

RESOLUTION 18-40

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ADOPTING PERMIT APPLICATION REQUIREMENTS AND TERMS FOR
CERTAIN MEDICAL MARIJUANA DISPENSARIES TO CONDUCT
RETAIL DELIVERIES OF ADULT-USE CANNABIS**

WHEREAS, on December 5, 2018, the Town Council adopted an ordinance to permit certain existing medical marijuana dispensaries to conduct retail deliveries of adult-use cannabis; and

WHEREAS, on December 5, 2018, the Town Council adopted an ordinance to establish regulations for certain medical marijuana dispensaries to conduct adult-use cannabis deliveries; and

WHEREAS, the Town Council desires to establish the permit application requirements for such deliveries as laid out in "Exhibit A" attached hereto and incorporated herein; and

NOW, THEREFORE, be it hereby resolved by the Town Council of the Town of Fairfax, California, that the permit application requirements and terms for non-storefront retail cannabis deliveries by certain existing medical marijuana dispensaries attached hereto and incorporated herein as "Exhibit A" is hereby adopted and takes effect upon the effective date of Ordinance No. 826.

The foregoing Resolution was duly introduced and adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 5th day of December 2018, by the following vote, to wit:

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



BARBARA COLER, Mayor

Attest:



Michele Gardner, Town Clerk

Exhibit "A"

EXHIBIT A

ADULT-USE CANNABIS DELIVERIES BY CERTAIN MEDICAL MARIJUANA DISPENSARIES APPLICATION PROCESS AND PERMIT REQUIREMENTS AND TERMS

I. Eligibility.

A medical marijuana dispensary that was legally operating as of April 3, 2018 and is permitted to operate a medical marijuana delivery service in the Town may conduct retail sales of adult-use cannabis and cannabis products exclusively by delivery from its existing premises subject to the requirements below.

II. Definitions.

The following words and phrases shall have the following meanings, unless otherwise specified:

- A. **Adult-Use** means cannabis or cannabis products that are intended for adults who are 21 years of age and older and who do not possess a physician's recommendation.
- B. **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" shall not include industrial hemp.
- C. **Cannabis business permit** means any permit issued to a cannabis business pursuant to the provisions of this chapter.
- D. **Cannabis products** has the same meaning as in Section 26001 of California Business and Professions Code.
- E. **Town Manager** means the Town Manager and his/her designee.
- F. **Delivery** means the commercial transfer of cannabis or cannabis products to a retail customer. "Delivery" also includes the use by a medical marijuana dispensary of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
- G. **Interested parties** means any of the following:
 - (1) Any individual that has an aggregate ownership interest, other than a security interest, lien, or encumbrance, of twenty percent or more in the commercial cannabis business;
 - (2) Partners, officers, directors, and stockholders of every corporation, limited liability company, or general or limited partnership that owns at least twenty percent of the cannabis business or that is one of the partners in the cannabis business;
 - (3) The manager(s) of the cannabis business; and
 - (4) The staff of the cannabis business.
- H. **Manager** means a person with responsibility for the establishment, registration, supervision, or oversight of the operation of a cannabis business, including, but not limited to, a person who performs the functions of a board member, director, officer, owner, operating officer, or manager of the cannabis business.
- I. **Medical marijuana dispensary** means a facility or premises where medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale or other sales or transfer to qualified patients or primary caregivers. For purposes of this chapter, "medical marijuana dispensary" includes medical cannabis dispensaries, patient collectives and cooperatives operating pursuant to the Compassionate Use Act (Health and Safety Code, § 11362.5) and/or the Medical Marijuana Program Act (Health and Safety Code, § 11362.7 et seq.), as may be amended.
- J. **Police chief** shall mean the Town of Fairfax chief of police and designee.

- K. **Staff** means a person other than a manager who works or provides services on the site of a cannabis business, whether as an employee, contractor, or volunteer.

III. Cannabis delivery permit required.

No medical marijuana dispensary shall perform cannabis delivery services in the Town without first obtaining a valid business license and cannabis delivery permit issued by the Town.

IV. Cannabis delivery permit fee.

The Town Council shall establish by resolution the amount of the cannabis delivery permit fee.

V. Applications for cannabis delivery permit.

- A. The manager of a medical marijuana dispensary may apply for a cannabis delivery permit, or a permit renewal, by filing an application with the Town Manager. The application shall be on a form approved by the Town Manager and may require any information or documentation as deemed necessary and appropriate by the Town Manager and consistent with state law, including the following:
1. Applicant.
 - a. A description of the statutory entity or business form that serves as the legal structure for the applicant and a copy of its formation and organizing documents, including, but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement.
 - b. The phone number and address to which notice of action on the application and correspondence is to be mailed.
 2. Interested Parties.
 - a. The name, address, telephone number, title, and function of each of the interested parties in the cannabis business.
 - b. The name, address, telephone number, and title of each of the employees that are authorized to perform deliveries from the cannabis business. For each employee authorized to perform deliveries, proof of valid driver's license and current employment by the business.
 3. Eligibility Description. A description of the medical marijuana dispensary's satisfaction of the criteria for eligibility.
 4. Local Licenses. Copies of the applicant's local licenses or permits relating to cannabis, demonstrating legal authorization to conduct a medical marijuana dispensary, including as local land use or business permits, issued by the local jurisdiction in which the business is located.
 5. State Licenses. Copies of the applicant's state licenses relating to cannabis, as required by state law. If the applicant applies for a cannabis delivery permit prior to the state issuing the appropriate licenses, the applicant shall specify which state license(s) will be applied for.
 6. Tax Compliance. A current copy of the applicant's town business license tax certificate, state sales tax seller's permit, and the applicant's most recent year's financial statement and tax returns, as may be applicable.
 7. Insurance. The applicant's certificate of commercial general liability insurance and endorsements and certificates of all other insurance including, but not limited to, workers compensation and automotive related to the operation of the cannabis retail business and deliveries.

8. Town Authorization. Authorization and consent for the Town Manager to seek verification of the information contained within the application.
9. Applicant's Certification. A statement dated and signed by the applicant, under penalty of perjury, that the applicant has personal knowledge of the information contained in the application, that the information contained therein is true and correct, and that the application has been completed under the applicant's supervision.
10. Indemnification. An agreement, on a form approved by the Town Attorney, whereby the applicant:
 - a. Releases the town, and its agents, officers, elected officials, and employees from any and all claims, injuries, damages, or liabilities of any kind arising from: (i) any repeal or amendment of this chapter, and (ii) any arrest or prosecution of the applicant or its managers, employees, other interested parties, or members for violation of state or federal laws; and
 - b. Defends, indemnifies, and holds harmless the town and its agents, officers, elected officials, and employees from and against any and all claims or actions: (i) brought by town property owners or any other parties for any damages, injuries, or other liabilities of any kind arising from the business delivery operations or the granting of the permit, and (ii) brought by any party for any problems, injuries, damages, or other liabilities of any kind arising out of the distribution of cannabis or cannabis products from the business site in the town.
- B. Every application for a cannabis delivery permit shall be accompanied by a nonrefundable \$500 cannabis delivery permit processing fee and a \$500 cannabis delivery permit fee.
- C. No person shall knowingly make a false statement of fact or knowingly omit any information that is required in an application for a cannabis delivery permit.
- D. The Town Manager may determine that a copy of the applicant's application to the state for a retail delivery-only license may meet the requirements of this Section V.

VI. Application process.

The Town Manager, in consultation with the police chief and planning and building department director or his/her designee, is authorized to establish procedures and guidelines to process cannabis delivery permit applications and renewals.

VII. Denial of a cannabis delivery permit.

- A. The Town Manager may deny a cannabis delivery permit if the Town Manager determines that one or more of the following circumstances exist:
 1. The application received is incomplete or not responsive to the requirements of this chapter;
 2. The application contains a false or misleading statement or omission of a material fact;
 3. The operation of the delivery business described in the application fails to comply with any of the requirements in this code, state law, or any other regulation;
 4. The applicant or any of its managers has any unpaid and overdue administrative penalties imposed for violations of this chapter; or
 5. Within twelve months of the date of application, either the applicant has had a state or local cannabis-related land use or business permit revoked; or any of its managers were associated with a cannabis business that had its cannabis-related permit(s) revoked.
- B. If a cannabis delivery permit is denied, the \$500 cannabis delivery permit fee shall be refunded to the applicant. However, the application fee is non-refundable.

VIII. Terms of a cannabis delivery permit.

- A. A cannabis delivery permit issued is valid for one year from the date that the permit is issued, unless suspended or revoked sooner
- B. Each cannabis delivery permit is valid for only one medical marijuana dispensary location.
- C. The permittee shall notify the Town Manager in writing of any change in the information provided on the application to obtain the cannabis delivery permit within thirty days of the change.
- D. The permittee shall submit to the Town Manager a copy of any and all of its state and local licenses and permits required for its operation before it can begin adult use deliveries. In addition, if the permittee applies for a cannabis delivery permit prior to the state issuing the appropriate licenses, the permittee shall provide copies of its state license application for the cannabis delivery service.
- E. If any other applicable state or local license or permit required for a cannabis business's operation is denied, suspended, modified, revoked, or expired, the cannabis business shall notify the Town Manager in writing within ten days.
- F. The permittee is required to pay all applicable taxes, including any future-adopted cannabis taxes, in addition to any fees established and imposed by the Town.
- G. A cannabis delivery permittee shall provide the Town Manager with the current name and primary and secondary telephone numbers of at least one twenty-four hour on-call manager to address and resolve complaints and to respond to emergency operating problems or concerns associated with the cannabis delivery operations in the town.
- H. A cannabis delivery permittee shall comply with the following requirements when conducting cannabis delivery services in the town:
 - 1. All cannabis deliveries must conform to State laws and regulations adopted pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (California Business and Professions Code, Division 10, Section 26000 et seq.).
 - 2. No adult-use customers shall be permitted to access or remain in the premises of a medical marijuana dispensary.
 - 3. No adult-use cannabis retail sales shall be permitted to occur at the premises of a medical marijuana dispensary.
 - 4. The dispensary shall have signage on the premises that clearly states no adult-use cannabis retail sales are allowed on site.
 - 5. The adult-use cannabis delivery service shall operate out of the same commercial space of the existing medical marijuana dispensary.
 - 6. No signage is allowed other than a business identification sign on the door, window, and/or wall, not to exceed 2.5 square feet.
 - 7. No signage/business identification allowed on delivery vehicles.
 - 8. Deliveries can only be made to and received by customers 21 or older. The dispensary must check, confirm, and log the identification of the customer to document their age and maintain/retain records pursuant to State laws and regulations. These records, the driver delivery ledgers/logs, and delivery receipts are subject to inspection by the Town of Fairfax.
 - 9. Deliveries must be completed within the hours of operations.
 - 10. Hours of operation would be limited to the hours allowed for medical marijuana dispensaries (i.e., 9:00am to 9:00pm and closed some holidays).
 - 11. Develop and implement an employee training plan to ensure employees comply with all local, state, and federal laws & regulations governing adult use cannabis delivery-only businesses. Upon request, the Town may review the employee training plan. The employee training plan shall be posted at the business.

12. Provide written certification to the Town, that all employees who will be conducting and/or overseeing deliveries have received the required training. In addition, provide written, signed attestation certificates by each of these employees conducting and/or overseeing that they have received the training and agree to adhere to all local, state and federal laws and regulations governing adult-use cannabis delivery-only.
- I. The Town Manager may impose additional conditions on the cannabis delivery permit in the interest of public health and safety.

IX. Permits not transferable.

Cannabis business permits issued by the Town are not property and have no value. Cannabis business permits may not be transferred, sold, assigned or bequeathed expressly or by operation by law. Any attempt to directly or indirectly transfer a cannabis business permit shall be unlawful and void, and shall automatically revoke the permit.

X. Renewal.

- A. A permittee may apply for a cannabis delivery permit renewal by submitting to the Town Manager at least sixty (60) calendar days before the expiration of the permit, a renewal application and a nonrefundable renewal fee in an amount of \$500. Failure to timely submit a renewal application prior to expiration of the permit shall result in permit expiration, and an application for a new permit shall be required pursuant to Section V.
- B. If a timely and complete application for renewal is filed, the permit's expiration shall be stayed until a decision on the renewal application is issued.
- C. The Town Manager shall either approve or deny the renewal of a permit within thirty calendar days of receipt of the complete application. The Town Manager may extend the time for consideration of the application for up to an additional twenty-one calendar days upon written notice to the applicant.
- D. The Town Manager shall approve the renewal of a permit if he or she finds that the circumstances existing during the term of the permit and during the review period of the application for renewal are consistent with all of the findings required for approval of a new permit and that no permittee or interested party of the cannabis business has committed, permitted, or failed to prevent violations of the municipal code, or any license or permit condition, during the preceding permit term.

XI. Suspending, modifying, or revoking a permit.

- A. The Town Manager may suspend, modify, or revoke a cannabis delivery permit issued for any of the following reasons:
 - (1) One or more of the circumstances upon which a retail cannabis business permit could be denied exists or has occurred;
 - (2) One or more conditions of the cannabis delivery permit has been violated; or
 - (3) The permittee, its managers or interested parties have violated any provision of this chapter.
- B. Any applicant or permittee aggrieved by a decision of the Town Manager in denying, suspending, modifying or revoking a permit, or imposing conditions on the issuance of a permit or permit renewal, may appeal the decision to the Town Council in accordance with the procedures set forth in Chapter 2.44 of the Town Municipal Code.

XII. Violations.

- A. Any person who violates the provisions of this chapter shall be subject to a fine of up to one thousand dollars for each day the violation continues.

- B. In addition to any other remedy allowed by law, any person who violates the terms and requirements of the permit is subject to criminal sanctions, civil actions, and/or administrative penalties pursuant to Chapter 1.10 of the Town's Municipal Code.
- C. Violations of the permit terms and requirements are hereby declared to be public nuisances.
- D. All remedies prescribed under this Section XII shall be cumulative and the election of one or more remedies shall not bar the Town from the pursuit of any other available remedy for the purpose of enforcing the provisions hereof.