

**ORDINANCE NO. 825**

**AN ORDINANCE OF THE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX  
TO PERMIT CERTAIN MEDICAL MARIJUANA DISPENSARIES TO CONDUCT  
ADULT-USE CANNABIS DELIVERIES**

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

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

**WHEREAS**, Senate Bill 94 (“SB 94”) amended AUMA to consolidate the State licensing laws applicable to both medical and adult-use commercial cannabis activity under a new law entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

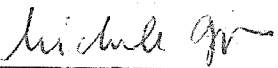
**SECTION 6.** Filing. The Town Clerk shall submit a copy of this ordinance to the Bureau of Cannabis Control as provided by Business and Professions Code, Section 26055.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 7th day of November 2018, and duly adopted at the next regular meeting of the Town Council on the 5th day of December 2018, by the following vote, to wit:

AYES: ACKERMAN, COLER, GODDARD, REED  
NOES: LACQUES  
ABSENT: None

  
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BARBARA COLER, Mayor

Attest:

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

12/07/18  
Date