



TOWN OF FAIRFAX

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

DATE: March 14, 2019
TO: Planning Commission
FROM: Ben Berto, Planning Director
SUBJECT: Discuss/consider proposed commercial cannabis regulations

RECOMMENDATION

Discuss/consider possible local cannabis regulations and provide direction to staff.

BACKGROUND

Fairfax is currently operating under a moratorium for commercial cannabis businesses (except for existing medical marijuana dispensaries allowed under the Town Code) that is in effect until October 31, 2019.

This is the 13th workshop/meeting on cannabis. Last month's Commission's review on February 21 was curtailed by the lateness of the hour. This special meeting was scheduled to allow the PC the ability to focus solely on the cannabis ordinance.

DISCUSSION

The same key policy issues presented in last month's staff report and draft regulations are presented tonight. Additionally, staff has continued to develop policy and regulatory options for Commission consideration in the interim, as noted below.

Staff acknowledges that while the draft Ordinances reflect staff's understanding of the Commission's direction in most areas, in some instances the Commission has not previously reached a unanimous or majority position on an issue. In those cases, the regulations show options for the Commission's consideration.

Staff requests that the Commission to provide staff with feedback and direction on the proposed regulations, including any desired changes.

The objective is to bring the Commission's recommendations on the draft ordinances to the Town Council for consideration at its May 1st meeting.

Cannabis regulations and key policies

Chapter 17.110 – Cannabis Uses

This current stand-alone Medical Marijuana Dispensary regulations contained in Chapter 17.110 are proposed to be substantially revised to address the new state regulatory

framework for the medical and adult-use commercial cannabis industry. Newly titled “Cannabis Uses,” Chapter 17.110 is proposed to address zoning standards and land use restrictions for commercial cannabis businesses. Per the direction of the Chair at the February 21, 2019 meeting, the proposed personal cannabis cultivation regulations have also been combined within Chapter 17.110.

Key provisions of the revised Chapter (in the order listed in the Chapter) include:

- 1) Definitions The Chair has requested that staff identify which definitions have been modified from state law. The attached memorandum from the Town Attorney’s office provides detailed annotations for each definition. Note that the definition of “school” reflects state law, although this definition differs from the Town’s broader default definition of “school” in Chapter 17.008 [“A place for systematic instruction in any branch or branches of knowledge.”]. There was a question at the last meeting about whether the First Friends Montessori Preschool would qualify as a day care center or a school. According to the website, First Friends’ offers a kindergarten program, and would therefore be treated as a school. This is consistent with past interpretation by the Town. In addition, the proposed definition of “youth center” provides some optional language for the Commission’s consideration that would clarify that the term “youth center” does not apply to certain common youth-oriented uses. “Fully enclosed and secure structure” has also been defined to reflect minimum security standards for indoor cultivation.
- 2) Prohibited activities This provision adopts the concept of permissive zoning with respect to commercial cannabis uses to make clear that commercial cannabis uses are not allowed unless expressly authorized by the Town Code, subject to exceptions provided by state law.
- 3) Allowable uses Consistent with Commission direction, only retail storefront and delivery-only retailers for medical and/or adult-use would be allowed, subject to the approval of a commercial cannabis business permit (replacing the current provisions for a dispensary use permit). Additional commercial cannabis uses (for example, microbusinesses) could be allowed in the future, but are not proposed at this time.
- 4) Buffer setback Proposed setbacks would be 600 feet from schools, day care centers and youth centers for both storefront retailers and delivery-only retailers, consistent with current State regulations and a majority of the Commission at the 1/17/19 meeting. Language on optional alternative setbacks is included for Commission review regarding limiting buffer requirements for delivery-only retailers to schools, or reducing or waiving buffers for sites that have unique circumstances that may reduce the need for the full 600-foot setback.
- 5) Parking Staff proposes to utilize the current retail parking standards for storefront retailers. Since delivery-only retailers are not open to the public, staff proposes to

utilize the parking standard for industrial uses: one space per two employees of the maximum shift. For storefront retailers providing delivery, or perhaps as an additional requirement for delivery-only businesses, the Commission might consider whether to require one additional parking space for each delivery vehicle.

- 6) Size Maximum size of retail establishments would remain at the 1,500 square feet currently allowed for medical cannabis business.
- 7) Signage Staff proposes to rely on current, generally applicable Town signage regulations (Chapter 17.064). Staff is recommending this change from the medical cannabis limit of 6 square feet in recognition of the desirability of providing adequate visual business identification consistent with other businesses in Town.
- 8) Number of businesses There is no Commission consensus to date on the exact number. A majority have narrowed the range to 1-3 businesses.
- 9) Medical cannabis deliveries Retain recently-adopted Section 17.110.230 to permit a medical marijuana dispensary that was legally operating as of April 3, 2018 to provide adult-use cannabis delivery services in addition to existing medical marijuana delivery services from its existing premises.
- 10) Personal cannabis cultivation A substantive change is proposed from the draft zoning regulations presented in February. Instead of leaving the personal cannabis cultivation regulations in Chapter 17.138, based on direction from the Chair, staff is suggesting that they be combined with Chapter 17.110. Locating all cannabis zoning regulations in one chapter will make it easier for persons to access any/all of the cannabis zoning standards, including for personal cultivation. The key substantive changes to the cultivation standards include:
 - (a) To comply with State law, allow up to 6 cannabis plants to be cultivated indoors or outdoors for personal use, whether for medical or non-medical purposes.
 - (b) Outdoor cultivation shall not exceed 6 plants per lot, regardless of the number of private residences located upon the lot (no express provision for outdoor cultivation on private balconies or private patios for multi-family residences).
 - (c) Existing outdoor cultivation standards would still apply.
 - (d) Eliminate the ability to request medical exceptions to the cultivation limit. Several commissioners inquired whether an administrative exception process could be included for medical cannabis patients, although it was not clear if there was majority support to include it. Optional language has been provided should the Commission wish to retain this process. This exception could potentially apply to the 6-plant limit and/or the 200 ft. buffer.

Staff would note that no additional changes to the commercial zoning regulations are contemplated at this time. For simplicity and consistent with the current approach to

medical dispensaries, staff and the Town Attorney's office suggest that all specific rules or exceptions for cannabis uses be contained within Chapter 17.110.

Chapter 5.56 – Commercial Cannabis Business Permits

Staff and the Town Attorney's office have continued to draft commercial cannabis business permit regulations to be included in Chapter 5.56 of the Town Code. Although Chapter 5.56 is not a zoning ordinance, Planning Commission feedback is requested as it relates to commercial cannabis regulations, including the draft business permit application provisions in Chapter 5.56. Proposed key elements of the application process include:

- 1) Permit requirements This sets forth the number of cannabis business and business types permitted in the Town. Insofar as there was split opinion on the Commission about the number of such businesses at the last meeting, the boxes have been left blank. These permit limits would match whatever business limits are included in the zoning ordinance.
- 2) Permit application A description of the minimum application contents has been included. It is proposed that applicants would be required to apply for any design review approval, traffic impact permit and/or sign permit necessary under Chapters 17.020, 17.056 and/or 17.064 concurrently with the application for the commercial cannabis business permit.
- 3) Application process During the application period set by the Town Manager, applicants for a commercial cannabis business permit would submit their application materials to the Town. It is now proposed that there would be two phases to the commercial cannabis business permit application process.
 - a. Phase 1 Pre-screening and Criminal History Staff would have 60 calendar days after close of the application period or receipt of LiveScan results to review the applications for general compliance with the Town's municipal code. This would include staff review to ensure that applicants meet any minimum application requirements, and that the application includes any required application materials for design review, traffic impact permits, sign permits and CEQA approval.

Commissioner Green had asked whether the Police Department's workload for security checks was such that the criminal history review could be moved to Phase 1. At the time of this report, staff is still consulting with the Police Department. However, the draft has been preliminarily revised to move criminal history review to Phase 1. Permit applicants must submit fingerprints pursuant to Livescan procedures and the Police Chief, or designee, will review the criminal history of the applicant, its owner and

managers, to verify whether there are specified disqualifying convictions (disqualifying convictions now listed in Section 5.56.080).

- b. Phase 2 Application scoring Upon approval of the prescreening review, the Town Manager would refer the application to the Planning Commission to review the application(s) and make recommendations to the Town Council. The Town Council would make a final decision on scoring of each application.

The Planning Commission would score each application based on specific scoring criteria and weighting to be determined. Staff will bring scoring criteria for the Commission's consideration at the March 14 meeting. The Town Council would review the Planning Commission's recommended scoring and either approve or modify the scores to come up with the final scores.

Applicants meeting minimum scoring criteria will be deemed a qualified applicant. If the number of qualified applicants exceeds the maximum number of permits available in that category, then applicants will be selected based on highest score(s).

The recommendations of the Planning Commission and decision of the Town Council would be made at a duly noticed public hearings, which would be consolidated with any required hearing for design review approval, traffic impact permit and/or sign permits. It is proposed that the Planning Commission would make recommendations on, and the Town Council would issue final decisions for, any required for design review approval, traffic impact permit and/or sign permits as a single consolidated package.

- 4) Operating requirements This section sets forth the proposed requirements for conducting a cannabis business in Fairfax, including ongoing items such as odor control, premise management, and inspections.

Key Policy Questions:

Commercial Cannabis Zoning Standards

- (a) **Youth Center:** If the Planning Commission feels that the state definition of youth center is vague, the optional text would provide some guidance to Town staff and Town officials tasked with interpreting and implementing these rules. General examples what does or does not qualify as a "youth center" could be added or excluded from the definition.

However, it would not be appropriate to identify a specific business by name and location. (Draft Section 17.110.020(Y).)

- (b) **Sensitive Use Buffers:** MAUCRSA sets a default 600 ft. buffer between a commercial cannabis business and a school, day care or youth center in existence at the time the cannabis business is established. (BPC §26054.) Should the Town set different buffers for storefront retailers versus delivery-only retailers? Alternatively, does the buffer “exception” process provide sufficient flexibility to address concern that 600 ft. buffer for all schools, day care centers and youth centers may be overly restrictive? (Draft Section 17.110.040(B).) If adopted, should the exception process only apply to day care centers and youth centers, and not allow modification of the buffers around schools?
- (c) **Parking:** Should an additional parking space per delivery vehicle be required in addition to the proposed standards set forth for storefront and delivery-only retailers? (Draft Section 17.110.040(C)(1).)
- (d) **Limit on Number:** How many retail businesses should be allowed? Should there be separate limits for medical-use retailers or delivery-only retailers? Should the existing medical marijuana dispensary be included within the total number? (Draft Section 17.110.040(C)(4).)

Personal Cannabis Cultivation Standards

- (a) **Locked Space.** Whether indoor or outdoor, state law requires personal cannabis plants to be kept within a locked space. For indoor cultivation, state law further specifies that the plants must be kept inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is “fully enclosed and secure.” (Health and Safety Code §11362.2.) The Town’s current definition of “fully enclosed and secure structure” clarifies that the an accessory structure must be locked but does not indicate where locks should be for plants kept within the primary residence. Should the Town Code specify that the plants must be kept in a locked room contained within the primary residence? Optional text provided in draft Section 17.110.300(C)(1).
- (b) **Medical Cannabis Administrative Exception.** Whether to eliminate the ability to request medical exceptions to the cultivation limit. No requests for exceptions have been made under the current 18 plant limit. Several commissioners inquired whether an administrative exception process could be included for medical cannabis patients, although it was not clear if there was majority support to include it. Optional language has been provided should the Commission wish to consider retaining this process. This exception could potentially apply to the 6-plant limit and/or the 200 ft. buffer for outdoor cultivation.

The buffer currently applies to any “public or private preschool, elementary, or middle school.” The Town Code, Chapter 17.008 defines “preschool” as “day care and education of five or more children aged five years and under.” This definition would appear to include preschools within a home. For consistency with the updated definitions, this provision has been carried forward as a 200 ft. buffer near schools and day care centers

(which includes preschools). (Draft Section 17.110.310) However, the state definition of day care center expressly excludes a family day care home.

Commercial Cannabis Business Permits

- (a) **Application Process.** Staff invites Planning Commission consideration and input regarding the proposed application scoring process outlined above.
- (b) **Scoring Criteria.** Staff will bring draft scoring criteria to the meeting for the Planning Commission's consideration and input.

NEXT STEPS

Once the Commission has made recommendation on zoning code amendments, these will be forwarded to the Town Council.

ATTACHMENTS:

1. Discussion Draft Town Code Chapter 17.110 - Commercial Cannabis Uses
2. Discussion Draft Commercial Cannabis Business Permits Town Code (Chapter 5.56)
3. Memorandum re Draft Definitions for Cannabis Zoning Regulations
4. Map of Fairfax commercial zones with State-mandated buffer zone
5. Map of Fairfax commercial districts without State buffer zone

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY

CHAPTER 17.110: CANNABIS USES

§ 17.110.010 PURPOSE.

The purpose of this Chapter is to impose zoning restrictions on various commercial cannabis businesses authorized and/or licensed by the State of California and personal cultivation of cannabis activities authorized pursuant to state law. This section is not intended to give any person or entity independent legal authority to operate a cannabis business, it is intended simply to impose zoning restrictions regarding cannabis businesses that may operate in the Town and personal cannabis cultivation activities pursuant to this Code and state law. This Chapter is in addition to any other business license and regulatory requirements imposed on cannabis businesses by this Code or other applicable state law.

§ 17.110.020 DEFINITIONS.

For purposes of this Chapter, the following definitions apply:

- A. “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” includes “cannabis” as defined in Business and Professions Code, Section 26001 and in Section 11018 of the Health and Safety Code. “Cannabis” shall not include industrial hemp as defined by Section 11018.5 of the Health and Safety Code.
- B. “Cannabis cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. For purposes of commercial cannabis cultivation, the term “cannabis cultivation” also includes processing, rolling, storing, packaging, and labeling of non-manufactured cannabis products.
- C. “Cannabis delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Cannabis delivery” also includes the use by a cannabis retailer of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
- D. “Cannabis distribution facility” means any facility engaged in the procurement, temporary storage, non-retail sales, and transport of cannabis and cannabis products between State-licensed cannabis businesses and any other activity allowed under the State distributor license(s), including, but not limited to, quality control and collection of State cannabis taxes.
- E. “Cannabis manufacturing” means the compounding, blending, extracting, infusing, or otherwise making, preparing or packaging a cannabis product. Cannabis manufacturing includes the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.
- F. “Cannabis microbusiness” means a commercial cannabis business that must engage in at least three of the following commercial cannabis activities: cultivation, manufacturing using nonvolatile solvents,

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

distribution, and/or retail.

- G. “Cannabis products” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis products include “cannabis products” as defined in Business and Professions Code, Section 26001.
- H. “Cannabis retailer” means a facility or premises where cannabis or cannabis products are offered, either individually or in any combination, for retail sale or other sales or transfer to consumers, including an establishment that delivers cannabis and cannabis products as part of a retail sale. For purposes of this Section, “cannabis retailer” also includes medical cannabis dispensaries, patient collectives and cooperatives operating, or proposing to operate, pursuant to the Compassionate Use Act (Health and Safety Code, § 11362.5) and/or the Medical Marijuana Program (Health and Safety Code, § 11362.7 et seq.), as may be amended. Unless otherwise specified, “cannabis retailer” means both a retailer selling medicinal cannabis and medicinal cannabis products to patients with valid physicians’ recommendations, and a retailer providing adult-use cannabis and cannabis products for adults twenty-one (21) years of age and older. The term “cannabis retailer” includes both storefront retailers and delivery-only retailers unless otherwise specified.
- I. “Cannabis testing laboratory” means a laboratory, facility, entity, or site that offers or performs tests or testing of cannabis or cannabis products.
- J. “Commercial cannabis use” includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis uses includes “commercial cannabis activity” as defined in Business and Professions Code, §26001, and includes any activity that requires, or may require in the future, a license from a State licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10), as may be amended. Commercial cannabis use does not include the activities of a qualified patient or a primary caregiver that are exempt from State licensure pursuant to Business and Professions Code, § 26033.
- K. “Day care center” means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and schoolage child care centers, as defined Sections 1596.76 and 1596.750 of the Health and Safety Code.
- L. "Delivery-only retailer" means a cannabis retailer that conducts cannabis sales exclusively through cannabis delivery from a fixed, physical location that is closed to the public. Also known as a “non-storefront retailer.”
- M. “Fully enclosed and secure structure” means a space within a dwelling unit that complies with the California Building Code, as adopted in the town (“CBC”); or, if exempt from the permit requirements of the CBC, an accessory structure, on a lot containing a dwelling unit, having a complete roof and enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. In order

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

to qualify as a fully enclosed and secure structure, the walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two-inch by four-inch or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials.

- N. “Indoor” means within a fully enclosed and secure structure.
- O. “Medicinal cannabis” means cannabis or cannabis products intended to be used for medical purposes in accordance with the Compassionate Use Act of 1996 (California Health & Safety Code §11362.5) and the Medicinal Marijuana Program Act (California Health & Safety Code §11362.7 *et seq.*), as each may be amended from time to time.
- P. “Outdoor” means any location exposed to the open air not within an enclosed structure or building.
- Q. “Personal cultivation” means cultivation of cannabis for a natural person’s own personal use and possession in accordance with this Code and state law, including but not limited to Health and Safety Code Sections 11362.1 and 11362.2, as may be amended, and such person does not sell or distribute cannabis to any other person. “Personal use” also means and includes cultivation of medical cannabis conducted by a qualified patient exclusively for his or her personal medical use, and cultivation conducted by a primary caregiver for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, in accordance with state law, including Health and Safety Code Sections 11362.7 and 11362.765, as may be amended. Except as herein defined, personal cultivation does not include, and shall not authorize, any cultivation conducted as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of cannabis, or by a cannabis cooperative association or any of its members.
- R. “Primary caregiver” shall have the same meaning as the term “primary caregiver” defined in Cal. Health and Safety Code § 11362.7, as may be amended from time to time.
- S. “Private residence” means house, an apartment unit, accessory dwelling unit, a mobile home, or other similar dwelling occupied for residential purposes, or as defined in Cal. Health and Safety Code § 11362.2, as may be amended from time to time.
- T. “Qualified patient” means and includes both a “qualified patient” and a “person with an identification card” as each term is defined in Cal. Health and Safety Code § 11362.7, as amended from time to time.
- U. “School” means of a school providing instruction in kindergarten or any grades 1 through 12 (whether public, private, or charter), but does not include any private school in which education is primarily conducted in private homes.
- V. “State commercial cannabis license” means a state license issued under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10), as may be amended, and includes both an A-license and an M-license, as well as a testing laboratory license.
- W. “Storefront retailer” means a cannabis retailer that conducts cannabis sales at a business premises that is open to the public, and may also conduct cannabis delivery as part of a retail sale.

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

- X. "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, but does not include the return of cannabis or cannabis products by a licensee to the licensee from who the cannabis or cannabis product was purchased.
- Y. "Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades where 10 or more video games or game machines or devices are operated, and where minors are legally permitted to conduct business, or similar amusement park facilities. [OPTIONAL: This definition shall not include any private martial arts, private tutoring center, yoga, ballet, music, art studio or similar studio of this nature nor shall it include any private gym, athletic training facility, pizza parlor, dentist office, doctor's office primarily serving children, or a location which is primarily utilized as an administrative office or facility for youth programs or organizations.]

§ 17.110.030 COMMERCIAL CANNABIS ACTIVITIES PROHIBITED UNLESS SPECIFICALLY AUTHORIZED BY THIS CHAPTER

- A. All commercial cannabis uses as defined herein (other than as provided under Business and Professions Code Sections 26054(c) and (d), 26080(b), and 26090(e)) are prohibited from establishing or operating in all zoning districts within the Town of Fairfax except and unless expressly permitted by and in conformance with the provisions of this Chapter and/or Chapter 5.56.
- B. All commercial cannabis uses permitted by this Chapter must, prior to establishing and operating any such commercial cannabis use, obtain and maintain at all times (1) a valid state commercial cannabis license, (2) a commercial cannabis business permit pursuant to Title V, Chapter 5.56 of this Code and (3) any other local or regulatory licenses or permits required by this Code or state law.

17.110.040 CANNABIS RETAIL USES.

- A. Cannabis retailers may be permitted subject to the approval of a commercial cannabis business permit pursuant to Chapter 5.56 of this Code, in the following zones:
 - 1. Cannabis Storefront Retailers: Highway Commercial (CH) and Central Commercial (CC).
 - 2. Cannabis Delivery-Only Retailers: Highway Commercial (CH), Central Commercial (CC) and Limited Commercial (CL).
- B. Cannabis retailers shall not be allowed within the specified distances to the following uses that are in existence at the time the cannabis use is established. Specifically, a cannabis retailer shall not locate or establish:
 - 1. Within a 600-foot radius of a school, day care center, or youth center. (See Business and Professions Code, § 26054.)

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

ALTERNATIVE:

1. Cannabis Storefront Retailers: Within a 600-foot radius of a school, day care center, or youth center. (See Business and Professions Code, § 26054.)
2. Cannabis Delivery-Only Retailers: Within a 600-foot radius of a school. 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 cannabis delivery-only retailers near day care centers or youth centers, or other potentially sensitive uses, beyond the radius contained herein.

The distances specified in this Section shall be the horizontal distance measured in a straight line from the property line of the school, day care center, or youth center to the closest property line of the lot on which retailer is to be located without regard to intervening structures. (See Business and Professions Code, § 26054(b); Health & Safety Code, § 11362.768(c).)

OPTIONAL:

The distances specified in this Section [for day care centers or youth centers only] shall apply unless Town Council finds that the proposed site will not pose a threat to the public health, safety and welfare of the surrounding properties. In exercising its discretion, the Town Council shall consider the following factors:

- 1) Whether natural or manmade features provide an intervening barrier to the exposure of any minors at a sensitive use [day care center or youth center] located within 600 feet of the proposed site;
 - 2) Whether the proposed site is located in an area that does not feature high concentrations of minors or pedestrian traffic;
 - 3) Whether there is a history of police or crime-related problems in the area of the proposed location and whether the proposed location creates potential public safety risks; and
 - 4) Whether the proposed site would provide traffic circulation benefits through provision of additional parking, ease of vehicular and/or pedestrian access, or other features that mitigate potential traffic congestion impacts.
- C. Cannabis retailers shall meet all standards for development in the underlying zoning district, in the Town's General Plan, and in any applicable specific plans or master plans, and in addition:
1. Parking shall be provided in accordance with the following:
 - i. Cannabis Storefront Retailers: Town Code § 17.052.030(F) for retail and personal service stores at a rate of three spaces for the first 500 square of gross floor area and one space for each additional 500 square feet thereafter. [OPTIONAL: plus space one per delivery vehicle.]
 - ii. Cannabis Delivery-Only Retailers: Town Code § 17.052.030(K) for industrial uses,

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

including wholesale and storage: one space per two employees of the maximum shift. [OPTIONAL: plus one space per delivery vehicle.]

2. Size of facility. The size of the facility shall not exceed 1,500 square feet exclusive of restroom facilities and common areas.
3. Limitation on number: There shall be no more than [] cannabis retailers at any one time, whether as storefront retailers or delivery-only retailers, and whether medical-use, adult-use or both.

ALTERNATIVE:

- i. [] storefront retailers, whether medical-use, adult-use or both; and
- ii. [] cannabis delivery-only retailers (medical-use, adult-use or both) located in the Town of Fairfax.

The above total(s) shall/shall not include any medical marijuana dispensary that was legally operating as of April 3, 2018, which shall be counted as a medical-use only storefront retailer, regardless of whether such dispensary is permitted to conduct adult-use cannabis deliveries pursuant to Section 17.110.230 (“Adult-Use Cannabis Deliveries By Certain Existing Medical Marijuana Dispensaries”), below.

4. If an application for a proposed cannabis retailer requires compliance with Chapter 17.020 [“Design Review Regulations”], then notwithstanding any provision of Chapter 17.020 to the contrary, the Planning Commission shall provide a recommendation on such design review application and final approval authority shall vested in the Town Council. The Town Council’s review and decision shall in all respects comply with the criteria set forth in Chapter 17.020.
5. If an application for a proposed cannabis retailer requires a traffic impact permit pursuant to Chapter 17.056 [“Traffic Impact Permit”], then notwithstanding any provision of Chapter 17.056 to the contrary, the Town Council shall not be required to approve the methodology used in the traffic study pursuant to Section 17.056.070.
6. If an application for a proposed cannabis retailer requires a sign permit pursuant to Chapter 17.064 [“Signs”], then notwithstanding any provision of Chapter 17.064 to the contrary, the Planning Commission shall make a recommendation on such sign permit, and final approval authority shall vested in the Town Council. The Town Council’s review and decision shall in all respects comply with the criteria set forth in Chapter 17.064.

17.110.050 -17.110.220 RESERVED.

§ 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:

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

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.
 4. No adult-use cannabis retail sales shall be permitted to occur at the premises of a medical marijuana dispensary.
- B. 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.

17.110.240 -17.110.290 RESERVED.

§ 17.110.300 PERSONAL CULTIVATION OF CANNABIS.

Personal cultivation of cannabis shall comply with the following:

- A. No more than six cannabis plants per private residence are allowed to be cultivated, whether indoors or outdoors upon the grounds of a private residence, regardless of the number of individuals residing at the residence. However, outdoor cultivation shall not exceed 6 plants per lot, regardless of the number of private residences located upon the lot.
- B. *Outdoor Cultivation.* Outdoor personal cultivation of cannabis shall comply with the following standards:
 1. Outdoor cannabis plants shall be located a minimum of five feet from property lines.
 2. Outdoor cannabis plants shall be located only in the rear and side yards of a lot, and are not permitted to be located in front yards of any lot.
 3. No cannabis plants cultivated under this article shall be visible from a public right-of-way or any other public place by normal unaided vision.
 4. No cannabis plants cultivated under this article shall exceed seven feet in height.
 5. The area used for cannabis cultivation shall be contained within a locked space (e.g. enclosed within a locked gate).

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

6. Any lot upon which cannabis plants are cultivated shall have fencing of no more than six feet in height surrounding the lot or that portion of the lot upon which the plants are cultivated. In no event shall netting or plastic screening be used in conjunction with cannabis cultivation.
 7. Outdoor cultivation is prohibited on parcels within 200 feet of any school or day care center.
- C. *Indoor Cultivation.* Indoor personal cultivation of cannabis shall comply with the following standards:
1. Plants shall be contained within a locked space of a fully enclosed and secure structure, as defined, either within the primary residence or within an accessory structure on the same lot as the primary residence. [OPTIONAL: For purposes of cultivation within the primary residence itself, the plants must be enclosed within a locked room contained within the residence.]
 2. Indoor grow lights shall not exceed 1,200 watts and comply with the California Building, Electrical, Plumbing and Fire Codes as adopted by the town. Gas products (CO₂, butane, propane, natural gas, kerosene, etc.) or generators may not be used indoors or outdoors.
 3. All electrical equipment used in the cultivation or processing of cannabis (e.g. lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation or processing of cannabis is prohibited.
 4. All cannabis cultivation areas shall be in compliance with the current, adopted edition of the California Building Code as regards mechanical ventilation.
 5. Shall not be conducted in a manner that results in the creation of mold or mildew inside the residence or the accessory structure.
- D. *General.* All personal cultivation of cannabis, whether indoors or outdoors, shall comply with the following generally applicable standards:
1. A copy of documentation of qualified patient status must be maintained at any location at which medical cannabis cultivation occurs. If cultivation is to be conducted by a primary caregiver, documentation of the legally-required relationship shall be maintained at the location where medical cannabis cultivation occurs.
 2. The residence shall maintain fully functional and usable kitchen, bathrooms, and bedrooms for their intended use, and the premises shall not be used primarily or exclusively for cannabis cultivation.
 3. No cannabis cultivation area shall be maintained or operated in such a way as to adversely affect the health or safety of the nearby residents in any manner, including but not limited to by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes. A public nuisance may be deemed to exist, if such cultivation activity produces: (a) odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public, (b) repeated responses to the residence from law enforcement officers, (c) repeated disruption to the free passage of persons or vehicles in the neighborhood, (d) excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public, or (e) any other impacts on the neighborhood which are disruptive of normal activity in the area.
 4. Any cannabis cultivation that would require a license or permit from the State of California per the Medical and Adult-Use Regulation and Safety Act (Cal. Business & Professions Code, Division 10) is prohibited within the Town of Fairfax.

OPTIONAL:

§ 17.110.310 MEDICAL CANNABIS ADMINISTRATIVE EXCEPTION.

- A. Any qualified patient or primary caregiver may seek a medical cannabis administrative exception to Section 17.110.300, subdivisions (A) or (B)(7).
- B. Any request for a medical cannabis administrative exception shall be submitted to the Town Manager, along with documentation, such as a physician’s recommendation or verification of more than one qualified patient living in the residence, demonstrating why the standard required by Section 17.110.300, subdivisions (A) or (B)(7), is not feasible.
- C. The Town Manager may grant a medical cannabis administrative exception only if the following findings can be made:
 - 1. The individual requesting the exception can demonstrate a medical need for the exception, as evidenced by the written recommendation of a treating physician;
 - 2. The requested exception shall not constitute a public nuisance, as set forth in § 17.110.300(D).
 - 3. For indoor cultivation, the Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers, code-compliant electrical systems or one-hour firewall assembly.
 - 4. The cultivation of no more than six (6) additional cannabis plants shall be authorized through a medical cannabis administrative exception.
- D. The Town Manager, or his or her designee, shall prepare a written approval or denial of any request for an exception within ten business days of its submission to the town. Approval of the requested exception may be made subject to conditions designed to lessen the impact of the exception on neighboring uses and the community generally.
- E. Any exception granted under this section shall be personal to the party to whom such exception was granted and shall not run with the land or otherwise be transferable.
- F. Notwithstanding any other provision of the Town Code, any person aggrieved by the decision of the Town Manager, or his or her designee, with respect to an exception requested under this § 17.110.310 may appeal said decision within ten days of the date of the decision to the Planning Commission. Upon review, the Planning Commission shall issue the requested exception if it meets the requirements of subdivision (C) above, and subject to any conditions imposed per subdivision (D) above.]

§ 17.110.320 ENFORCEMENT.

- A. *Public nuisance.* The violation of this Chapter is hereby declared to be a public nuisance and may be enforced pursuant to the provisions of Chapter 1.12 of the Fairfax Town Code.
- B. *Seizure and destruction of cannabis.* To the extent authorized by state law, all cannabis seized by the town police in the enforcement of this Chapter shall be seized, retained and destroyed in the same manner and subject to the same procedures as are provided in California Health and Safety Code §§ 11472 through 11479, for cannabis possessed in violation of Division 10 of the Health and Safety Code.
- C. *Right of entry.* The Code Enforcement Officer, Building Official, Planning Director, Chief of Police, Fire Inspector, or a designee is authorized to enter upon and inspect private properties to ensure compliance with the provisions of this section. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other person in lawful possession of the property. If consent cannot for any reason be obtained, an inspection warrant shall be obtained from a court of law prior to any such entry and inspection. In those cases where consent is denied, the town may seek to recover the costs it incurs in obtaining a warrant from the property owner and/or person in lawful possession of the property.

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

- D. *Abatement.* The Town Attorney, in the name of and on behalf of the town and/or the people of the town, may bring a civil action in a court of competent jurisdiction to enforce any provision of this Chapter, or to restrain or abate any violation of the provisions of this Chapter as a public nuisance.
- E. *Penalties not exclusive.* The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the town from using any other remedy at law or in equity which may be available to enforce this Chapter or to abate a public nuisance.

§ 17.110.330 LIABILITY.

The provisions of this Chapter shall not be construed to protect the property owner(s) of record, or their lessees, tenants or other participants engaged in the personal cultivation of cannabis or commercial cannabis uses from prosecution pursuant to any state or federal laws regulating or prohibiting such activities. The property owner(s) of record, or their lessees, tenants and other participants, assumes any and all risk and all liability that may arise or result under state and federal laws from the cultivation of cannabis or commercial cannabis activities conducted on such property.

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY

Fairfax Municipal Code

CHAPTER 5.56: CANNABIS BUSINESSES

ARTICLE I: COMMERCIAL CANNABIS BUSINESS PERMITS

5.56.010 Purpose and intent.

It is the purpose and intent of this Chapter to regulate commercial cannabis activities located within the Town of Fairfax, in order to promote the health, safety, and general welfare of residents and businesses within the Town. Commercial cannabis activities shall comply with all provisions of the Fairfax Municipal Code, state law, and all other applicable local codes and regulations, including all applicable land use and zoning regulations imposed on cannabis activities.

5.56.020 Definitions.

The definitions for commercial cannabis business uses and activities in this Chapter shall be as defined in Section 17.110.020 of the Municipal Code. In addition, for purposes of this Chapter, the following words and phrases whenever used in this Chapter shall have the meanings defined in this Section:

- A. “Adult use” shall refer to cannabis goods intended to be sold for nonmedical use by persons twenty-one years of age or older in conformance with the MAUCRSA and the provisions of state law regarding cannabis use and sale (Health & Safety Code, §11362.1 et seq.).
- B. “Application period” shall be the time stated in the notice of availability during which the Town will accept applications for commercial cannabis business permits for one or more categories of commercial cannabis activities.
- C. “Cannabis business” means the actual or intended conduct of commercial cannabis activity, as defined by MAUCRSA, or of one or more commercial cannabis use(s), as defined by this Code.
- D. “Cannabis goods” means cannabis, including dried flower, cannabis products, and products containing cannabis.
- E. “Chief of Police” shall refer to the Town of Fairfax Chief of Police or the person designated by the Chief of Police.
- F. “Day” shall refer to calendar days.

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

- G. “Financial interest” shall have the same meaning as that term is defined in 16 California Code of Regulations, Section 5004, as may be amended from time to time.
- H. “Manager” shall mean a person can or does have or share ultimate control over the day-to-day operations of a business.
- I. “MAUCRSA” shall mean the Medical and Adult-Use Cannabis Regulation and Safety Act (California Business & Professions Code, Division 10), as may be amended from time to time.
- J. “Medical use” shall refer to cannabis goods intended to be sold for medicinal use by a qualified patient in California who possesses a physician’s recommendation pursuant to the Compassionate Use Act of 1996 (California Health & Safety Code §11362.5), the Medicinal Marijuana Program Act (California Health & Safety Code §11362.7 *et seq.*) and MAUCRSA, as each may be amended from time to time.
- K. “Owner” shall have the same meaning as that term is defined in 16 California Code of Regulations, Section 5003, as may be amended from time to time.
- L. “Person” shall mean any natural person, partnership, cooperative, association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- M. “Planning department” means the Department of Planning and Building Services of the Town of Fairfax.
- N. “Police department” means the Police Department of the Town of Fairfax.

5.56.030 Prohibited commercial cannabis activities.

- A. All medicinal and adult-use commercial cannabis uses or other activities requiring a State commercial cannabis license under the MAUCRSA are prohibited, except as expressly allowed by this Chapter and Chapter 17.110.
- B. The foregoing prohibition shall not apply to:
 - a. Conduct specified in Business and Professions Code Sections 26054(c) and (d), 26080(b), or 26090(e).
 - b. Cannabis delivery originating from a retailer located outside of the Town, which is not prohibited or regulated by this Chapter.

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

- C. Cannabis temporary events, as provided under Business and Professions Code Section 26200, are prohibited in the Town of Fairfax unless specifically authorized by separate resolution or ordinance of the Town Council.

5.56.040 Permit requirements.

- A. Any person seeking to establish or operate a medicinal or adult-use cannabis business from premises located in the Town must first obtain and maintain a commercial cannabis business permit in accordance with this Chapter prior to establishing and/or operating.
- B. The Town Council shall adopt by resolution a limit on the number of each type of commercial cannabis business permit to be issued.

ALTERNATIVE 1:

- B. There shall be no more than the following number of commercial cannabis business permits issued pursuant to this Article at any one time in the following activity categories:
 - 1. cannabis retailer(s), whether storefront or delivery-only, and whether medical-use, adult-use or both

ALTERNATIVE 2:

- 1. storefront retailers, whether medical-use, adult-use or both; and
- 2. cannabis delivery-only retailer(s) (medical-use, adult-use or both) located in the Town of Fairfax.

OPTIONS:

The above totals shall include any medical marijuana dispensary that was legally operating as of April 3, 2018, which shall be counted as a medical-use only storefront retailer, regardless of whether such dispensary is also permitted to conduct adult-use cannabis deliveries pursuant to Section 17.110.230 and this Chapter.

OR

The above totals shall not include any medical marijuana dispensary that was legally operating as of April 3, 2018, regardless of whether such dispensary is also permitted to conduct adult-use cannabis deliveries pursuant to Section 17.110.230 and this Chapter.

- C. When the number of commercial cannabis business permits falls below the number of permits set by Town Council [OR set forth above], the Town Manager (or his or her designee) shall post a notice of availability that the Town will be accepting applications for commercial cannabis business permits. The notice shall include the dates during which applications will be accepted, information regarding application requirements and directions, and the contact information for questions. The notice shall be posted on the Town's website and on the three public places in the Town of Fairfax designated for official postings.

5.56.060 Permit application.

- A. All applications for a commercial cannabis business permit shall be filed with the Town Manager or designee, using forms provided by the Town, within the application period

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

that is established by the Town Manager, and which period may be extended from time to time. It is the responsibility of the applicant to provide a complete application and all information required for approval of the permit. The application shall be made under penalty of perjury. At a minimum, each application shall contain:

1. A complete identification of the applicant including name, address and phone number to which notice of action on the application and correspondence is to be mailed;
2. A description of the statutory entity or business form that will serve 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;
3. Names, residence and business addresses of each and every owner. If one or more owners is a statutory entity or other business form, the name of the entity shall be set forth exactly as shown in its formation and organizing documents together with the names, residence and business addresses of each of the owners and other persons with a financial interest in the entity;
4. The names, residence and business addresses of the managers;
5. The name, residence and business address of the owner of the property, who shall indicate in writing his/her/its consent to cannabis business being conducted on the property by signing the application in the space provided;
6. A complete list of every individual who has a financial interest in the commercial cannabis business, who is not an owner, as defined;
7. A site plan, floor plan, and elevations of the property where the business will operate, and indicate whether any exterior building improvements, including façade improvements or exterior signage is proposed. If exterior building improvements or signage is proposed, then compliance with Chapters 17.020 and 17.064 is required, and the applicant shall submit its application for any design review approval and/or sign permits concurrently with the application for the commercial cannabis business permit;
8. An operations plan for the business and the name under which it is to be operated;
9. A traffic study for the proposed location, if a traffic impact permit is required under Chapter 17.056. If required, the applicant shall submit its application for the traffic impact permit concurrently with the application for the commercial cannabis business permit;
10. Evidence of compliance with the California Environmental Quality Act (California Public Resources Code §21000 et seq.);
11. Whether or not any person referred to in subsection (1), (3), (4), (5) or (6) has had a license, permit or use permit for the same or any similar business suspended or revoked anywhere, and, if so, the circumstances of such suspension or revocation;
12. The proposed hours of operation;

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

13. The applicant's certificates of automobile and general commercial liability insurance coverage and evidence of workers' compensation insurance (if required) related to the operation of the commercial cannabis business;

14. An executed release of liability and indemnity agreement in the form set forth by the Town; and

15. Such other related information or documentation consistent with this Code and state law as the Town Manager may require.

The residential addresses required in subsections (3), (4) and (5), as well as the name(s) of managers listed in subsection (4), shall be kept private and not made available to the public.

- B. An application shall be accompanied by an application review fee, as established by resolution of the Town Council from time to time. This application review fee shall not include fingerprinting, photographing, and background check costs and shall be in addition to any other business permit fee or business license fee imposed by this code or other governmental agencies.

5.56.070 Review and action on applications.

The processing of new permit applications will include the following phases:

A. Phase 1 – Prescreening and Criminal History:

1. Upon receipt of a completed application, Town staff shall review applications for general compliance with the Town's municipal code, and shall reject any application which does not meet such requirements. Rejected applications shall not be scored. The Town shall also disqualify any application that contains any false or misleading information.

2. All exterior building improvements, including façade improvements and proposed signage, shall be reviewed for conformance with the Town's zoning and land use standards. If required, the applicant shall apply for any design review approval, traffic impact permit and/or sign permit necessary under Chapters 17.020, 17.056 and/or 17.064 concurrently with the application for the commercial cannabis business permit. The prescreening approval may be conditioned upon the applicant submitting complete application materials for design review, traffic impact and/or sign permits. All applications will be required to comply with environmental review pursuant to the California Environmental Quality Act ("CEQA") (California Public Resources Code §21000 et seq.).

3. Each applicant shall submit to the Chief of Police a recent photograph of the applicant (if an individual), each owner and current or prospective manager. The applicant, owner(s) and manager(s) shall also be responsible for submitting fingerprints pursuant to "Livescan" procedures and pay all costs associated with such submittal. The fingerprints will then be submitted to the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) for evaluation. Upon receipt of the report from the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), the Chief of Police shall review and approve or deny the criminal history of the applicant, owner(s) and manager(s).

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

4. The applicant prescreening decisions will be made by the Town Manager within 60 days of the close of the application period or receipt of Livescan results, whichever is later. Prescreening decisions are not appealable. Only applicants who receive approval of the prescreening review may proceed to the next phase of the selection process.

B. Phase 2 – Application Scoring:

1. Upon approval of the prescreening review, the Town Manager or designee shall refer the application to the Planning Commission for preliminary scoring of the application(s) and recommendation to the Town Council. A public hearing on a commercial cannabis business permit application(s) may be consolidated with any required hearing for design review approval, traffic impact permit and/or sign permits.

2. The Town Council will issue the final score on the commercial cannabis business permit application, relying only upon the written application itself, any other written Town materials generated in connection with the review, and the applicant presentation and representations at the public hearing. The decision of the Town Council will be made at a duly noticed public hearing and may be consolidated with any required hearing for design review approval, traffic impact permit and/or sign permits.

3. The specific scoring criteria, weighting (points per criteria) and minimum qualifying scores will be determined by resolution of the Planning Commission prior to the commencement of the initial screening application period and posted publically on the Town's website.

4. If the number of applicants who receive minimum qualifying scores at Phase 2 exceeds the maximum number of permits available in that category, then applicants will be selected and issued a commercial cannabis business permit based on highest score.

5. Qualified applicants that are not selected will be placed on a qualified applicant list. Applicants placed on the qualified applicant list will be notified when future applications are accepted. A qualified applicant will remain eligible for three years.

C. Issuance of a commercial cannabis business permit does not create a land use entitlement. Furthermore, no permittee may begin operations, notwithstanding the issuance of a permit, until all of the State and local laws and regulations, including but not limited to the requirements of this Chapter and of the permit, have been complied with. The issuance of a commercial cannabis business permit does not excuse compliance with any other requirement in the Zoning Ordinance or Building Code. Any additional permits required may be obtained after the business permit is issued but before operation.

D. The Town reserves the discretion to not grant any applications in the interest of the health, safety, or general welfare of the Town.

5.56.080 Minimum criteria for issuance of a permit.

A. The applicant, each owner, and any existing or prospective manager, must be at least twenty-one years of age.

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

- B. The applicant, each owner, and any existing or prospective manager, must not have had a similar type of license or permit previously revoked or denied for good cause within the immediately preceding two years prior to the permit application.
- C. Neither the applicant, any owner, nor any proposed or prospective manager, shall have been convicted of:
 - 1. Any offense relating to possession, manufacture, sales, or distribution of a controlled substance, with the exception of cannabis-related offenses;
 - 2. Any offense involving the use of force or violence upon the person of another;
 - 3. Any offense involving theft, fraud, dishonesty or deceit;
 - 4. Any offense involving sales of cannabis to a minor or use of a minor to distribute cannabis.

For purposes of this subsection (C), a conviction includes a plea or verdict of guilty or a conviction following a plea of nolo contendere. The above criteria are in addition to any applicable provisions of state law.

5.56.090 Operating requirements.

- A. State and Local Licenses. The permittee shall obtain and maintain a State commercial cannabis license for the equivalent State cannabis commercial activity. The permittee shall obtain and maintain all other required State and local licenses, permits, or approvals as required.
- B. MAUCRSA Compliance. The permittee shall meet all operating requirements of the MAUCRSA, and any regulations promulgated thereunder.
- C. Criminal History. No permittee, its owners, managers, employees, or volunteer workers, shall have been convicted of an offense listed Section 5.60.080(C).
- D. The permittee shall ensure that its operations conform to the following requirements in addition to the State regulations, which shall include:
 - 1. Signage and notices.
 - i. All signage shall meet the Town zoning code's sign requirements.
 - ii. A notice shall be clearly and legibly posted in the business premises indicating that smoking, ingesting or consuming cannabis on the premises or in the vicinity of the retailer is prohibited.
 - iii. Signs on the premises shall not obstruct the entrance or windows.
 - iv. Address identification shall comply with Fire Department illuminated address signs requirements.

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

2. Entrances. The primary entrance shall be located and maintained free of barriers, landscaping and similar obstructions so that it is visible from public streets, sidewalks or driveways.
3. Records. A current register of all employees shall be maintained.
4. Odor Control. An odor absorbing ventilation and exhaust system shall be installed so that odor generated inside the business is not detected outside the property or lease area boundaries, or anywhere on adjacent property or public rights-of-way, or within any other unit located within the same building as the cannabis business.
5. Consumption. Cannabis and cannabis products shall not be consumed on the premises of the cannabis business, including parking areas, or in a delivery vehicle.
6. Operating Hours. A permittee may operate between the hours of 9:00 a.m. to 9:00 p.m., up to seven days a week.
7. Display of permit. Each commercial cannabis business permit shall be prominently displayed at the business premises in a location readily visible to Town officials, such as a lobby or entryway, and on any business website or advertisement.
8. Contact Person. A permittee shall provide the Town 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 permittee shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating concerns before any calls or complaints are made to the Town.
9. State License Application. The permittee shall submit to the Planning Department within seven (7) days a copy of any state commercial cannabis license application, renewal application and/or any business modification request or notification submitted to the state licensing authority (for retail, the Bureau of Cannabis Control) related to the permitted business.
10. Inspections. The Fairfax Code Enforcement and Police Department shall have the right, without warrant, to inspect the premises for which the permit was obtained on the following conditions:
 - i. The scope of the inspection is limited to determining compliance with this Chapter;
 - ii. The inspection shall be conducted not more often than once every six months;
 - iii. The inspection shall be conducted during regular business hours; and

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

- iv. The inspection shall be conducted at a time and in a manner that will minimize business interruption.
- 11. State and Local Law Compliance. The permittee shall comply with all state and local laws, rules and regulations, including payment of all applicable fees and taxes and payment of any future-adopted cannabis taxes.
- 12. Notification of State and Local Law Violations. A permittee shall immediately report to the Chief of Police any of the following:
 - i. Arrests of any employees, managers or owners for an offense other than a misdemeanor traffic offense.
 - ii. Any disciplinary action taken by a state licensing authority regarding the permittee's state commercial cannabis license and submit a copy of any notice or order.
 - iii. The occurrence of any event that constitutes a violation of this Chapter or state law related to the conduct of the commercial cannabis business.
- 13. The permittee shall be responsible for all violations of this Chapter and MAUCRSA or its implementing regulations, whether committed by the permittee, its owners, or any employee or agent of the permittee, which violations occur in or about the premises of the commercial cannabis business whether or not said violations occur within the permit holder's presence.

5.56.100 Term of permit and renewal procedure.

- A. Permits issued under this Chapter shall be valid for 12 months from the date of issuance. The permit may be renewed annually.
- B. Permits may be renewed by the Town Manager unless the permit is suspended or revoked in accordance with the provisions of this Chapter or if the application for renewal fails to comply with the provisions of this Chapter.
- C. Applications for renewal shall be made at least 60 days before the expiration date of the permit and shall be accompanied by the nonrefundable application review fee. Applications for renewal shall be acted upon by the Town Manager. Applications for renewal made less than 60 days before the annual expiration date shall not stay the expiration date of the permit.
- D. A permittee shall be responsible for paying an annual permit fee, as established by resolution of the Town Council from time to time. This deposit shall cover the full cost borne by the Town to administer the permit program and all responsibilities established in this Chapter.

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

5.56.110 Permit suspension and revocation.

- A. The Town Manager may suspend or revoke a commercial cannabis business permit if any of the conditions identified in this Section exist. On determining that grounds for permit suspension or revocation exist, the Town Manager shall serve the permittee with written notice of the proposed suspension or revocation. The notice shall state the ground or grounds upon which the decision is based, the effective date of the decision, the right of the permittee to appeal the decision to the Town Council, and that the Town Manager’s decision will be final if no written appeal is timely submitted to the Town in accordance with Section 5.56.140. The notice is effective within fifteen (15) days from the date of service of the notice. If an appeal is timely and properly filed, then the effective date of the notice is stayed. The date of service is the date it is personally delivered or placed in a U.S. Postal Service receptacle.
- B. A permittee is subject to suspension or revocation of the permit, or subject to other appropriate disciplinary action, for any of the following causes arising from the acts or omissions of the permittee, or an employee, agent, owner, director or manager of a commercial cannabis business:
1. The permittee has made a false, misleading or fraudulent statement or omission of facts in the application for a permit, or in any report or record required to be filed with the City.
 2. The commercial cannabis business has been operated as a nuisance, as defined in Fairfax Municipal Code or as defined in State law.
 3. A violation of any provision of this Chapter, or any other provision of the Municipal Code.
 4. There has been one or more violations of State law, including but not limited to violations of MAUCRSA or its implementing regulations.
- C. Upon revocation, no new permit may be issued for the applicant or any other business entity in which the applicant is a partner or owner of ten percent or more of the business for a period of five years from the date of revocation.

5.56.120 Expiration.

A permit shall expire if not in active use for a period of six months at any time after the date of issuance. This period may be extended if the permit has applied for a State commercial cannabis license that has been delayed through no fault of the permittee. Expired permits may not be renewed but the permit holder may apply again when a permit vacancy occurs.

5.56.130 Transfer of permits.

A commercial cannabis business permit issued under this Chapter is valid only as to the permittee and approved site, and is therefore nontransferable to other persons, projects or locations. A commercial cannabis business permit is not property and has no value. A

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

commercial cannabis business permit may not be transferred, sold, assigned or bequeathed expressly or by operation by law. Any attempt to directly or indirectly transfer a commercial cannabis business permit shall be deemed to constitute a voluntary surrender of such permit and such permit shall therefore be automatically rendered null and void. Except, however, if the permittee is a partnership, corporation, limited liability company or other entity, and one or more of the owners should die, one or more of the surviving owners may acquire, by purchase or otherwise, the interest of the deceased owner without affecting a surrender or termination of such permit and in each case the permittee shall thereafter be deemed to be the surviving owner(s). Additionally, a commercial cannabis business permit may be endorsed to add an additional owner, provided such prospective new owner satisfies the requirements for applicants, including but not limited to, a criminal history check and the qualifications listed in Section 5.56.080, as approved by the Town Manager.

5.56.140 Appeals

- A. Within fifteen (15) days after the date of service of a decision of the Town Manager to revoke, suspend or deny renewal of a permit, the permittee may appeal such action by filing a written appeal with the Town Clerk.
- B. The notice of appeal shall be in writing and signed by the person making the appeal, or his or her legal representative, and shall contain the following:
 - 1. The name, address, telephone number of the appellant.
 - 2. A true and correct copy of the notice of the decision issued by the Town Manager for which the appellant is appealing.
 - 3. A specific statement of the reasons and grounds for making the appeal in sufficient detail to enable the Town Council to understand the nature of the controversy, the basis of the appeal, and the relief requested.
 - 4. All documents or other evidence pertinent to the appeal that the appellant requests the Town Council to consider at the hearing.
- C. At the time of filing the appellant shall pay the designated appeal fee, established by resolution of the Town Council from time to time.
- D. Failure of the Town Clerk to receive a timely and proper appeal, or the requisite fee, constitutes a waiver of the right to appeal the decision of the Town Manager and a failure to exhaust all administrative remedies. In this event, the Town Manager's decision is final and binding.
- E. In the event a notice of appeal is timely filed, the nonrenewal, suspension or revocation is not effective until a final order has been rendered and issued by the Town Council. If a notice of appeal is not timely filed, in the event of a decision of nonrenewal, the permit expires at the conclusion of the term of the permit and in the event of a suspension or revocation, the suspension of revocation is effective upon the expiration of the period for filing a written notice of appeal.

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

- F. Upon receipt of a timely notice of appeal, the Town Clerk shall set the matter for a hearing before the Town Council. The Town Council shall preside over the hearing on appeal, hear the matter de novo and conduct the hearing pursuant to the procedures set forth by the Town. The Town Manager bears the burden of proof to establish the grounds for nonrenewal, suspension or revocation by a preponderance of the evidence. The issuance of the Town Manager’s decision constitutes prima facie evidence of grounds for the nonrenewal, suspension, or revocation.
- G. The appeal shall be held within a reasonable time after the filing of the notice of appeal, but in no event later than ninety (90) days from the date of such filing. The Town shall notify the appellant in writing of the date, time and location of the hearing at least ten (10) days prior to the date of the hearing.
- H. At the hearing the appellant may present witnesses and evidence relevant to the decision appealed. Appeal hearings are informal, and the formal rules of evidence and discovery applicable in a court of law shall not apply to the hearing. However, rules of privilege shall be applicable to the extent they are permitted by law, and irrelevant, collateral and repetitious evidence may be excluded.
- I. After the conclusion of the appeal hearing, the Town Council shall determine if any ground exists for the nonrenewal, suspension, or revocation of the commercial cannabis business permit. If the Town Council determines that no ground for nonrenewal, suspension, or revocation exists, the Town Manager’s notice of decision shall be deemed cancelled. If the Town Council determines that a ground enumerated in the Town Manger’s notice of decision exists, the Town Council shall issue a written final order via resolution. The decision of the Town Council shall be final. The decision shall contain the following statement: “The decision of the Town Council is final and binding. Judicial review of this decision is subject to the time limits set forth in California Code of Civil Procedure section 1094.6.” The Town Council’s order shall be served by first-class mail on the appellant.

5.56.150 Enforcement.

- A. It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this Chapter. A failure to obtain a commercial cannabis permit required by this Chapter shall be punishable in accordance with the Fairfax Municipal Code and state law.
- B. All remedies prescribed under this Chapter shall be cumulative and the use of one or more remedies by the Town shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.
- C. Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY
FAIRFAX PLANNING COMMISSION – MAR. 14, 2019

- D. Any use or condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is declared a public nuisance and may be summarily abated by the Town.
- E. The violation of any provision of this Chapter shall be and is declared to be contrary to the public interest and shall, at the discretion of Town Manager, create a cause of action for injunctive relief.
- F. In addition to the civil and administrative remedies set forth above, any person that violates the provisions of this Chapter may be subject to administrative penalties as set forth by the Fairfax Municipal Code, Chapter 1.10.

5.56.160 Application of this article to existing medical marijuana dispensaries.

An existing medical marijuana dispensary that was legally operating as of April 3, 2018 does not require a permit pursuant to this chapter to continue its existing operations as storefront medicinal cannabis retailer. However, if such a medical marijuana dispensary has received a permit to operate an adult-use cannabis delivery service from its existing premises pursuant to Article III of this Chapter as of the effective date of the Article I, then such adult-use deliveries may continue until expiration of the adult-use delivery permit. Upon expiration of adult-use delivery permit approved under Section 5.56.300, the proprietor shall be required to obtain a permit and comply with the provisions of this Article I, without the need to undergo the review procedure set forth in Section 5.56.070.

Alternatively, if such a medical marijuana dispensary has not received a permit to operate an adult-use cannabis delivery service from its existing premises pursuant to Article III of this Chapter as of the effective date of the Article I, the proprietor shall be required to compete for a new adult-use cannabis delivery-only retailer permit under the same terms and conditions as all other applicants.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Memorandum

To: Fairfax Planning Commission **File No.:** 38072.00001
From: Amanda Charne, Assistant Town Attorney
Date: March 5, 2019
Re: Draft Definitions for Cannabis Zoning Regulations

Purpose: At the hearing on February 21, 2019, the Chair of the Fairfax Planning Commission requested information from the Town Attorney's Office regarding which proposed definitions in the draft cannabis regulations were modified from state law. This document is intended to fulfill that request. Note that the proposed definitions now cover both commercial cannabis activities and personal cannabis cultivation activities consistent with the direction of the Chair to combine proposed Chapter 17.110 and Article III of Chapter 17.138.

§ 17.110.020 DEFINITIONS.

For purposes of this Chapter, the following definitions apply:

- A. "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" includes "cannabis" as defined in Business and Professions Code, Section 26001 and in Section 11018 of the Health and Safety Code. "Cannabis" shall not include industrial hemp as defined by Section 11018.5 of the Health and Safety Code.
- *State law provides two separate definitions of cannabis: BPC §26001 for purposes of commercial regulation under MAUCRSA and HSC §11018 for purposes of the Uniform Controlled Substances Act. For "readability" and consistency with HSC §11018, the language from BPC §26001(f) referring to portions of the plant that are not included within the definition of cannabis have been omitted from the text. Since the Town's regulations will cover both commercial activity and personal cultivation activity, it is appropriate to include both state law definitions to ultimately create a more inclusive local definition of cannabis.*

- B. “Cannabis cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. For purposes of commercial cannabis cultivation, the term “cannabis cultivation” also includes processing, rolling, storing, packaging, and labeling of non-manufactured cannabis products.
- *The second sentence shown in underline has been added to reflect additional activities authorized under the state Department of Food and Agriculture commercial cultivation regulations.*
- C. “Cannabis delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Cannabis delivery” also includes the use by a cannabis retailer of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
- *The underlined portion of the second sentence clarifies what activity the technology platform enables consistent with BCC Regulation 5415.1.*
- D. “Cannabis distribution facility” means any facility engaged in the procurement, temporary storage, non-retail sales, and transport of cannabis and cannabis products between State-licensed cannabis businesses and any other activity allowed under the State distributor license(s), including, but not limited to, quality control and collection of State cannabis taxes.
- *BPC §26001(r) defines distribution generally, but not how it functions as a land use. The state definition also does not reflect the full breadth of activities allowed under the state cannabis distributor license. The underlined text is intended to clarify and address these issues.*
- E. “Cannabis manufacturing” means the compounding, blending, extracting, infusing, or otherwise making, preparing or packaging a cannabis product. Cannabis manufacturing includes the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.
- *This definition combines BPC §26001, subdivision (ag) [“manufacture”] and subdivision (ah) [“manufacturer”] to create a more comprehensive definition of cannabis manufacturing activity.*
- F. “Cannabis microbusiness” means a commercial cannabis business that must engage in at least three of the following commercial cannabis activities: cultivation, manufacturing using nonvolatile solvents, distribution, and/or retail.
- *BPC §26001 does not define the term microbusiness. Microbusinesses are identified in BPC § 26070(a)(3) and defined further in the BCC Regulation*

5500(a). *This definition identifies the functions of a microbusinesses consistent with the state regulations for purposes of the zoning regulation.*

- G. “Cannabis products” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis products include “cannabis products” as defined in Business and Professions Code, Section 26001.
- *The definition of cannabis products in BPC §26001(i) refers to the definition in HSC §11018.1, which has been set forth above.*
- H. “Cannabis retailer” means a facility or premises where cannabis or cannabis products are offered, either individually or in any combination, for retail sale or other sales or transfer to consumers, including an establishment that delivers cannabis and cannabis products as part of a retail sale. For purposes of this Section, “cannabis retailer” also includes medical cannabis dispensaries, patient collectives and cooperatives operating, or proposing to operate, pursuant to the Compassionate Use Act (Health and Safety Code, § 11362.5) and/or the Medical Marijuana Program (Health and Safety Code, § 11362.7 et seq.), as may be amended. Unless otherwise specified, “cannabis retailer” means both a retailer selling medicinal cannabis and medicinal cannabis products to patients with valid physicians’ recommendations, and a retailer providing adult-use cannabis and cannabis products for adults twenty-one (21) years of age and older. The term “cannabis retailer” includes both storefront retailers and delivery-only retailers unless otherwise specified.
- *Neither MAUCRSA, nor the BCC Regulations provide a definition of a cannabis retailer. This definition has been crafted based on the functions of a cannabis retailer set forth in BCC Regulation 5400 et seq. and to broadly refer to all entities that engage in cannabis retail sales, including medical dispensaries, patient collectives and patient cooperatives. See BCC “Collectives and Cooperatives Fact Sheet”, available online at: https://bcc.ca.gov/about_us/documents/18-006_collective_faq.pdf*
- I. “Cannabis testing laboratory” means a laboratory, facility, entity, or site that offers or performs tests or testing of cannabis or cannabis products.
- *The definition of “testing laboratory” in BPC §26001(at) has been simplified to refer to the land use functions of the testing laboratory and to omit references to regulatory requirements for such facilities.*
- J. “Commercial cannabis use” includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis uses includes “commercial cannabis activity” as defined in Business and Professions Code, §26001, and includes any activity that requires, or may require in the future, a license from a State licensing authority pursuant to the Medicinal and Adult-Use Cannabis

Regulation and Safety Act (Business and Professions Code, Division 10), as may be amended. Commercial cannabis use does not include the activities of a qualified patient or a primary caregiver that are exempt from State licensure pursuant to Business and Professions Code, § 26033.

- *The state definition of “commercial cannabis activity” has been modified to incorporate the terms defined in this chapter, while still incorporating the state definition by reference. This definition makes clear that any activity requiring a state cannabis license is included in the local definition of a “commercial cannabis use”, and expressly excludes the limited activities of a qualified patient and primary caregiver that are exempt from state licensure.*
- K. “Day care center” means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and schoolage child care centers, as defined Sections 1596.76 and 1596.750 of the Health and Safety Code.
- *The definition of “day care center” in BPC §26001(o) incorporates HSC §1596.76. HSC §1596.76 is set forth above, with the underlined portion including relevant the cross reference to a “child day care facility” under HSC §1596.750.*
- L. “Delivery-only retailer” means a cannabis retailer that conducts cannabis sales exclusively through cannabis delivery from a fixed, physical location that is closed to the public. Also known as a “non-storefront retailer.”
- *MAUCRSA identifies, but does not define, the concept of a “non-storefront retailer” or “delivery only retailer” in BPC §26070(a)(1). This concept is interpreted under BCC Regulation 5414. The definition above is intended to define the land use consistent with BCC Regulation 5414.*
- M. “Fully enclosed and secure structure” means a space within a dwelling unit that complies with the California Building Code, as adopted in the town (“CBC”); or, if exempt from the permit requirements of the CBC, an accessory structure, on a lot containing a dwelling unit, having a complete roof and enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. In order to qualify as a fully enclosed and secure structure, the walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two-inch by four-inch or thicker studs overlaid with three- eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials.
- *State law (HSC §11362.2) does not define “fully enclosed and secure.” This definition comes from the Town’s current personal cultivation regulations (Town Code, Section 17.138.320).*
- N. “Indoor” means within a fully enclosed and secure structure.

- *State law (HSC §11362.2) does not define “indoors.” This definition comes from the Town’s current personal cultivation regulations (Town Code, Section 17.138.320).*
- O. “Medicinal cannabis” means cannabis or cannabis products intended to be used for medical purposes in accordance with the Compassionate Use Act of 1996 (California Health & Safety Code §11362.5) and the Medicinal Marijuana Program Act (California Health & Safety Code §11362.7 et seq.), as each may be amended from time to time.
- *The definition of medicinal cannabis provided under MAUCRSA (BPC §26001(ai)) has been modified slightly to more generally refer to medical use authorized under state law, given that the Town’s regulations under Chapter 17.110 will apply to both commercial and personal use activity. In particular, this definition adds a reference to the Medical Marijuana Program Act which clarifies and expands protections for personal medical use of cannabis.*
- P. “Outdoor” means any location exposed to the open air not within an enclosed structure or building.
- *State law (HSC §11362.2) does not define “outdoor.” This definition comes from the Town’s current personal cultivation regulations (Town Code, Section 17.138.320).*
- Q. “Personal cultivation” means cultivation of cannabis for a natural person’s own personal use and possession in accordance with this Code and state law, including but not limited to Health and Safety Code Sections 11362.1 and 11362.2, as may be amended, and such person does not sell or distribute cannabis to any other person. “Personal use” also means and includes cultivation of medical cannabis conducted by a qualified patient exclusively for his or her personal medical use, and cultivation conducted by a primary caregiver for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, in accordance with state law, including Health and Safety Code Sections 11362.7 and 11362.765, as may be amended. Except as herein defined, personal cultivation does not include, and shall not authorize, any cultivation conducted as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of cannabis, or by a cannabis cooperative association or any of its members.
- *New definition created to clarify and distinguish between commercial cultivation and personal cultivation of cannabis, with appropriate state law references.*
- R. “Primary caregiver” shall have the same meaning as the term “primary caregiver” defined in Cal. Health and Safety Code § 11362.7, as may be amended from time to time.
- S. “Private residence” means house, an apartment unit, accessory dwelling unit, a mobile home, or other similar dwelling occupied for residential purposes, or as defined in Cal. Health and Safety Code § 11362.2, as may be amended from time to time.

- T. “Qualified patient” means and includes both a “qualified patient” and a “person with an identification card” as each term is defined in Cal. Health and Safety Code § 11362.7, as amended from time to time.
- U. “School” means of a school providing instruction in kindergarten or any grades 1 through 12 (whether public, private, or charter), but does not include any private school in which education is primarily conducted in private homes.
- *BPC § 26054 sets the default buffer around schools “providing instruction in kindergarten or any grades 1 through 12” and incorporates the buffer measurement criteria set forth in HSC §11362.768. HSC §11362.768 clarifies that private schools are included, but excludes private home schools. The above definition is intended to combine these two statutory provisions, with a clarification regarding the status of charter schools (if any).*
- V. “State commercial cannabis license” means a state license issued under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10), as may be amended, and includes both an A-license and an M-license, as well as a testing laboratory license.
- *Adapted from BPC 26001(y) to clarify that “this division” refers to MAUCRSA.*
- W. “Storefront retailer” means a cannabis retailer that conducts cannabis sales at a business premises that is open to the public, and may also conduct cannabis delivery as part of a retail sale.
- *MAUCRSA identifies, but does not define, the concept of a “storefront retailer” in BPC §26070(a)(1). This concept is interpreted and defined under BCC Regulation 5400 et seq. The definition above is intended to define the land use consistent with those BCC Regulations.*
- X. "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, but does not include the return of cannabis or cannabis products by a licensee to the licensee from who the cannabis or cannabis product was purchased.
- Y. “Youth center” means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades where 10 or more video games or game machines or devices are operated, and where minors are legally permitted to conduct business, or similar amusement park facilities. [OPTIONAL: This definition shall not include any private martial arts, private tutoring center, yoga, ballet, music, art studio or similar studio of this nature nor shall it include any private gym, athletic training facility, pizza parlor, dentist office, doctor’s office

primarily serving children, or a location which is primarily utilized as an administrative office or facility for youth programs or organizations.]

- *BPC §26001(av) incorporates Section 11353.1 of the Health and Safety Code. The definition set forth above comes from HSC §11353.1(e)(2) ["youth center"] and also incorporates the definition of video arcade" provided in HSC §11353.1(e)(3) to avoid the need for additional cross references. If the Town feels that the state definition of youth center may be difficult to implement, the optional language would provide some general guidance to Town staff and Town officials. General examples what does or does not qualify as a "youth center" could be added or excluded. However, it would not be appropriate to identify specific businesses currently operating in Town in the zoning regulations as these businesses may change over time.*

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



Legend

- Parks
- 600 foot buffer
- Building footprint
- Schools / preschool / youth center
- Downtown Commercial Parcels



