



TOWN OF FAIRFAX

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DATE: February 21, 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.

The Town has been formally reviewing cannabis-related topics, particularly commercial cannabis, since December 2017, conducting 12 workshops or meetings. The Town Council provided the Planning Commission with general policy direction to begin reviewing commercial cannabis regulations, and updates to the personal cannabis cultivation regulations.

Commencing at the Planning Commission's September 2018 meeting, the Commission has been reviewing cannabis regulatory options. At the Commission's most recent (January 17, 2019) meeting, the Commission provided direction on commercial cannabis to use as the basis for returning with draft regulations. Staff has done so for this meeting.

At this regular meeting there are three planning applications scheduled for review by the Commission prior to the cannabis hearing. This combined agenda presents a challenge to finalizing cannabis regulations. Therefore staff requests the Commissioners to check each of your calendars prior to this meeting to determine whether you are available to attend a special Commission meeting to continue discussing the cannabis regulations. The dates under consideration are Thursday evening, either March 14 or 28.

DISCUSSION

A number of key policy decisions are contained in the draft regulations being presented tonight. 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.

Cannabis regulations and key policies

Chapter 17.110 – Commercial Cannabis Uses

This current stand-alone Medical Marijuana Dispensary regulations contained in Chapter 17.110 are proposed to be substantially revised. The newly titled “Commercial Cannabis Uses” provisions generally address zoning standards and restrictions for commercial cannabis land uses.

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

- 1) Definitions The definitions include “school” to reflect state law, although this definition differs from the Town’s default definition of “school” in Chapter 17.008. 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.
- 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, except as provided by state law.
- 3) Allowable uses Consistent with Commission direction, only retail adult-use cannabis, retail medical cannabis, and delivery-only would be allowed, subject to the approval of a commercial cannabis business permit (replacing the current provisions for a 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. However, there is some alternative language should the Commission wish to consider only applying the buffer surrounding schools for delivery-only retailers.
- 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 visual business identification cues consistent with any other business in Town.

- 8) Number of businesses There is no Commission consensus to date on the exact numbers to date, but the range has been narrowed.
- 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 then existing premises.

Chapter 17.138, Article III – Personal Cannabis Cultivation

The proposed ordinance amending Article III, currently entitled “Medical Marijuana Cultivation,” is largely unchanged from the January 17, 2019 Commission meeting. In summary, the proposed ordinance would re-name Article III “Personal Cannabis Cultivation,” and make the following key changes:

- 1) Comply with State law and allow up to 6 cannabis plants to be cultivated indoors or outdoors for personal use, whether for medical or non-medical purposes.
- 2) 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).
- 3) Existing outdoor cultivations standards would still apply.
- 4) 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 consider retaining this process. This exception could potentially apply to the 6-plant limit and/or the 200 ft. buffer.

Chapter 5.56 – Commercial Cannabis Business Permits

Staff and the Town Attorney’s office are continuing to prepare 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 would be useful in developing the application approval process as it relates to the Commission’s overall discussions on commercial cannabis land use issues. 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 It is proposed that there would be three phases to the commercial cannabis business permit application process.
 - a. Phase 1 Pre-screening Staff would have 30 calendar days after close of the application period 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.
 - b. Phase 2 Application scoring Upon approval of the prescreening review, the Town Manager would refer the application to the Scoring Body to complete the review of the application. The Scoring Body will be designated by resolution of the Town Council. The Commission previously indicated its desire to review applications.

The Scoring Body would score each application based on specific criteria and weighting to be determined (either in the ordinance or at a designated later time). One policy decision is whether the Scoring Body would collectively decide on scores, or whether the final scores would be based on an average of the individual members' scores. Applicants must score 80% or above to be deemed a qualified applicant. If the number of applicants who score more than 80% at Phase 2 exceeds the maximum number of permits available in that category, then applicants will be selected based on highest score.

The decision of the Scoring Body will be made at a duly noticed public hearing, which may be consolidated with any required hearing for design review approval, traffic impact permit and/or sign permits.

- c. Phase 3 Criminal History Proposed awardees of the permit 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. Upon approval of the criminal history background check, the Town Manager will issue the commercial cannabis business permit. However, additional permits (e.g. business licenses, building permits and state licenses) may or would still be required prior to operation.
- 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.

NEXT STEPS

Continue review of the proposed cannabis regulations at a (recommended) March special meeting (either March 14 or 28). Prepare formal recommendation on zoning code amendments 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. Proposed Town Code, Chapter 17.138, Article III – Personal Cannabis Cultivation
4. Map of Fairfax commercial zones with State-mandated buffer zone
5. Map of Fairfax commercial districts without State buffer zone

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CHAPTER 17.110: COMMERCIAL 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 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 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 marijuana. “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. “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,

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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. “Medicinal cannabis” means cannabis 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.
- N. “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.

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- O. “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.
- P. “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.
- Q. "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 permittee to the permittee from who the cannabis or cannabis product was purchased.
- R. “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.
- C. The zoning regulations pertaining to cannabis in this Chapter do not apply to personal cultivation of cannabis. Personal cultivation of cannabis shall be subject to state law and Chapter 17.138, Article III of this Code.

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:

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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.)

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).)

- 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, 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 the following number of cannabis retail uses at any one time in the following use categories:
 - i. adult-use storefront retailer(s), or combination adult-use and medical use

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

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 totals 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.

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:
 - 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

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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.

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Fairfax Municipal Code

CHAPTER 5.56: CANNABIS BUSINESSES

ARTICLE I: COMMERCIAL CANNABIS BUSINESS PERMITS

5.56.010 Purpose and intent.

TBD

5.56.020 Definitions.

TBD

5.56.030 Prohibited commercial cannabis activities.

TBD

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:

- 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. adult-use storefront retailer(s), or combination adult-use and medical storefront retailers;
 - 2. medical-use storefront retailer(s);
 - 3. cannabis delivery-only retailer(s) (whether 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

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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 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

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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;
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.

- A. The processing of new permit applications will include the following phases:
 1. Phase 1 - Prescreening: 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. The applicant screening decisions will be made by the Town Manager within 30 calendar days of the close of the application period, and screening decisions are not appealable. Only applicants who receive approval of the prescreening review may proceed to the next phase of the selection process.

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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.).

2. Phase 2 – Application Scoring: Upon approval of the prescreening review, the Town Manager or designee shall refer the application to the Scoring Body to complete the review of the application. The Scoring Body will be designated by resolution of the Town Council. The review of the application will include the following application scoring system, based on a 100-point scale. [ALTERNATIVELY: The specific criteria and weighting (points per criteria) for each permit type will be determined by _____ prior to the commencement of the initial screening application period and posted publically on the Town’s website.]

- i. Review Criteria - TBD.

The decision of the Scoring Body will be made at a duly noticed public hearing. The public hearing on a commercial cannabis business permit application may be consolidated with any required hearing for design review approval, traffic impact permit and/or sign permits. The Scoring Body 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.

[OPTION: The scores awarded by each member of the Scoring Body shall be totaled and averaged for each applicant. The applicants shall then be ranked from highest to lowest based on their scores.] Applicants must score 80% or above to be deemed a qualified applicant. If the number of applicants who score more than 80% at Phase 2 exceeds the maximum number of permits available in that category, then applicants will be selected based on highest score. The issuance of the commercial cannabis business permit shall be contingent upon the Phase 3 background check and any additional permits, licenses or other approvals that may be required prior to operation.

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.

3. Phase 3 – Criminal History. The Police Chief shall require 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 Police Chief shall review the criminal history of the applicant, owner(s) and manager(s). Upon approval of the criminal background

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histories for the applicant, owner(s) and manager(s), the Town Manager shall cause the commercial cannabis business permit to be issued.

- B. 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.
- C. 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.

TBD

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.
 - 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.

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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 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
 - 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.

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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.

TBD

5.56.110 Permit suspension, modification and revocation.

TBD

5.56.120 Expiration.

TBD

5.56.130 Transfer of permits.

TBD

5.56.140 Appeals

TBD

5.56.150 Enforcement.

TBD

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING ARTICLE III ('MEDICAL MARIJUANA CULTIVATION') OF CHAPTER
17.138 ('REGULATIONS APPLYING IN MULTIPLE DISTRICTS') OF TITLE 17
('ZONING') OF THE FAIRFAX TOWN CODE**

WHEREAS, in 1996, California became the first state in the nation to allow the use of medicinal marijuana/cannabis after voters approved Proposition 215, the California Compassionate Use Act; and

WHEREAS, numerous court decisions confirm that a municipality has authority to regulate medical marijuana activities, including personal cultivation of medical marijuana under the state's medical marijuana laws (*Kirby v County of Fresno* (2015) 242 Cal.App.4th 940, 964-967; see also, *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729; *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975); and

WHEREAS, in 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which legalized the non-medical use of marijuana/cannabis by adults over 21 years of age; and

WHEREAS, the AUMA made it lawful for adults to possess, plant, cultivate, harvest, dry, or process not more than six living cannabis plants within a single private residence, or upon the grounds of that private residence, at one time (Health & Safety Code, §11362.1); and

WHEREAS, the AUMA, as amended by the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), authorizes cities and towns to "reasonably regulate" the cultivation of cannabis for personal use, and may even completely prohibit cultivation activities outdoors upon the grounds of a private residence (Health & Safety Code, §11362.2); and

WHEREAS, the outdoor cultivation of marijuana/cannabis unregulated by local law poses a risk of adverse effects to the public health, safety and welfare due to the potentially high cash value of the plants and the potential creation of strong odors, aesthetic impacts, noise from equipment and other impacts that can be detectable beyond the property boundaries; and

WHEREAS, the indoor cultivation of marijuana/cannabis has potential adverse effects to the health and safety; including structural damage to the building due to increased moisture and excessive mold growth which can occur and a risk of fire and electrocution due to improper wiring and equipment; and

WHEREAS, the Town Council of the Town of Fairfax adopts this Ordinance in order to effect land use regulations reasonably regulating the cultivation of cannabis for personal use to protect the public health, safety and welfare and to protect the character of residential neighborhoods, as well as for consistency with AUMA, as amended by MAUCRSA.

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

SECTION 1. The Town Council hereby finds that all of the foregoing recitals are true and correct and are hereby incorporated and adopted as findings of the Town Council as if fully set forth herein.

SECTION 2. Article III ('Medical Marijuana Cultivation') of Title 17 (Zoning'), Chapter 17.138 ('Regulations Applying in Multiple Districts'), shall be amended and restated as provided in Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 3. This Ordinance is exempt from the requirements of the California Environmental Quality Act (codified at California Public Resources Code §§ 21000, *et seq.*, and as further governed by 14 California Code of Regulations §§ 15000, *et seq.*, collectively, "CEQA") under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (14 CCR §15061(b)(3).) The Ordinance has no potential for causing a significant effect on the environment based on the limited number of plants and the use of existing structures for indoor cultivation allowed by State law. As additional bases, this Ordinance qualifies for the Class 3 and Class 4 exemptions because the amendments authorize indoor cultivation in existing structures and, for outdoor cultivation, only minor private alterations in the condition of land, water, and/or vegetation akin to new gardening on private residential property. Accordingly, this Ordinance is categorically exempt from further CEQA review pursuant to Sections 15061(b)(3), 15303 and 15304 of Title 14 of the California Code of Regulations.

SECTION 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The Town Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional, provided, however, that if any decision of a court of competent jurisdiction invalidates the increase of the water service charges set forth in this Ordinance, then the water service charges in effect on the date of adoption shall continue in existence.

SECTION 5. This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women's Club Building, located at 46 Park.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the ___ day of _____, 20___, and duly adopted at the next regular meeting of the Town Council on the ___ day of _____, 2019, by the following vote, to wit:

AYES:
NOES:

ABSENT:
ABSTAIN:

Barbara Coler, Mayor

Attest:

Michele Gardner, Town Clerk

Date

EXHIBIT "A"

ARTICLE III: PERSONAL CANNABIS CULTIVATION

§ 17.138.310 PURPOSE.

It is the purpose of this article to regulate the cultivation of cannabis for personal medical use and personal adult-use within the Town of Fairfax for the health, safety and welfare of the public. Nothing in this article is intended to impair any defenses available to qualified patients or primary caregivers under the applicable state law or to authorize the cultivation, possession, or use of cannabis in violation of state or federal law. This article is not intended to give any person or entity legal authority to operate a cannabis business or to engage in commercial cannabis activity; it is intended simply to impose zoning restrictions on personal cultivation of cannabis allowed by state law.

§ 17.138.320 DEFINITIONS.

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

CANNABIS. 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 marijuana. "Cannabis" includes "cannabis" as defined in Business and Professions Code, Section 26001 and in Section 11018 of the Health and Safety Code.

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

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

INDOORS. Within a fully enclosed and secure structure.

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

PERSONAL CULTIVATION. 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.

PRIMARY CAREGIVER. A “primary caregiver” as defined in Cal. Health and Safety Code § 11362.7, as amended.

PRIVATE RESIDENCE. A 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.

QUALIFIED PATIENT. A “qualified patient” or a “person with an identification card” as defined in Cal. Health and Safety Code § 11362.7, as amended.

TOWN. The Town of Fairfax.

§ 17.138.330 PERSONAL CULTIVATION OF CANNABIS.

Personal cultivation of cannabis is prohibited except in compliance with the following:

(A) No more than six cannabis plants per private residence are allowed to be cultivated either indoors or outdoors upon the grounds of a private residence, or a combination of both indoors and outdoors, 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.* 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).

(6) Any lot upon which cannabis plants are cultivated under this article 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 public or private preschool, elementary, or middle school.

(C) *Indoor.* Indoor personal cultivation of cannabis shall comply with the following standards:

(1) Plants shall be contained within 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.

(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.

(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.

§ 17.138.340 RESERVED.

§ 17.138.350 RESERVED.

[OPTIONAL: MEDICAL CANNABIS ADMINISTRATIVE EXCEPTION

§ 17.138.350 MEDICAL CANNABIS EXCEPTIONS.

(A) Any qualified patient or primary caregiver may seek a medical marijuana administrative exception to Section 17.138.330, subdivisions (A) or (B)(7).

(B) Any request for a medical marijuana 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 a standard required by Section 17.138.330, subdivisions (A) or (B)(7), is not feasible.

(C) The Town Manager who may grant a medical marijuana administrative exception only if the following findings can be made:

(1) The 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 § 17.138.360.

(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 ___ [Note: current code allows up to six (6) mature marijuana plants indoors] shall be authorized through a medical marijuana 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 § 17.138.350 may appeal said decision within ten days of the date of the decision to the Planning Commission. Upon review, the Planning Commission shall issue the requested exception if it meets the requirements of divisions (A) and (B) above, and subject to any conditions imposed per subdivision (C)(4) above.]

§ 17.138.360 PUBLIC NUISANCE PROHIBITED.

It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any lot, site, dwelling unit, and/or fully enclosed and secure structure within the town to create a public nuisance in the course of cultivating cannabis plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces: (a) odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public, (b) repeated responses to the parcel from law enforcement officers, (c) repeated disruption to the free passage of persons or vehicles in the neighborhood, (d) excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public, or (e) any other impacts on the neighborhood which are disruptive of normal activity in the area.

§ 17.138.370 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.* Except as otherwise expressly stated in this section, all cannabis seized by the town police in the enforcement of this article shall be seized, retained and destroyed in the same manner and subject to the same procedures as are provided in California Health and Safety Code §§ 11472 through 11479, for 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.

(D) *Abatement.* The Town Attorney, in the name of and on behalf of the town and/or the people of the town, may bring a civil action in a court of competent jurisdiction to enforce any provision of this section, or to restrain or abate any violation of the provisions of this section as a public nuisance pursuant to the procedures set forth in Chapter 1.12 of the Town Code.

(E) *Violation.* Cultivation of cannabis that does not comply with this section constitutes a violation of the zoning ordinance and is subject to the penalties and enforcement as provided in Chapter 17.004 of the Town Code.

(F) *Penalties not exclusive.* The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the town from using any other remedy at law or in equity which may be available to enforce this section or to abate a public nuisance.

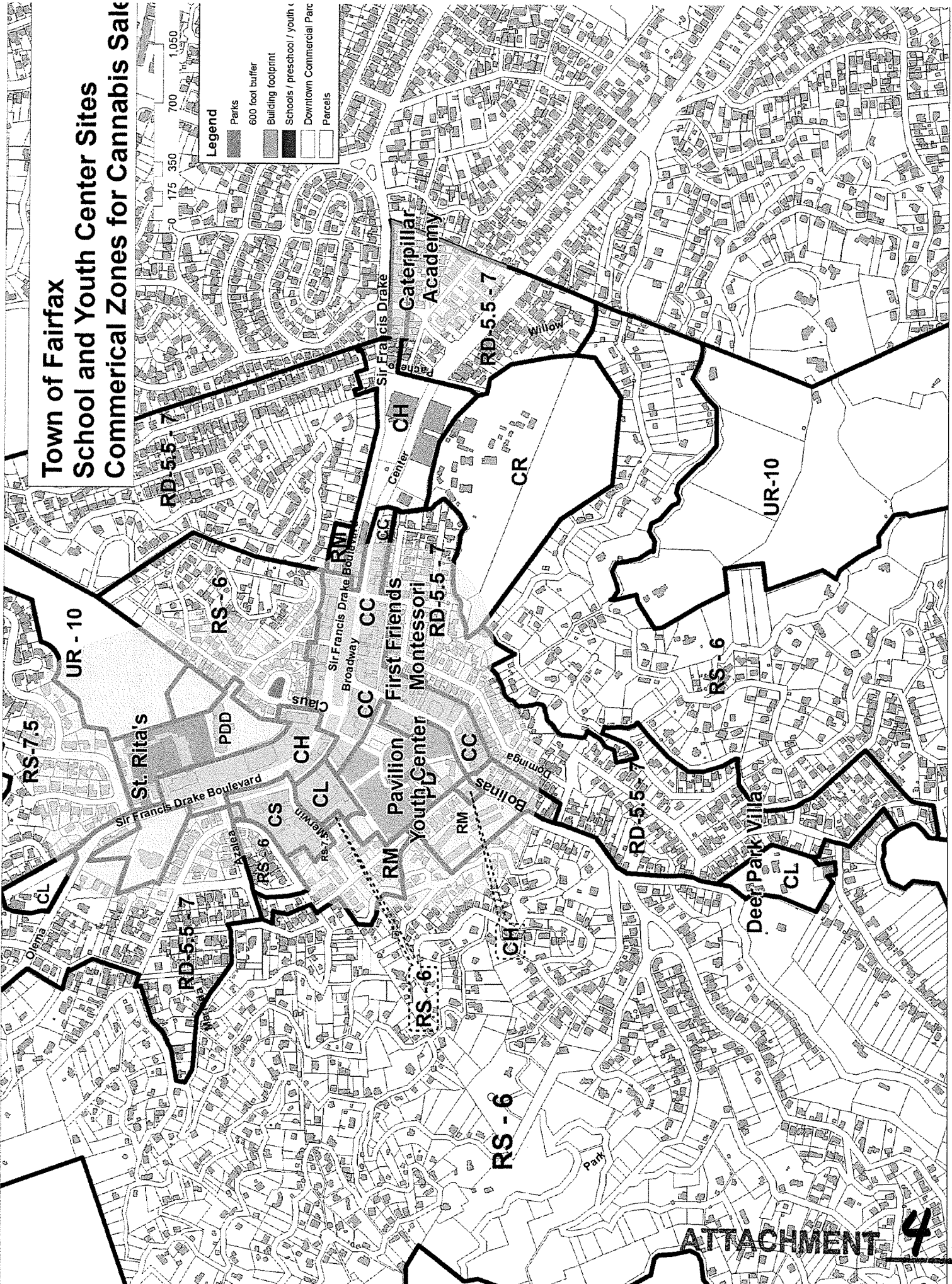
§ 17.138.380 LIABILITY.

The provisions of this article shall not be construed to protect the property owner(s) of record for property associated with the cultivation of cannabis, or their lessees, tenants or participants in the cultivation of cannabis, from prosecution pursuant to any laws that prohibit the cultivation, sale and/or possession of cannabis. In particular, the possession or cultivation of cannabis remains illegal under federal law. The property owner(s) of record for property associated with the cultivation of cannabis, or their lessees, tenants and other participants in the cultivation of cannabis, assumes any and all risk and all liability that may arise or result under state and federal criminal laws from the cultivation of cannabis.

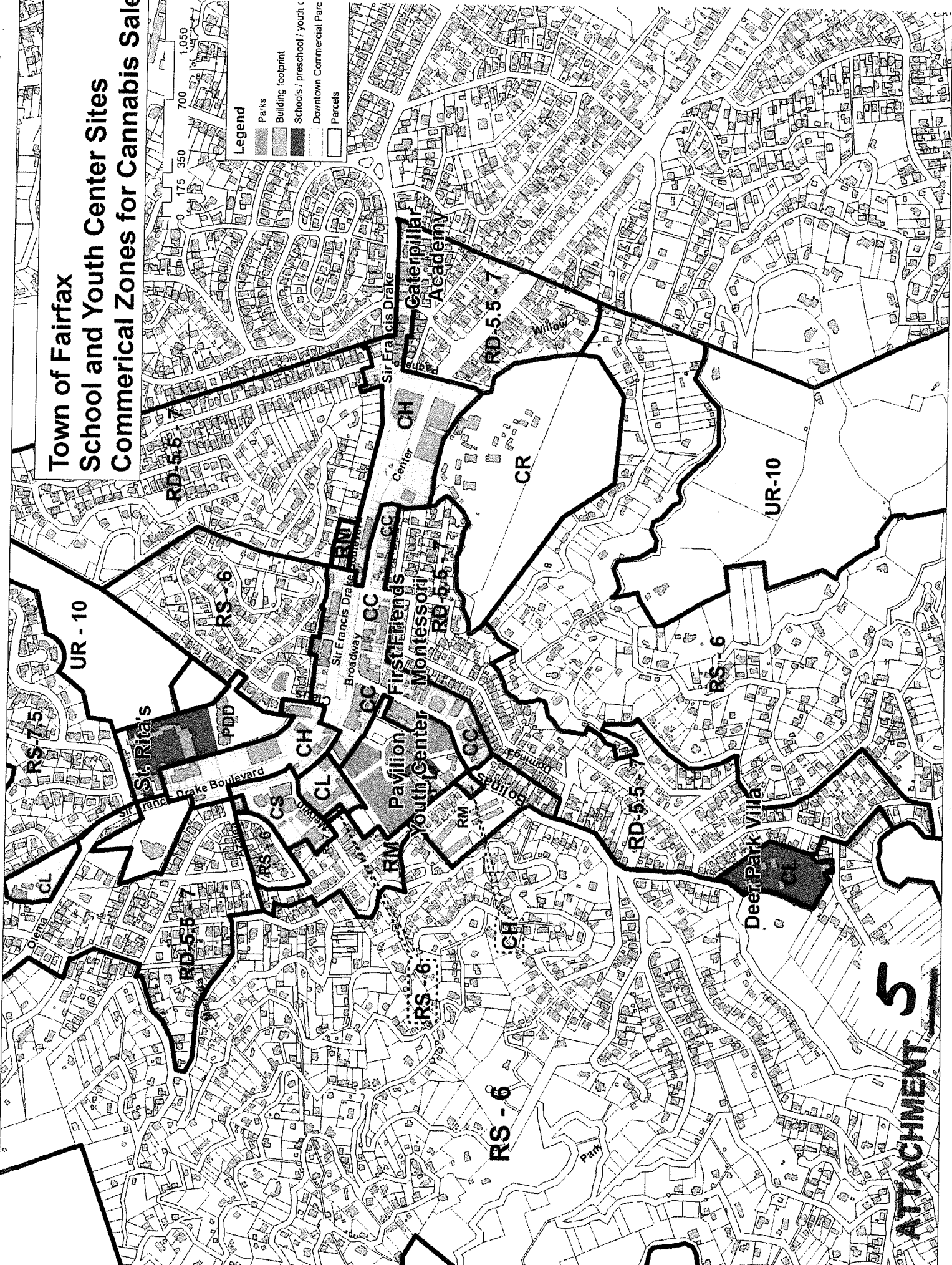
Town of Fairfax School and Youth Center Sites Commercial Zones for Cannabis Sale



Legend	
[Pattern]	Parcs
[Pattern]	600 foot buffer
[Pattern]	Building footprint
[Pattern]	Schools / preschool / youth center
[Pattern]	Downtown Commercial Parcels
[Pattern]	Parcels



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



Code § 17.080.060(A) and Ross Valley Fire Departments access distance regulations (the fire hoses must be able to reach all portions of the exterior of the structure).

OTHER DEPARTMENT/AGENCY COMMENTS/CONDITIONS

Ross Valley Fire Department (RVFD)

RVFD submitted written requirements which have been incorporated into conditions of approval in the attached resolution and are summarized as follows:

All vegetation and construction materials are to be maintained away from the residence during construction, a fire sprinkler system shall be installed throughout the entire building, smoke detectors shall be installed throughout the entire building and be provided with AC power and be interconnected for simultaneous alarm, carbon monoxide alarms shall be provided outside each sleeping area in the immediate vicinity of the bedrooms and address numbers at least 4 " tall visible from the street and internally illuminated or illuminated by and adjacent light controlled by a photocell and switched off only by a breaker so it will remain illuminated all night.

Marin Municipal Water District (MMWD)

MMWD submitted written requirements which have been incorporated into conditions of approval in the attached resolution and are summarized as follows:

A low pressure water service application is required as well as a notarized low pressure water agreement and the applicant may be required to install a mechanism to pressurize the water supply system, a copy of the building permit must be provided to the district along with the required applications and fees, the foundation must be completed within 120 days of the date of application, all indoor and outdoor requirements or District Code Title 13, Water Conservation must be complied with, any landscaping plans must be reviewed and approved by the District, backflow prevention requirements must be met and Ordinance 420, requiring installation of grey water recycling system when practicable, must be incorporated into the project building permit plans or an exemption letter from the District must be provided to the Town, all of the District's rules and regulations if effect at the time service is requested must be complied with.

Ross Valley Sanitary District (RVSD)

RVSD submitted written requirements which have been incorporated into the conditions of approval in the attached resolutions and are summarized as follows:

The public sewer must be extended to serve the proposed single-family residence, an application for public sewer extension must be filed as approved, the applicable fees and plans must accompany the application for a public sewer extension, the public sewer extension must be installed in accordance with the District's specifications, once

the public sewer extension is installed and accepted by the District, a sewer connection permit is required for each building having sewer service, the District will issue the sewer connection permit after the building permit is obtained and the District's fees have been paid, the private sewer line must meet District specification and be inspected by a District inspector before being covered.

Fairfax Police, Building and Public Works Departments

The Public Works Department has required the following:

A Civil Engineer shall prepare an existing roadway condition report including video and photographs on the portion of Toyon Road that is not Town maintained, documenting the existing roadway condition. The report shall be submitted with the building permit application and the applicant shall be responsible for restoring any damaged portions of the road to preconstruction condition prior to the final project inspection.

RECOMMENDATION

1. Conduct the Public Hearing.
2. Move to continue application # 19-03 to the March 21, 2019 meeting to give the Fairfax Open Committee and the Fairfax Tree Committee an opportunity to review and comment on the project.

ATTACHMENTS

Attachment A – Resolution No. 2019-03

Attachment B – DVC preliminary drainage report dated 9/7/18

Attachment C – Civil Engineer's easements and boundaries

Attachment D – Vegetative Management Plan approval letter from RVFD

Attachment E - Geoengineering, Inc. geotechnical reports dated 11/16/18, 6/27/18, 7/9/15 and 6/8/01

Attachment F –Urban Forestry Associates, Inc. Tree Preservation/Protection Plan dated 10/11/18

Attachment G – Town Engineers' final memorandum of 12/11/18

Attachment H – Neighbor comments