Allow in commercial areas along Sir Francis Drake, Bolinas Rd., Broadway, and/or Center Blvd.

Depending on the PC direction, this may further limit locations.

- Allow only on the second floors and/or on ground floor if the entrance is not on street.

This would further restrict possible locations.

- Do not allow in locations where youth tend to congregate.

Many public comments received concerned the potential adverse impact of cannabis businesses, especially storefront retail, on youth. Staff will be prepared to share its informal findings on this issue at the meeting.

- Require some on-site parking

The PC may want to consider criteria that requires a location to have some off-street parking or establish a specific parking standard such as 1 parking space per 200 sq. ft. of gross floor area (restaurant standards). These 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 PC may also want to consider potential impacts to parking in adjacent residential areas.

Depending on the PC's position on the above concepts, the PC may find that it has created de-facto "local buffer" zone to replace or expand the State buffer zone.

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

See the above discussion.

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 would not 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.

As stated above, current State regulations require a default mandatory 600-foot setback buffer distance to a school, day-care, or youth-center. However, parks are not currently considered such a facility, but the PC could consider additional uses to the setback area.

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

The PC 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 make the existing code for medical dispensaries consistent with current State law.

We also recommend simplifying the regulations for medical marijuana dispensaries because 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. Repeating them 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, traffic, and parking.

Staff recommends the PC focus on areas where local circumstances and desires might be unique to our situation. For example, the PC 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

A majority of the PC supported a cannabis business permit process. There also appeared to be consensus on requiring a "pre-application" process to ensure applications meet minimum standards.

The primary benefit of a business permit is that it 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.

The Commission may want to consider the following:

- 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?
- Would business permits be approved by staff or by the PC?

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

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 PC'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

If the PC can provide sufficient policy direction, staff in conjunction with the Town Attorney could begin to prepare draft zoning regulations for consideration by the Planning Commission.

ATTACHMENTS:

1. Memo on microbusinesses
2. BCC's microbusiness regulations
3. CDPH fact sheet
4. Map of Fairfax commercial zones with State-mandated buffer zone
5. Map of Fairfax commercial districts without State buffer zone
6. San Rafael Cannabis Pilot Program Resolution
7. Table of multiple unit developments
8. Survey



BEST BEST & KRIEGER
ATTORNEYS AT LAW

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:



BEST BEST & KRIEGER
ATTORNEYS AT LAW

- **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



BEST BEST & KRIEGER
ATTORNEYS AT LAW

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.)



BEST BEST & KRIEGER
ATTORNEYS AT LAW

- 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 were 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

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 2

- (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.

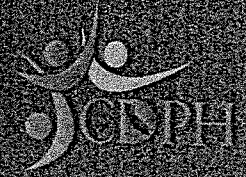
Chapter 5. CANNABIS EVENTS

§ 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.

(See Components of Cannabis Manufacturing and Safety Regulation.)

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:

Category A

Cannabis products for sale in the adult-use market

Category B

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 1

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

Type 2

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

Type 3

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

Type 4

Packaging and labeling only

Operational Requirements

Licensees 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:

Public Health Law - Transition Periods – Includes requirements set forth by MAUCRSA

Consumer Protection Law - Retailers, Distributors, Third-Party Testing Laboratories and Microbusinesses – Includes specific requirements for retailers, distributors, third-party testing laboratories and microbusinesses

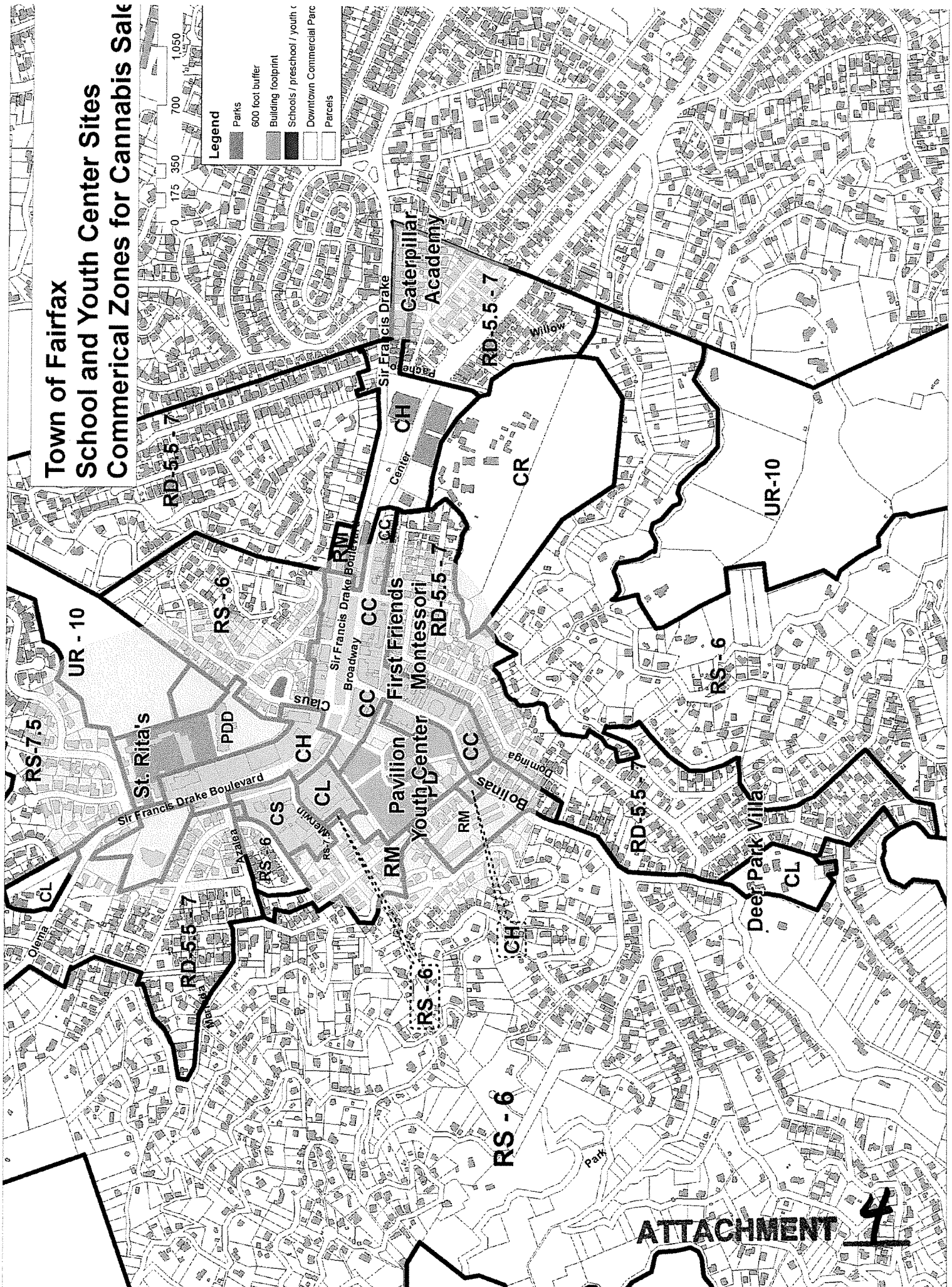
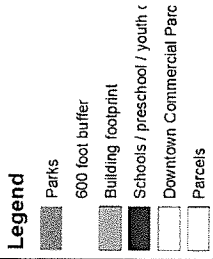
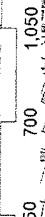
Public Health Law - Cultivators and Track-and-Trace System – Includes specific requirements for cultivators and the track-and-trace system

California Department of Public Health
Manufactured Cannabis Safety Branch

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



Town of Fairfax School and Youth Center Sites Commercial Zones for Cannabis Sale



SECTION 2. DEFINITIONS

For the purposes of this Program, the definitions below shall apply:

- (a) "Applicant" means an owner applying for a City Medical Cannabis Business Operator license.
- (b) "Bureau" means the Bureau of Cannabis Control within the California Department of Consumer Affairs.
- (c) "City" means City of San Rafael.
- (d) "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.
- (e) "Cannabis Testing Lab" means a laboratory, facility, or entity in the State that offers or performs tests of cannabis or cannabis products as further defined in SRMC 10.96.040. This sort of use is regulated by the State of California as a Type 8 Cannabis license.
- (f) "Cannabis Delivery" means the commercial transfer of medicinal cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform. This sort of use is regulated by the State of California as a Type 9 Cannabis license.
- (g) "Cannabis Manufacturing" means producing edible or topical products that include pre extracted cannabis oils, to create edibles, beverages, capsules, vape cartridges tinctures or topical. This sort of use is regulated by the State of California as a Class N (Infusions) Cannabis license. Cannabis manufacturing may also include shared use of a manufacturing facility by multiple businesses that perform manufacturing, (ie commercial kitchen). Shared manufacturing is regulated by the State of California as Type S Cannabis license.
- (h) "Licensee" means any person holding a City Medical Cannabis Business Operator License.
- (i) "Medical cannabis" or "Medical cannabis product" means cannabis or a cannabis product, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation.

- (j) "Operator License" means a City Medical Cannabis Business Operator license.
- (k) "Owner" means any of the following, as defined in Section 26001 of the Business and Professions Code:
- 1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance.
 - 2) The chief executive officer of a nonprofit or other entity
 - 3) A member of the board of directors of a nonprofit
 - 4) An individual who will be participating in the direction, control, or management of the person applying for a license.
- (l) "Person" includes any individual, firm, partnership, joint venture, association, corporation, Limited Liability Company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
- (m) "Purchaser" means the customer who is engaged in a transaction with a licensee for purposes of obtaining medical cannabis or medical cannabis products.
- (n) "Qualified patient" means person who is entitled to the protections of Section 11362.5, but does not have an identification card issued, as defined by 11362.7 of the Health and Safety Code.
- (o) "Sell", "sale," and "to sell" include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same.

SECTION 3. LICENSING PROCESS

- (a) Any person seeking to sell and or deliver, manufacture, or providing laboratory testing services **located** in San Rafael city limits must first obtain a Medical Cannabis Business (MCB) operator license prior to operating.
- (b) The Medical Cannabis Business Operator Licensing Program will make the following limited licenses available:
- Testing Labs (State License Type 8): **4 licenses**
 - Medical Infused Products Manufacturing (State License Type N): **8 licenses**
 - Medical Delivery (State License Type 9): **4 licenses**

SECTION 4. REVIEW AND ACTION ON APPLICATIONS

- (a) The initial Medical Cannabis Business Operator License Application Review Committee ("Committee" includes (1) MC Subcommittee Councilmember, Police Chief, Fire Chief, Community Development Director and Economic Development Director, and/or their designees, to review and rank applications.
- (b) The Medical Cannabis Business (MCB) operator license application ranking process shall consist of the following areas of evaluation:

- 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 shall rank all the applications and shall issue a written decision setting forth the ranking for each application, the ranking of each application in each of the ranking categories, and an explanation of the facts and reasoning supporting the rankings. The Committee shall serve a copy of its written decision on each applicant by email.

An applicant who has received a ranking of less than 85 points may appeal that decision to the City Manager or his or her designee, by filing a written appeal with the City Manager's office within five (5) business days after the date of service of the written ranking decision on the applicant. The appeal shall not be accepted for filing unless accompanied by an appeal fee in an amount determined by resolution of the City Council. In determining the appeal, the City Manager/designee will review the Committee's written decision on the appellant's application and the application itself. In addition, within five (5) business days after the filing of the appeal, the City Manager/designee shall set a time for a hearing, not to exceed two hours in length, at which the appellant may appear to review the Committee's decision and to present evidence or argument why the Committee's ranking should be modified. The hearing shall occur no later than thirty (30) days following the filing of the appeal unless another time is agreed to by the appellant. The hearing may be recorded by audiotape or written minutes.

Within ten (10) business days after completion of the hearing on the appeal, the City Manager/designee shall issue a written decision on the appeal shall either confirming or modifying the ranking given by the Committee. The decision shall be in served upon the appellant by email, or regular mail through the United States Post Office. The City Manager's decision will be final, with no appeal to the City Council, and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6; however the filing of any such action shall not stay any lottery or subsequent award of operator licenses as provided herein.

After the appeal period has run without the filing of any appeals, or after the final decision by the City Manager on any and all appeals, if the Committee determines that the number of pre-screened and ranked applicants exceeds 100% of the maximum number of licenses available, then a lottery will be conducted after the ranking round.

- (c) **Operator Selection.** Within 45 days of notification of written and e-mail notification, operators will have the ability to look for sites within permitted zoning districts and return with identified site to apply for zoning clearance, business license tax and operator

license issuance.

- (d) **Zoning Clearance, Business License Tax, and Operator permit issued.** Once the operator has found a business location, and has an executed lease agreement, or signed application by the property owner, planning staff will confirm zoning clearance. The applicant can then proceed with filing for a business license tax certificate, and the operator license will be issued.

SECTION 5. FEES

The Medical Cannabis Business Operator License application and renewal fees are based on a cost-recovery model for application intake, processing, and compliance monitoring.

Process Steps	Staff Coordination	Per Applicant	Cost
Application Intake	Econ. Dev Coordinator	Review Time: 1-2 hours	\$200
Criminal Background Check	Police	Review Time: 1 hour	\$100
Application Review and Ranking	Econ. Development Director, Police Chief, Fire Chief, Community Development Director, (1) MC Subcommittee Council member	Review Time: 2-3 hours	\$1,500
Operator Notification	Econ. Development Coordinator/Director	Review Time: 1 hour	\$100
Zoning Clearance, Business Tax Certificate, Operator License Issuance	Senior Planner, Revenue Manager, Economic Development Director	Review Time: 2-3 hours	\$300
Compliance Inspections	Senior Code Enforcement Officer	Review Time: 3-4 hours	\$600
Annual Gross Receipts Audits	Contract with Outside Agency	Review Time 3-4 hours	\$800

SECTION 6. OPERATING REQUIREMENTS

All Medical Cannabis Business operator licensees shall comply with all of the following operating requirements:

- (a) The licensee shall meet all operating requirements of the Medicinal and Adult-use Cannabis Regulation and Safety Act, and requirements set forth by the Bureau and the California Department of Public Health.

- (b) The licensee shall obtain and maintain the State of California license for the equivalent State cannabis license type. Obtain and maintain all other required State and local licenses, permits, or approvals as required.
- (c) Odor Control. No cannabis odors shall be detectable outside the commercial facility.
- (d) Advertising and Marketing Restrictions. All signage shall meet the City zoning code's sign requirements and shall not advertise any activity related to cannabis.
- (e) Operating Hours. A licensee may operate between the hours of:
 - 1) **Medical Delivery:** 9AM to 9PM up to seven days a week, unless modified as condition of license to address site specific conditions.
 - 2) **Cannabis Testing Labs:** 7AM – 6PM up to seven days a week, unless modified as condition of license to address site specific conditions.
 - 3) **Cannabis Infused Product Manufacturing:** 7 AM – 6 PM, evenings available as a condition of the license; up to seven days a week, unless modified as condition of license to address site specific conditions.
- (f) Contact Person. A licensee shall provide the City with the name and phone number of an on-site community relations staff person or designee to whom one can provide notice if there are operating concerns. The licensee shall make a good faith effort to encourage residents to call this person to try to solve operating concerns before any calls or complaints are made to the City.

SECTION 7. TERMS OF LICENSE

- (a) Licenses issued under this resolution shall be valid for 12 months from the date of issuance.

SECTION 8. LICENSE SUSPENSION, MODIFICATION AND REVOCATION

- (a) Any license issued under the terms of this resolution may be suspended, modified, or revoked by the Economic Development Director, or his or her designee, for cause including but not limited to violation of any the requirements or provisions of this resolution, or conflicts with State law.
- (b) Written Notice Required. The Economic Development Director, or designee, before revoking or suspending any Medical Cannabis Business operator license shall serve the licensee with written notice of revocation or suspension, provided in the manner set forth in Section 1.08.060 of the San Rafael Municipal Code, of the alleged grounds for revocation or suspension and the date for a hearing, to be held no less than ten (10) days and no more than sixty (60) days after the service of the written notice, to consider whether the Medical Cannabis Business operator license shall be revoked or suspended.
- (c) Hearing. The Economic Development Director, or designee, shall appoint a hearing officer to hear and consider all evidence at the hearing. The hearing may, after being

commenced within the time specified pursuant to subsection (b) of this section, be continued for good cause by the hearing officer from time-to-time. The hearing officer may require such legal briefing as may be required to address any issues raised at the hearing.

- (d) Notice of Decision; Judicial Review. Within a reasonable time, but not more than thirty (30) days following the conclusion of the hearing, the hearing officer shall issue a written decision as to whether the Medical Cannabis Business operator license shall be revoked or suspended, supported by factual findings and determinations referenced by supporting evidence. The written decision shall be served on the operator licensee as provided in Code of Civil Procedure Section 1094.6, with a copy submitted to the city clerk and the city attorney. The written decision of the hearing officer shall be final and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

SECTION 9. TRANSFER OF LICENSE

- (a) A licensee shall not operate under the authority of a Medical Cannabis Business operator license at any location other than the address stated in the application for the license.

- (b) The Medical Cannabis Business operator license is nontransferable.

SECTION 10. ENFORCEMENT

It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this resolution, and any such violation shall be enforceable in accordance with the provisions of Chapters 1.40, 1.42, 1.44, and 1.46 of the San Rafael Municipal Code.

SECTION 11. SIX-MONTH PROGRESS REPORT AND REVIEW

Six months following the adoption of the resolution, the Economic Development Director shall prepare a progress report on the Medical Cannabis Pilot Operator Licensing Program for Council review.

BE IT FURTHER RESOLVED that any amendments to the Medical Cannabis Pilot Operator Licensing Program Policies, Practices and Procedures as deemed necessary from time-to-time shall require an amendment to this resolution by City Council action.

I, LINDSAY LARA, Interim City Clerk of the City of San Rafael, hereby certify that the foregoing resolution was adopted at a regular meeting of the City Council on the 16th day of January 2018.

AYES: Councilmembers: Bushey, Colin, Gamblin, McCullough & Mayor Phillips
NOES: Councilmembers: None
ABSENT: Councilmembers: None



Lindsay Lara, Interim City Clerk

FAIRFAX PROPERTIES DEVELOPED WITH MULTIPLE RESIDENTIAL UNITS	
NUMBER OF UNITS	PROPERTY ADDRESS
80	200 BOLINAS ROAD
70	53 TAYLOR DRIVE
48	2575 SIR FRANCIS DRAKE BLVD.
42	60 PASTORI AVE.
33	2555 SIR FRANCIS DRAKE BLVD.
32	2501 SIR FRANCIS DRAKE BLVD.
27	101-197 PIPER COURT
12	33 MERWIN AVE.
12	2401-2403 SIR FRANCIS DRAKE BLVD.
15	2525-2535 SIR FRANCIS DRAKE BLVD.
10	780 CENTER BLVD.
10	300 OLEMA RD.
7	19 SEQUOIA RD.
6	103-109 LIVE OAK AVE.
6	68-78 PARK RD.
6	2360 SIR FRANCIS DRAKE BLVD.
5	1822 SIR FRANCIS DRAKE BLVD.
4	135-137 BOLINAS RD.
4	OAK TREE LN.
4	52 PARK RD.
4	140-142 WILLOW AVE.
3	21 BOLINAS RD.
3	165 BOLINAS RD.
3	367 BOLINAS RD.
3	111 CHESTER AVE.
3	11 OLEMA RD.
3	1615 SIR FRANCIS DRAKE BLVD.
3	99 WESSEN LN.
3	86 WREDEN AVE.
2	53 BELMONT AVE.
2	20 BOLINAS RD.
2	10 OLEMA RD.
2	2090 SIR FRANCIS DRAKE BLVD.

SMOKING SURVEY OF FAIRFAX APARTMENT POLICIES FOR ESTABLISHMENTS WITH 6 OR MORE UNITS

ADDRESS	NO. OF UNITS	SMOKING PERMITTED	% OF UNITS	DO THE RULES DIFFERENTIATE BETWEEN TOBACCO/CANNABIS	ALLOW CULTIVATION	LIMIT THE # OF PLANTS	LOCATION/ SCREENING	MISCELLANEOUS COMMENTS
200 Bolinas Road	80	No		No	No			
780 Center Blvd.	10	No		No				does not allow the growing of any type of plant indoors/outdoors
103-109 Live Oak Ave.	6	No		No	undecided			
33 Merwin Blvd.	12	No			No			in France you can only take a pill
300 Olema Rd.	10	No		No	No			has had odor complaints- prohibition not in lease. Pointed out that you don't have to grow or smoke, tenants can purchase and partake of edibles
68-78 Park Rd.	6	No		No	Have not thought about it yet but probably will prohibit			
60 Pastori Ave.	40	No		no	Owner does not prohibit it now but will if it creates problems for him			He has only seen 1 plant being grown since he has owned the property (MTCC).
101-197 Piper Ct.	27	No			No			
19 Sequoia Rd.	7	No		No				lease prohibits smoking anything and growing;
2360 Sir Francis Drake Blvd.	6	No		No	going to prohibit			prohibit with lease renewals
2401-2403 Sir Francis Drake	12	tobacco in designated outdoor areas		Cannabis prohibited	No			
2501 Sir Francis Drake Blvd.	32	No		No				If a long term tenant became ill they would evaluate the situation and might allow growing
2525-2535 Sir Francis Drake	16	No		No	still considering whether to prohibit but probably will			

2555 Sir Francis Drake Blvd.	33	No	No	No	No				She would like to prohibit the growing of any plants indoors/outdoors.
2575 Sir Francis Drake Blvd.	48	No	No	No	still considering how to go forward.				
53 Taylor Drive	70	No	No	No	No				Bennett House has one designated outdoor smoking area near the garden