

**TOWN OF FAIRFAX  
STAFF REPORT  
Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** November 17, 2016  
**FROM:** Jim Moore, Director of Planning and Building Services  
**ACTION:** Discussion of Town's Position on the Definition of "School" in Town Code Chapter 5.25, Medical Marijuana Dispensaries

**BACKGROUND**

At the October 20, 2016 Planning Commission meeting, the Planning Commission directed staff to schedule a discussion of the Town's Medicinal Marijuana Dispensary Ordinance, Town Code Chapter 5.5.2. Specifically, a citizen and his attorney had raised questions about whether or not First Friends Montessori Preschool actually constitutes a school, and if it does not meet the Town's definition of a school, can a dispensary be located closer than 600 feet from this establishment.

**DISCUSSION**

The Town Attorney has reviewed the matter and has determined that the First Friends Montessori Preschool meets the Town's definition of a school, therefore Town Code § 5.53.080(C) which prohibits the location of a dispensary within 600 feet of any school does apply. Attached is memo from the Town Attorney's office, Best Best & Krieger, discussing the Town's position on the matter.

The citizen who raised this issue also asked that the Planning Commission be provided with an e-mail he had sent to the Planning Director which included his attorney, Larry Bragman's analysis of the issue. The e-mail and attorney analysis is contained in Attachment C.

**POSSIBLE FUTURE ACTIONS**

After discussing this matter the Commission should either: 1) take no action; 2) request the Town Council to consider an amendment to the definition of a "school" in the Town Code; or 3) continue the matter to the January Planning Commission meeting for further discussion.

**ATTACHMENTS**

- Attachment A – Town Attorney's memorandum dated 11/9/16
- Attachment B – Town Code 17.008.020, Zoning Code definition of "school"
- Attachment C – Bob Parfitt's e-mail, dated October 4, 2016, and attorney analysis dated August 26, 2016
- Attachment D – Map-School Site Buffer Zones



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**Memorandum**

**To:** Chair and Planning Commissioners **File No.:** 38072.00001  
**From:** Katy Wisinski, Assistant Town Attorney  
**Date:** November 9, 2016  
**Re:** Town's characterization of Montessori school use in RD 5.5-7 with regard to requested siting of medical marijuana dispensary within 600 feet

**QUESTION PRESENTED**

A potential applicant has approached the Town to determine whether a medical marijuana dispensary may locate in a certain location within the CC district. The selected site is within 600' of the First Friends Montessori Preschool. State and local law prohibit a medical marijuana dispensary from locating within 600' of a school. Does the Montessori preschool fall within this definition, thus precluding the operation of the medical marijuana dispensary at the chosen site?

**ANALYSIS**

Under California state law, "no medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school." (Health & Safety Code § 11362.768(b).) Measuring such distance is calculated by measuring "the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medical marijuana cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures." (Health & Safety Code § 11362.768(c).) Under the state provision, a qualifying 'school' is "any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes." (Health & Safety Code § 11362.768(h).)

However, the state distance provisions are not the end of the story. Under the state law, "nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider." (Health & Safety Code § 11362.768(f).)

Fairfax Town Code § 5.52.080(C)(1) provides that no medical marijuana dispensary may be operated within 600' of a 'school.' The Town, though, defines a 'school' much more broadly than



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does the state. According to the definitions in the Town's zoning ordinance, a 'school' is "a place for systematic instruction in any branch or branches of knowledge." (Town Code § 17.008.020.) Additionally, the Medical Marijuana Dispensary Ordinance (Town Code Chapter 5.52) includes its own definition of 'school,' which it defines as "[a]ny public or private school providing instruction in kindergarten or grades one to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes."

First Friends Montessori is located at 86 Mono Avenue in the RD 5.5-7 (Residential, high density) zoning district. Its website refers to the use as a school which conducts pre-enrollment observations from October through February "of the prior school year." It also provides that its "teachers" aid children in learning about math, handwriting/language, and biology, among other subjects. The "preschool program" operates from 9:00 am to 3:00 pm, with extended care available before and after those times. This structure highlights the difference in programming between the daycare portions of the day and the 'school' hours. Moreover, while the final year of Montessori is not identified as 'kindergarten,' per se, it functions as such, given that it prepares children who complete that final year to enter first grade the following school year. It thus satisfies both Town Code definitions of a 'school.'

First Friends operates pursuant to a conditional use permit approved by the Planning Commission on March 18, 2004. At the time it was issued, resolutions were not used to memorialize use permits; rather, applicants were sent a letter noting the Planning Commission's decision and any conditions imposed. According to the March 2004 letter, "staff scheduled the project for the April [Planning Commission] meeting based on discussions with the applicants even though the required \$835.00 variance fee has not been paid. This fee must be submitted to the Department of Planning and Building Services prior to issuance of any building permit for work to convert the duplex into the day care center." This is in keeping with the characterization of the use in the staff report on the application, which initially frames the proposed use as a child care center. That being said, one section of the staff report stands out:

The application requires the approval of the following discretionary permits:

A Use Permit – because the proposed use, a Child Care Center, is not a permitted use in the RD 5.5-7 Zone. However, Town Code 17.44.030(B) indicates that the Planning Commission can grant use permits for educational facilities within the RD 5.5-7 Zone.

(Page 2 of March 18, 2004, Planning Commission staff report for Application #04-05, emphasis added.)

As background, Town Code § 17.084.030(B) provides that "[p]ublic or quasi-public buildings and uses of an educational, religious, cultural or public service type, not including corporation yards, storage or repair yards, warehouses or similar uses" are conditionally permitted in the RD 5.5-7 zone. It appears the Town ultimately recognized the proposed use as an educational



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facility, which is consistent with the way in which Montessori programs are frequently classified, and the type of educational facility offered by First Friends meets the Town's definitions of a 'school.'

**CONCLUSION**

The programming offered by First Friends does not meet the statutory definition of a 'school,' and a medical marijuana dispensary within 600' of this use would thus not be precluded under state law. However, state law allows towns to adopt stricter location requirements, which Fairfax has done. In authorizing First Friends to operate, the Town recognized it as an educational facility. Given the Town's broad definition of 'school,' coupled with the facility's systematic academic programming, and the Town's earlier determination that the use is an 'educational facility,' First Friends Montessori has been recognized as a school for purposes of the Town's definitions. We thus believe that medical marijuana dispensaries are precluded from operating within 600' of it.

department of science or learning is used by its practical application to the affairs of others, either advising or guiding them in serving their interest or welfare through the practice of an act founded thereon.

(Prior Code, § 17.04.459)

**PUBLIC BUILDING.** Any building held, used or controlled exclusively for public purposes by any department or branch of government, state, county or municipal, without reference to the ownership of the building or of the realty upon which it is situated.

(Prior Code, § 17.04.462)

**QUARRY.** A place, cavern or pit where stone is taken from the rock or ledge or dug from the earth, for building or other purposes; a stone pit.

(Prior Code, § 17.04.465)

**QUARRYING.** The digging out of stone or slate from an open excavation.

(Prior Code, § 17.04.468)

**RAILROAD RIGHT-OF-WAY.** A strip of land with tracks and auxiliary facilities for track operation, but not including freight depots or stations, loading platforms, train sheds, warehouses, car or locomotive shops or car yards.

(Prior Code, § 17.04.471)

**RESIDENCE DISTRICT.** The land fronting on both sides of any public street or court where less than 25 percent of the frontage is now used or designed for business or industrial purposes within a distance of 300 feet of the center of the place where any building for business or industrial purposes is sought to be used, erected, located, constructed or altered.

(Prior Code, § 17.04.477)

**RESTAURANT WITH DRIVE-IN SERVICE.** An establishment designed, in whole or part, to cater to or accommodate the consumption of food and/or beverage in automobiles on the premises of such establishment.

(Prior Code, § 17.04.480)

**RIDING STABLE.** Any place at which horses or ponies are kept for hire either with or without instruction in riding.

(Prior Code, § 17.04.483)

**ROADSIDE STAND.** An area and/or structure, with no space for customers within the structure itself, for the display and sale of agricultural products.

(Prior Code, § 17.04.486)

**ROOM.** Any enclosed division of a building containing over 70 square feet of floor space and commonly used for living purposes, not including lobbies, halls, closets, storage, space, bathrooms, utility rooms and unfinished attics, cellars or basements. An **ENCLOSED DIVISION** is an area in a structure bounded along more than 75 percent of its perimeter by vertical walls or partitions, or by other types of dividers which serve to define the boundaries of the division.

(Prior Code, § 17.04.489)

**ROOMINGHOUSE.** A dwelling or other residential structure in which lodging facilities are supplied for pay over an extended period of time and distinguished from a tourist home.

(Prior Code, § 17.04.492)

**SANITARIUM.** A health station or retreat or an institution for the recuperation and treatment of persons suffering from physical or mental disorders.

(Prior Code, § 17.04.495)

**SCHOOL.** A place for systematic instruction in any branch or branches of knowledge.

(Prior Code, § 17.04.498)

**SELF-SERVICE LAUNDRY.** A business rendering a retail service by renting to the individual customer equipment for the washing, drying and otherwise processing of laundry, with the equipment to be serviced and its use and operation supervised by the management.

(Prior Code, § 17.04.312)

## Ordinance 759

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**From:** Bob Parfitt <bobparfitt@earthlink.net>  
**To:** jmoore@townoffairfax.com  
**Subject:** Ordinance 759  
**Date:** Oct 4, 2016 12:07 PM  
**Attachments:** [IMG\\_0957.JPG](#) [IMG\\_0958.JPG](#)

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Jim,

Thanks for stopping to chat with me the other day.

I am sending an attachment of the part of Ordinance 759, part 17.110.020(o), referring to the definition of a school that we were talking about. It is short so I will quote from the document:

"School means any public or private school providing instruction in kindergarten or grades 1-12 inclusive."

I asked Attorney Larry Bragman to review the ordinance for me and I have also attached a copy of his response.

Jim, I'm sorry you are leaving Fairfax, you have been a great asset to the town. I wish you well.

Thanks for looking at this.

Bob  
415-456-9400  
S and N Auto  
64 Bolinas Rd  
Fairfax, CA 94978

**ATTACHMENT** C

WEB MAIL  
bobparfitt@earthlink.net

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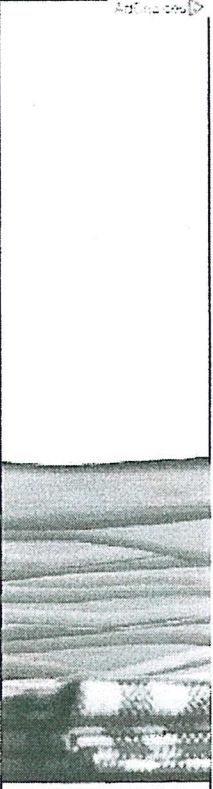
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**From:** Larry Bragman <bragmanlaw@gmail.com> [\[Add to Address Book\]](#)

**To:** Bob Parfitt <bobparfitt@earthlink.net>

**Subject:** Re: Ordinance 759

**Date:** Aug 26, 2016 5:20 PM

Hi Bob:

My take is that you have an interesting issue as First Friends Pre-School does appear to fall outside the legal definition of "school" used for the exclusionary zoning provisions under both California and Fairfax codes.

Under Fairfax Town Code, First Friends Pre-School does not appear to fall within the definition of a school set forth under section 5.52.20:

**§ 5.52.020 DEFINITIONS.**

For the purpose of this chapter, the following words and phrases shall apply.

**ACCESSORY BUILDING.** Shall have the same meaning as set forth in Town Code § 17.08.020.

**APPLICANT.** A person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

**DISPENSARY.**

(1) Any medical cannabis dispensing collective, any medical cannabis patient collective, or any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or a qualified patient, in strict accordance with Cal. Health and Safety Code §§ 11362.5 *et seq.*

(2) A **DISPENSARY** shall not include dispensing by primary caregivers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Cal. Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Cal. Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Cal. Health and Safety Code, residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Cal. Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Cal. Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Cal. Health and Safety Code §§ 11362.5 *et seq.*, or a qualified patient's or caregiver's place of residence.

**IDENTIFICATION CARD.** Shall have the same definition as Cal. Health and Safety Code § 11362.7, and as may be amended.

**MEDICAL CANNABIS DISPENSING COLLECTIVE.** Shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, retail distribution of medical cannabis.

**MEDICAL CANNABIS PATIENT COLLECTIVE.** Shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, but not retail, distribution of medical cannabis.

**PERMITTEE.** The person:

- (1) To whom a dispensary permit is issued, and
- (2) Who is identified in Cal. Health and Safety Code § 11362.7, subdivision (c), (d), (e) or (f).

**PERSON.** Any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

**PERSON WITH AN IDENTIFICATION CARD.** Shall have the same definition as set forth in Cal. Health and Safety Code §§ 11362.5 *et seq.*, and as it may be amended from time to time.

**PHYSICIAN.** Shall include licensed medical doctors (M.D.) and doctors of osteopathic medicine (D.O.) as defined in the Cal. Bus. and Prof. Code.

**PRIMARY CAREGIVER.** Shall have the same definition as set forth in Cal. Health and Safety Code § 11362.7, and as it may be amended from time to time.

**QUALIFIED PATIENT.** Shall have the same definition as set forth in Cal. Health and Safety Code §§ 11362.7 *et seq.*, and as it may be amended from time to time.

**SCHOOL.** Any public or private school providing instruction in kindergarten or grades one to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

**TOWN.** The Town of Fairfax.

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**TOWN MANAGER.** The Town Manager of the Town of Fairfax or the authorized representative thereof.  
(Ord. 759, passed 6-1-2011)

The Fairfax Town Code mirrors California Health and Safety Code section 11362.768 (h) which states:

11362.768. (a) This section shall apply to individuals specified in subdivision (b) of Section 11362.765. (b) No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school. (c) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medical marijuana cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures. (d) This section shall not apply to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is also a licensed residential medical or elder care facility. (e) This section shall apply only to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license. (f) Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider. (g) Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider. (h) For the purposes of this section, "school" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.



Hence, I believe that if your location is not within 600 feet of any other protected school site that you may indeed be a legal location for a dispensary. Please let me know if you have any further questions or concerns.

Larry

On Sun, Aug 21, 2016 at 9:12 AM, Larry Bragman <bragmanlaw@gmail.com> wrote:  
Hi Bob:

I'll look into it in the next couple days or sooner depending on time constraints. Would you keep the garage open too?? Might be an interesting combination.

Larry

On Sat, Aug 20, 2016 at 10:35 AM, Bob Parfitt <bcbparfitt@earthlink.net> wrote:  
Larry,

Here is the reminder that I promised you when we spoke earlier, on the phone. I truly appreciate you reviewing this for me.

I am particularly concerned about the definition of "school" as stated on Page 3, item (c) in the ordinance 759 in relation to the buffer zone.

Thank you very much.

Sincerely,  
Bob

**Law Office of Lawrence Bragman**  
912 Lootens Place, Second Floor  
San Rafael, CA 94901



**ORDINANCE NO. 759**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX  
REGULATING MEDICAL MARIJUANA DISPENSARIES,  
TOWN CODE CHAPTER 17.110**

The Town Council of the Town of Fairfax does hereby ordain as follows:

**SECTION 1: TOWN CODE AMENDED**

The following is added as a new Chapter 17.110 of the Town Code:

**17.110.010 Purpose and Intent.**

It is the purpose and intent of this chapter to regulate medical marijuana (cannabis) dispensaries in order to promote the health, safety, morals, and general welfare of residents and businesses within the Town.

**Interpretation and Applicability.**

(A) No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 800, *et seq.*, or to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The distribution of medical cannabis in the Town of Fairfax is controlled by the provisions of this chapter of the Fairfax Town Code.

(B) Nothing in this ordinance is intended, nor shall it be construed, to limit the provisions of Chapter 9.6 of the Fairfax Town Code, or to limit the right to use or possess marijuana for medical purposes, or to limit any defense to criminal prosecution otherwise afforded by California law.

(C) Provided compliance is maintained with this ordinance, nothing in this ordinance is intended, nor shall it be construed, to preclude a landlord from limiting cannabis cultivation, smoking or other related activities by tenants otherwise permitted by law.

(D) Nothing in this ordinance is intended, nor shall it be construed, to exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.

(E) Nothing in this ordinance is intended, nor shall it be construed, to make legal any cultivation, transportation, sale, or other use of cannabis that is otherwise prohibited under California law.

(F) All sale and distribution of medical cannabis within Town limits shall be subject to the provisions of this chapter, regardless if the processing or distribution existed or occurred prior to adoption of this chapter.

**17.110.020 Definitions.**

For the purpose of this chapter, the following words and phrases shall mean:

- (A) "Accessory building" shall have the same meaning as set forth in Town Code Section 17.08.020.
- (B) "Applicant" means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.
- (C) "Town" means the Town of Fairfax.
- (D) "Town Manager" means the Town Manager of the Town of Fairfax or the authorized representative thereof.
- (E) "Identification card" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended.
- (F) "Medical cannabis dispensing collective," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, retail distribution of medical cannabis.
- (G) "Medical cannabis patient collective," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, but not retail, distribution of medical cannabis.
- (H) "Dispensary" means any medical cannabis dispensing collective, any medical cannabis patient collective, or any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5, *et seq.* A dispensary shall not include dispensing by primary caregivers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5, *et seq.*, or a qualified patient's or caregiver's place of residence.
- (I) "Permittee" means the person (1) to whom a dispensary permit is issued and (2) who is identified in California Health and Safety Code Section 11362.7, subdivision (c), (d), (e) or (f).

(J) "Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

(K) "Person with an identification card" shall have the same definition as set forth in California Health and Safety Code Section 11362.5, *et seq.*, and as it may be amended from time to time.

(L) "Physician" shall include licensed medical doctors (M.D.) and doctors of osteopathic medicine (D.O.) as defined in the California Business and Professions Code.

(M) "Primary caregiver" shall have the same definition as set forth in California Health and Safety Code Section 11362.7, and as it may be amended from time to time.

(N) "Qualified patient" shall have the same definition as set forth in California Health and Safety Code Section 11362.7, *et seq.*, and as it may be amended from time to time.

(O) "School" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

#### **17.110.030 Dispensary Permit Required to Operate.**

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the Town the operation of a dispensary unless the person first obtains and continues to maintain in full force and effect a dispensary Use Permit from the Town as required in this chapter.

#### **17.110.040 Term of Permits and Renewals Required.**

(A) A Use Permit issued under this chapter shall expire two years following the date of its issuance.

(B) A Use Permit may be renewed by the Director of Planning for additional two-year periods upon application by the permittee, unless the permit is suspended or revoked in accordance with the provisions of this chapter.

(C) Applications for renewal shall be made at least 45 days before the expiration date of the permit and shall be accompanied by a nonrefundable application fee as specified in section 17.110.060. Applications for renewal shall be acted upon in the same manner provided herein for applications for permits.

(D) Applications for renewal made less than 45 days before the expiration date shall not stay the expiration date of the permit.

(E) Permits may be revoked or suspended by the Town, as provided in this chapter and Town Code.

#### **17.110.050 General Tax Liability.**

As a prerequisite to obtaining a permit pursuant to the terms of Chapter 17.110, an operator of a dispensary shall also be required to apply for and obtain a Business

License as required by the State Board of Equalization. Dispensary sales shall be subject to sales tax consistent with California law.

**17.110.060 Imposition of Fees.**

Every application for a permit or renewal shall be accompanied by an application fee, the amount of such fee to be established and revised from time to time by resolution of the Town Council. This application or renewal fee shall not include the cost of fingerprinting, photographing, and background checks, which shall be in addition to any other business license fee or permit fee imposed by this code or other governmental agencies.

**17.110.070 Limitations on Number of Dispensaries.**

The Planning Commission may not grant or cause to be granted more than three (3) permits for medical cannabis dispensaries in the Town, in compliance with the provisions of this chapter, and/or prior to adoption of the provisions of this chapter.

**17.110.080 Limitation on Location of Dispensary.**

(A) A dispensary shall be located only within a Central Commercial CC, Highway Commercial CH, and Light Commercial CL area, as designated in the General Plan and Zoning map.

(B) 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.

(C) A dispensary shall not be allowed in the following areas at the time of its permitted establishment:

(1) Within 600 feet of a school; or

(2) Within any residentially-zoned parcel or within any parcel with a primarily residential land use; or

(3) On a parcel directly abutting a residentially-zoned property, unless there is a fence or an intervening natural landform between the commercial property and the residential property such as a creek or significant undeveloped parcel of land.

(D) The distance between a dispensary and areas of the above listed uses shall be made in a straight line from the boundary line of the property on which the dispensary is located to the boundary of the property on which the facility, building or structure, or portion of the building or structure of the above listed use is located.

(E) A waiver of the provisions in subsection (C)(2) or (C)(3) of this section may be granted if, on plans and materials presented for review, the applicant demonstrates and the Planning Commission determines that a physical barrier or similar condition exists which achieves the same purpose and intent as the distance separation requirements established herein.

#### 17.110.090 Operating Requirements.

Dispensary operations shall be established and managed only in compliance with the following standards:

(A) **Criminal History.** No applicant, his or her agent or employees, volunteer workers, or any person exercising managerial authority of a dispensary on behalf of the applicant shall have been convicted of a felony, or of a misdemeanor involving moral turpitude, or is on probation for a drug offense, or engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of no contest. The Police Chief, in his or her discretion, may require a dispensary to conduct annual criminal background checks for all employees to ensure compliance with this paragraph.

(B) **Minors.**

(1) It is unlawful for any permittee, operator, or other person in charge of any dispensary to employ any person who is not at least 18 years of age.

(2) Persons under the age of 18 shall not be allowed on the premises of a dispensary unless they are a qualified patient, and they are in the presence of their parent or guardian.

(3) The entrance to a dispensary shall be clearly and legibly posted with a notice indicating that any person under the age of 18 is precluded from entering the premises unless such person is a qualified patient and is in the presence of his/her parent or guardian.

(C) **Operating Hours.** Unless the reviewing authority imposes more restrictive hours due to specific considerations for a particular application, a dispensary shall only be operated within the following days and hours:

(1) 9:00 a.m. to 9:00 p.m.

(2) Christmas Day, Thanksgiving Day, New Years Day, Memorial Day, Labor Day, and 4<sup>th</sup> of July: closed.

(D) **Dispensary Size and Access.**

(1) The dispensary size shall not exceed 1,500 square feet exclusive of restroom facilities, unless specifically authorized by the approving authority. Dispensary size shall be limited, as deemed appropriate and necessary, to best serve patient needs within the intent of this chapter and to reduce potential adverse impacts that might otherwise occur on surrounding neighborhoods, businesses and Town services.

(2) A dispensary shall not be increased in size without a prior approval amending the existing dispensary permit.

(3) Dispensary personnel shall monitor site activity, control loitering and site access.

(4) Only dispensary staff, primary caregivers, qualified patients and persons with bona fide purposes for visiting the site shall be permitted at a dispensary.

(5) Potential patients or caregivers shall not visit a dispensary without first having obtained a valid written recommendation from their physician recommending use of medical cannabis.

(6) Only a primary caregiver and qualified patient shall be permitted in the designated dispensing area with dispensary personnel. All other authorized visitors shall remain outside, or in a designated waiting area in the front entrance/lobby.

(E) That adequate parking will be provided in accordance with Town Code section 17.052.030(F) for retail and personal service stores at a rate of three (3) spaces for the first 500 square of gross floor area and one (1) space for each additional 500 square feet thereafter.

(F) Dispensary Supply. A dispensary may possess no more than one ounce of dried cannabis per qualified patient or primary caregiver. However, if a qualified patient or primary caregiver has a physician's recommendation that this quantity does not meet the qualified patient's medical needs, the dispensary may possess an amount of cannabis consistent with the patient's needs.

(G) Dispensing Operations.

(1) A dispensary, existing or new, shall only dispense to qualified patients or caregivers with:

(a) A currently valid California Medical Marijuana Identification Card issued by the State of California, a county or a county-designated entity in accordance with California Health & Safety Code Section 11362.7 ("Identification Card"); or

(b) A current, written physician's recommendation and valid photo identification that is confirmed by telephone or by electronic means. The permittee shall maintain a written record of the telephone or by electronic means. Additionally, the dispensary is required to check with the State of California to ensure that the physician who issued the recommendation has a valid medical license of the appropriate type. The permittee shall maintain records of these verifications.

(2) A dispensary shall not have a physician on-site to evaluate patients and provide a recommendation for medical cannabis.

(H) Record Keeping.

(1) Patient Records. Patient records shall be maintained and verified as needed by a HIPAA compliant medical professional appointed by the Police Chief or his or her designee. The dispensary shall comply fully with HIPAA and any other federal or state law protecting the privacy of medical records and information on patient health conditions.

(2) Employee Records. Each owner or operator of a dispensary shall maintain a current register of the names of all volunteers and employees currently working at or employed by the dispensary, and shall disclose such registration for inspection by any Town officer or official for purposes of determining compliance with the requirements of this section. In addition, all employees shall have a valid form of identification issued by the State of California while present at the dispensary.

(3) Stock. The permittee will record the total gross weight of all marijuana possessed at the dispensary that is no longer affixed to any living marijuana plant at the close of each business day. In addition, the permittee shall record the total numbers of cloned live marijuana plants being stored or offered for sale.

(4) Receipts. The permittee, or his or her employee, shall record upon an individual receipt the membership number of the person obtaining the marijuana, the amount of marijuana purchased, the amount paid for the marijuana, and the time and date the marijuana was dispensed.

(5) Financial Records.

(a) Permittee shall maintain financial records identifying information for all savings accounts, checking accounts, investment accounts and trusts associated with the operation of the dispensary. Permittee shall maintain ledgers documenting all credits and debits affecting said accounts. Permittee shall maintain records documenting all parties involved in, amounts of and purposes, for all cash transactions.

(b) Permittee shall maintain records of all transactions related to the operation of the dispensary, including but not limited to rent, utilities, inventory, insurance and payroll.

(6) Cultivation sites. Permittee shall maintain the records regarding the actual address, including Assessor's Parcel Number, of each site within the Town limits where medicinal marijuana is cultivated, grown and/or harvested on behalf of the dispensary. The cultivation site(s) identified pursuant to this section shall not be in areas zoned as residential, as more specifically outlined in 17.110.80.

(7) Storage of Records. Permittee shall maintain all of the required records at the dispensary site or in secured, accessible storage at all times. Patient records shall be maintained and verified as needed by a HIPPA compliant medical professional appointed by the Police Chief or his or her designee..

(8) Audit. As an alternative to police inspection, the Town may request that an audit of receipts be conducted by a Certified Public Accountant (CPA) chosen by the Town and paid for by the permittee. The permittee shall provide a summary of the report to the Town.

(I) Consumption Restrictions. Cannabis shall not be consumed by patients on the premises of the dispensary. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other surroundings within 200 feet of the dispensary's entrance.

(J) Retail Sales

(1) Only immature, non-flowering, cloned, live marijuana plants measuring less than 12 inches in height may be stored and sold on site.

(2) Except for the immature nursery stock cannabis plants described above, the dispensary shall not cultivate, store, or sell live cannabis plants.

(3) With the approval of the Planning Commission a dispensary may conduct or engage in the commercial sale of specific products, goods or services

ancillary to the provision of medical cannabis and other items permitted by these regulations on terms and conditions consistent with this chapter and applicable law.

(4) If food products are sold the site must be inspected and approved for food sales by the Marin County Health Department.

(5) Display and sales of devices necessary for administering medical cannabis, shall be limited to including but not limited to rolling papers and related materials and devices, pipes, water pipes, and vaporizers. Such devices may only be provided to qualified patients or primary caregivers and only in accordance with California Health and Safety Code Section 11364.5.

(6) A dispensary shall not distribute or sell medical cannabis for a profit.

(7) A dispensary shall not pay any supplier(s) of medical cannabis more than the costs incurred for cultivation and preparation.

(8) A dispensary shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.5, *et seq.*

(K) Operating Plans.

(1) Floor Plan. A dispensary shall have a lobby waiting area at the ~~entrance to receive clients, and a separate and secure designated area for dispensing~~ medical cannabis to qualified patients or designated caregivers. The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

(2) Storage. A dispensary shall have suitable locked storage on premises, identified and approved as a part of the security plan, for after-hours storage of medical cannabis.

(3) Minimum Staffing Levels. The premises shall be staffed with at least one person during hours of operation that shall not be responsible for dispensing medical cannabis.

(4) Odors Control. A dispensary shall have an air treatment system that ensures off-site odors shall not result.

(5) Security Plans. A dispensary shall provide adequate security on the premises, and be reviewed by the Planning Commission, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.

(6) Any dispensary shall be equipped with an operable alarm system that at a minimum will protect the perimeter of the dispensary and the location within the structure where medicinal marijuana is stored, packaged or dispensed.

(7) Alarm System. Professionally monitored robbery alarm and burglary alarm systems shall be installed and maintained in good working condition.

(8) Emergency Contact. A dispensary shall provide the Chief of Police, Town Manager and the Director of Planning and Building Services with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with



the dispensary. The dispensary shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the Town.

(L) Signage and Notices.

(1) A notice shall be clearly and legibly posted in the dispensary indicating that smoking, ingesting or consuming cannabis on the premises or in the vicinity of the dispensary is prohibited.

(2) Signs on the premises shall not obstruct the entrance or windows.

(3) Address identification shall comply with Fire Department illuminated address signs requirements.

(4) Business identification signage shall contain the business name only, be limited to that information needed for identification only, and shall consist of a single window sign or wall sign that shall not exceed six square feet in area. Signs shall comply with all ordinances and not contain any logos or information that identifies, advertises or lists the services or products offered.

(M) Staff Training. Dispensary staff shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with state and local law, and security personnel shall be properly trained.

~~(N) Compliance with Other Requirements. The operator shall comply with all provisions of all local, state or federal laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.~~

(O) Alcoholic Beverages. No dispensary shall hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the premises that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

(P) No person shall operate, or own a financial interest in, more than one Dispensary with the Town.

**17.110.100 Criteria for Review.**

The Planning Commission shall consider the following criteria in determining whether to grant or deny a dispensary permit, and renewals:

(A) That the dispensary permit is consistent with the intent of Proposition 215 and related California law, the provisions of this chapter and the Town Code, including the application submittal and operating requirements herein.

(B) That the dispensary location is not identified as having significant crime issues (e.g., based upon crime reporting district/statistics as maintained by the Police Department).

(C) That there have not been significant numbers of calls for police service, crimes or arrests in the area or to an existing dispensary location.

(D) That an applicant or employee is not under 18 years of age.

(E) That all required application materials have been provided and/or the dispensary has operated successfully in a manner that shows it would comply with the operating requirements and standards specified in this chapter.

(F) That all required application or annual renewal fees have been paid and reporting requirements have been satisfied in a timely manner.

(G) That an appropriate limit on size of the dispensary has been established and the requested permit would not exceed limitations on number of permits allowed by this chapter.

(H) That the location is not prohibited by the provisions of this chapter or any local or state law, statute, rule or regulation and no significant nuisance issues or problems have resulted or are anticipated.

(I) That the site plan, floor plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems as specified in the operating requirements section. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

(J) That no dispensary use, owner, permittee, agent, or employee has violated any provision of this chapter including grounds for suspension, modification or revocation of a permit.

(K) That all reasonable measures have been incorporated into the plan and/or consistently taken to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, cannabis use in public, or creation of a public or private nuisance, or interference of the operation of another business.

(L) That the dispensary would not adversely affect the health, peace or safety of persons living or working in the surrounding area, overly burden a specific neighborhood with special needs or high impact uses, or contribute to a public nuisance; or that the dispensary has resulted in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passers-by, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours; lewd conduct, or police detentions or arrests.

(M) That any provision of the Town Code or condition imposed by a Town-issued permit, or any provision of any other local or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws has not been violated.

(N) That the applicant has not violated any local or state law, statute, rule or regulation respecting the distribution, possession, or consumption of cannabis.

(O) That the applicant has not knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.

applicant and no such permit shall be issued to such person or to any corporation in which he shall have any beneficial interest for a period of three years after the action denying or revoking the permit.

#### **17.110.140 Suspension and Revocation.**

(A) Consistent with Chapter 17.250, any permit issued under the terms of this chapter may be suspended or revoked by the Planning Commission when it shall appear to the Commission that the permittee has violated any of the requirements of this chapter or the dispensary is operated in a manner that violates the provisions of this chapter, including the criteria for review and operating requirements sections, or conflicts with California law.

(B) Except as otherwise provided in this chapter, no permit shall be revoked or suspended by virtue of this section until written notice of the intent to consider revocation or suspension of the permit has been served upon the person to whom the permit was granted at least five days prior to the date set for such review. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Notice may be given either by personal delivery to the person to be notified, or by depositing it in the U.S. Mail in a sealed envelope, postage prepaid, return receipt requested, addressed to the person to be notified at his/her address as it appears in his/her application for a permit.

(C) If any person holding a permit or acting under the authority of such permit under this chapter is convicted of a public offense in any court for the violation of any law which relates to his or her permit, the Town Manager may revoke such permit forthwith without any further action thereof, other than giving notice of revocation to the permittee.

#### **17.110.150 Transfer of Permits.**

(A) A permittee shall not operate a dispensary under the authority of a dispensary permit at any place other than the address of the dispensary stated in the application for the permit.

(B) A permittee shall not transfer ownership or control of a dispensary or transfer a dispensary permit to another person unless and until the transferee obtains a Use Permit.

(C) No permit may be transferred when the Planning Director has notified the permittee that the permit has been or may be suspended or revoked.

(D) Any attempt to transfer a permit either directly or indirectly in violation of this section is declared void, and the permit shall be deemed revoked.

#### **17.110.160 Violations.**

(A) It is unlawful for any person, individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character to violate any provision or fail to comply with any of the requirements of this chapter.

(B) A violation of this chapter shall be subject to the criminal, civil, or administrative penalties specified in Town Code Chapter 1.10.

**17.110.170 Remedies Cumulative.**

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.

**17.110.180 Separate Offense for Each Day.**

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.

**17.110.190 Hold Harmless.**

As a condition of approval of any permit for medical cannabis cultivation, processing or distribution, the permittee shall indemnify, defend and hold harmless the Town of Fairfax and its agents, officers, elected officials and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties ~~due to permitted uses or operations, and in the case of dispensaries, for any claims~~ brought by any of the permittee's clients or employees for problems, injuries, damages, or liabilities of any kind that may arise out of the permitted activities.

**17.110.200 Public Nuisance.**

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.

**17.110.210 Severability.**

The provisions of this chapter are declared to be severable. If any provision, clause, word, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter.

**17.110.220 Judicial Review.**

Judicial review of a decision made under this chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the California Code of Civil Procedure Section 1094.5. Any such petition shall be filed within 90 days after the day the decision becomes final as provided in California Code of Civil Procedure Section 1994.6 which shall be applicable for such actions.

**SECTION II. EFFECTIVE DATE**

Copies of the foregoing ordinance shall, within fifteen (15) days after its final passage and adoption, be posted in three public places in the Town of Fairfax, to wit:

- a. Bulletin Board, Fairfax Town Offices, Town Hall;
- b. Bulletin Board, Fairfax Post Office; and
- c. Bulletin Board, Fairfax Women's Club Building,

which said places are hereby designated for that purpose, and shall be in full force and effect thirty (30) days from after its final passage and adoption.

**SECTION III: VOTE**

The foregoing Ordinance No. 759, amending the Fairfax Town Code, was duly and regularly introduced at a regular meeting of the Town Council of the Town of Fairfax held on May 4, 2011, and was duly passed and adopted at a regular meeting held on June 1, 2011, by the following vote to wit:

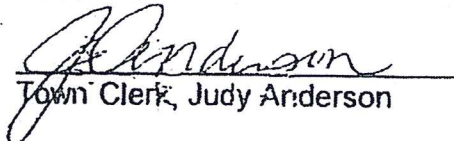
AYES: Hartwell-Herrero, Reed, Tremaine, Weinsoff

NOES: None

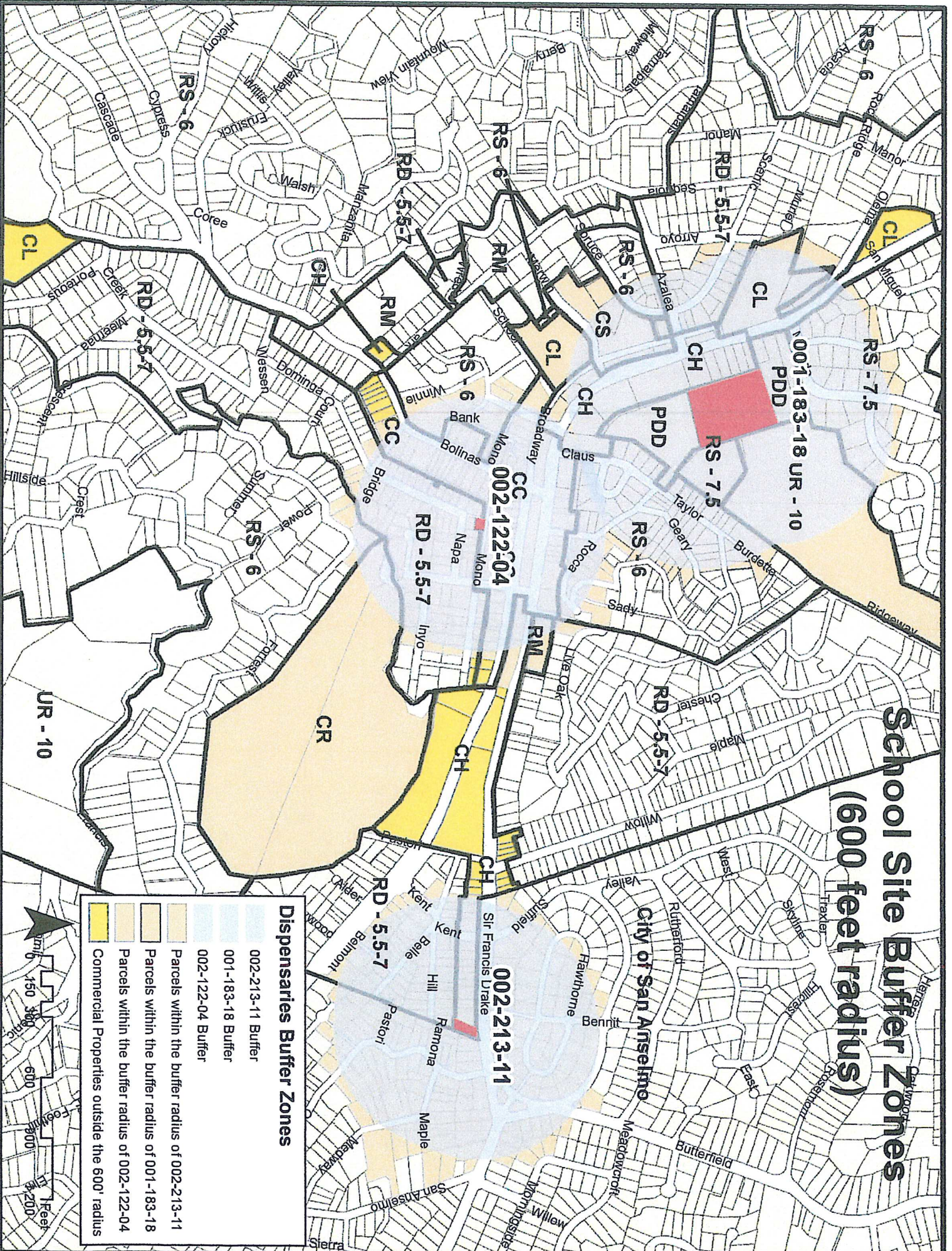
RECUSED: Bragman

  
MAYOR BRAGMAN

ATTEST:

  
Town Clerk, Judy Anderson

# School Site Buffer Zones (600 feet radius)



**Dispensaries Buffer Zones**

	002-213-11 Buffer
	001-183-18 Buffer
	002-122-04 Buffer
	Parcels within the buffer radius of 002-213-11
	Parcels within the buffer radius of 001-183-18
	Parcels within the buffer radius of 002-122-04
	Commercial Properties outside the 600' radius

