



TOWN OF FAIRFAX

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DATE: April 11, 2019

TO: Planning Commission

FROM: Ben Berto, Planning Director

SUBJECT: Consideration of a resolution recommending to the Town Council amendments to the Town Code pertaining to medical dispensaries, certain commercial cannabis uses including store-front retail and delivery-only businesses, and non-commercial cannabis cultivation and discussion of cannabis business permit process and scoring criteria for applications

RECOMMENDATION

1. Conduct Public hearing for amendments to Town Code Chapter 17.110
2. Adopt resolution recommending amendments Town Code Chapter 17.110 Cannabis Uses
3. Review and comment on Town Code Chapter 5.56, Cannabis Businesses
4. Discuss proposed Scoring Criteria for cannabis business applicants

BACKGROUND

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

This is the 14th workshop/meeting on cannabis. Last month's Commission's review on March 14 provided staff with direction on many of the regulatory policy questions and issues relating to Chapter 17.110. Last month's Commission direction is reflected in the changes contained in the draft regulations before you tonight.

DISCUSSION

The direction the Planning Commission (PC) provided on amendments to the Chapter 17.110 and Chapter 5.56 on March 14 is summarized below. The discussion lists staff's understanding of the Commission's direction on the primary topics. In instances where the Commission accepted the previously mentioned Code provisions without any changes, the provisions simply remain in the draft ordinance without further staff discussion. As reflected in the attached March 14 minutes, there were different points of view and no unanimous consensus on many issue. Staff intends to include the minutes of the Commission's March 14 and April 11 meetings in the report to the Town Council when they review the cannabis regulations, to assist the Council in understanding the context of the Commission's recommendations.

Staff has also continued to develop the draft ordinance language for the cannabis business permit process (Chapter 5.56). As we noted at previous PC meetings, Chapter 5.56 is not under the zoning code and does not require a PC recommendation to the Council. However, we believe it important for the Council receive PC feedback on the proposed cannabis business permit process. We have also attached the proposed Scoring Criteria by which the PC will evaluate applications. Staff suggests that, if time permits, the PC begin its discussions regarding the Scoring Criteria, but no action is needed at this time.

The cannabis regulations have been tentatively scheduled for discussion by the Town Council at their May 1 meeting.

Cannabis regulations and key policies

Chapter 17.110 – Commercial Cannabis Uses

This recaps staff's understanding of the Commission's direction on changes to Chapter provisions (in the order listed in the Chapter). While the Commission may reconsider any consensus reached on specific policy issues, staff recommends the PC focus on those policy issues such as parking and signage which remain uncertain.

- 1) Definitions Staff eliminated "or facility" from the last sentence of the proposed definition of "youth center".
- 2) Buffer setback The Commission provided direction on several buffer topics, as follows:
 - Cultivation
 - 200 feet from schools, day care centers, and youth centers for outdoor personal cultivation. See cultivation discussion below for the question regarding the buffer for someone seeking a medical cannabis administrative exception to grow cannabis.
 - Commercial business
 - Proposed setbacks from storefront retailers are 600 feet from schools, day care centers and youth centers.
 - Proposed setbacks from delivery-only retailers are limited to 600 feet from schools, but not day care centers or youth centers.
- 3) Parking Three Commissioners appeared to favor utilizing the current retail parking standards for storefront retailers and the industrial standards for delivery-only retailers, but only two of those Commissioners supported the additional requirement for delivery vehicle parking spaces. Two Commissioners appeared to favor utilizing the retail parking standards for both storefront retailers and delivery-only retailers, but appeared to differ on whether to require an additional delivery vehicle parking space. Note that under state licensing regulations, a storefront retailer may include

a delivery service component, but a delivery-only retailer (non-storefront retailer) would be closed to the public and not allow on-site customer access to its facility.

The current draft of Section 17.110.040(C) incorporates the retail parking standards for storefront retailers and the industrial standards for delivery-only retailers, but omits the additional off-street parking space requirements for delivery vehicles. State regulations require that cannabis deliveries be performed by an employee that is directly employed by the retailer (not by an unlicensed third party). However, there is no requirement that the retailer own the delivery vehicles and it appears that delivery could be performed using the employees' vehicles. (See BCC Regulation § 5417, subds. (e), (f).)

Staff would like direction from the Commission whether:

- a. Retail parking standards should apply to both retail storefront and retail delivery-only businesses
 - b. An additional parking space is/is not required for a business with a delivery component.
- 4) Signage Signage is another area where staff is requesting the Commission confirm its direction. The proposed regulation would rely on current, generally applicable Town signage regulations (Chapter 17.064). This represents a change from the medical cannabis limit of 6 square feet, in recognition of the desirability of providing adequate visual business identification commensurate with the regulations for other retail businesses in Fairfax.
- 5) Personal cannabis cultivation The Planning Commission supported a Medical Cannabis Administrative Exception that sets forth a process for an individual to be allowed to cultivate more than 6 cannabis plants at one time or to request an exception from the 200 foot buffer for outdoor personal cannabis cultivation near schools and daycares. (As noted above, three Commissioners appeared to support retaining the 200 foot buffer for outdoor cultivation.)

The proposed ordinance provides for the medical exception as discussed above with a maximum plant limit. Staff believes the PC also wanted to establish a limit of up to 18 plants could be authorized via an Administrative Exception. Staff is seeking clarification from the Planning Commission on this issue.

Chapter 5.56 – Commercial Cannabis Business Permits

The Planning Commission discussed the proposed provisions in Chapter 5.56. Although not strictly within the Commission's purview for ordinance development and recommendation, Chapter 5.56 directs Business Permit process for commercial cannabis businesses. Chapter 5.56 also proposes to assign the Commission a role in the

deliberative process for evaluating cannabis businesses. Therefore, the Commission's comments are helpful to staff in refining these regulations for Council consideration.

Commission feedback at its March 14 meeting did not result in any consensus direction on elements. If possible, it would be helpful if your Commission can provide direction on the Chapter 5.56 elements listed below.

- 1) Permit requirements This sets forth the total number of cannabis business (i.e., a total of 2 locations which would include the existing dispensary) and business types permitted in the Town. 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, and to demonstrate compliance with CEQA.
- 3) Application process It is proposed that there would be two phases to the commercial cannabis business permit application process.
 - a. Phase 1 Pre-screening Staff would have 60 calendar days to review the applications for general compliance with the Town's municipal code and for background checks. 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 Planning Commission to review the application(s) and make recommendations to the Town Council. The Town Council would make a final decision on scoring of each application.

The Planning Commission would score each application based on specific criteria and weighting. Attached are the draft Scoring Criteria, which will be discussed in more detail below.

One policy decision is whether the scores would be decided collectively, or whether the final scores would be based on an average of the individual reviewer's scores in each scoring criteria. It would seem to be more efficient to simply average out reviewer's scores in each criteria, and apply each criteria average to reach a final cumulative score for each applicant.

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, the Council's review

contains a final scoring criteria to be used in selecting the applicant(s) with highest score(s).

The recommendations of the Planning Commission and decision of the Town Council would be made at a duly noticed public hearing, which the ordinance proposes to consolidate with any other discretionary applications and required hearing for design review, traffic impact permit, and/or sign permits.

- 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.

Scoring Criteria

Staff has included a preliminary Scoring Criteria for the Planning Commission’s review. The Scoring Criteria will be adopted by Town Council resolution, separate from the cannabis ordinances. Therefore, the Commission’s review of the Scoring Criteria can continue independent of its review of and recommendations on those ordinances.

Scoring Criteria elements

As part of a 110-point cumulative scoring system, there are three primary scoring criteria:

1. Business Plan	40 points
2. Operating Plan	30 points
3. Public Benefits	<u>30 points</u> 100 points
Town Council final review	<u>10 points</u>
Maximum potential total	110 points

Within each of the three overall scoring criteria are sub criteria to be considered in arriving at a point total for the categories. Time permitting, staff recommends that the Commission begin its discussions on the proposed Scoring Criteria and continued for consideration at a future Commission meeting. The Scoring Criteria would eventually be recommended to the Town Council for final consideration and approval.

ATTACHMENTS:

- 1. Resolution with attached Town Code Chapter 17.110 - Commercial Cannabis Uses
- 2. Redline of Town Code Chapter 17.110 - Commercial Cannabis Uses reflecting PC comments from March 14th
- 3. Draft Commercial Cannabis Business Permits Town Code (Chapter 5.56)
- 4. Draft Scoring Criteria
- 5. Map of Fairfax commercial zones with State-mandated buffer zone
- 6. Map of Fairfax commercial districts without State buffer zone

RESOLUTION NO. 18-_____

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX RECOMMENDING THE TOWN COUNCIL ADOPT AN ORDINANCE AMENDING FAIRFAX MUNICIPAL CODE, TITLE 17 ("ZONING"), CHAPTER 17.110 ("MEDICAL MARIJUANA DISPENSARIES") IN ORDER TO PROHIBIT COMMERCIAL CANNABIS USES, TO ALLOW CERTAIN CANNABIS RETAILERS SUBJECT TO REGULATION, AND TO PROVIDE STANDARDS FOR PERSONAL CULTIVATION OF CANNABIS FOR MEDICAL AND ADULT-USE, AND REPEALING ARTICLE III ('MEDICAL MARIJUANA CULTIVATION') OF CHAPTER 17.138 ('REGULATIONS APPLYING IN MULTIPLE DISTRICTS')

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, in 2015, the California Legislature enacted the Medical Cannabis Regulation and Safety Act (MCRSA), which for the first time in the State's history adopted comprehensive regulations and licensing for medical marijuana industry; and

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

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

WHEREAS, MAUCRSA specifically provides that local jurisdictions may adopt and enforce local ordinances that regulate licensed cannabis businesses, including, but not limited to, local zoning and land use requirements, business license requirements, or to completely prohibit the establishment or operation of one or more types of businesses licensed under MAUCRSA within the local jurisdiction (Business and Professions Code, § 26200); and

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

WHEREAS, to protect and promote the public health, safety, and welfare, the Planning Commission recommends certain revisions to the Town's zoning and land use regulations to allow certain cannabis retailers subject to regulation and to prohibit other commercial cannabis activities for consistency with MAUCRSA and in order to meet the unique local needs of the community; 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 Compassionate Use Act (codified as Health and Safety Code, § 11362.5) and under the Medical Marijuana Program Act (codified as Health and Safety Code, § 11362.7 et seq.)

(*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, the AUMA made it lawful for adults over 21 years of age 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 MAUCRSA, authorizes a city/town 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 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 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 has expressed its desire to update the Town’s land use regulations pertaining to personal cultivation of medical marijuana for consistency with AUMA, as amended by MAUCRSA; and

WHEREAS, staff has prepared such an ordinance, a true and correct copy of which is attached hereto as **Attachment 1** (the “proposed Ordinance”), which, if adopted, will amend the Town’s zoning ordinance, found at Title 17 of the Town Code; and

WHEREAS, in accordance with the State Planning and Zoning Law, the Planning Commission is tasked with considering whether any proposed amendment to the Town’s zoning ordinance would be in conformance with the terms of the Town’s general plan, and the Planning Commission has determined that the proposed Ordinance would, in fact, conform to the Town’s General Plan on the basis of the following:

- The proposed Ordinance permits certain commercial cannabis retail uses in existing commercial zones. This Ordinance is consistent with Fairfax General Plan Land Use Element Goal LU-5 to “manage future growth while preserving the area’s natural resources” and with Policy LU-5.1.1, which provides that “[n]ew and renewed development shall occur primarily as infill development;” and
- By allowing local medical and adult-use cannabis retailers and avoiding the need for residents to utilize cannabis retailers located in other jurisdictions, the proposed Ordinance is also consistent with Fairfax General Plan Conservation Element, Program CON-1.3.1.4: Educate citizens on primary means to reduce GHG emissions, such as transportation choices and supporting the local economy, including locally-grown foods and local businesses, to reduce GHG emissions; and

- The proposed Ordinance allows cannabis retailers to provide cannabis deliveries in Town. This is consistent with Fairfax General Plan Circulation Element Goal C-6, which seeks to “promote less reliance on single-occupant vehicles” because private delivery services can potentially reduce the need for “errand-running” trips, thereby potentially reducing traffic congestion (General Plan, p. C-3); and
- The proposed Ordinance permits personal cultivation of up to six plants of medical or adult-use cannabis per private residence pursuant to State law, subject to reasonable regulations to minimize the potential for adverse impacts to surrounding neighbors and the general public. By addressing potential neighborhood and community impacts, this Ordinance is consistent with Fairfax General Plan Land Use Element Goal LU-7 to “preserve community and neighborhood character” and with Objective LU-7.2 to “[p]reserve, maintain, and enhance in a sustainable manner, the existing character, scale, and quality of life in Fairfax’s residential neighborhoods;” and
- By limiting the wattage of indoor grow lights and prohibiting the use of gas products in connection with personal cannabis cultivation, the proposed Ordinance is also consistent with Fairfax General Plan Safety Element, Goal S-3, to minimize risk due to fires, and Objective S-3.1.1 to protect people and property from risks associated with urban and wildland fire; and

WHEREAS, the adoption of the proposed ordinance is exempt from the California Environmental Quality Act (codified at California Public Resources Code §§ 21000, *et seq.*, and 14 California Code of Regulations §§ 15000, *et seq.*, collectively, “CEQA”) under the general rule that the project will not result in any significant changes to the environment because it would permit cannabis retailers in zones where medical marijuana dispensaries and other similar uses are currently permitted, and based on the limited number of plants for personal cannabis cultivation. Additionally, 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. Additionally, this Ordinance is exempt pursuant to Business and Professions Code Section 26055(h), which provides that CEQA does not apply to the adoption of an ordinance by a local jurisdiction that requires discretionary review and approval of permits to engage in commercial cannabis activity that includes applicable environmental review; and

WHEREAS, the Planning Commission has conducted a duly-noticed public hearing to consider the draft ordinance, hear the presentation of a staff report, and receive public comment on the matter.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the Town of Fairfax as follows:

SECTION 1. The recitals set forth above are adopted as further findings of the Planning Commission.

SECTION 2. The Planning Commission has reviewed the draft ordinance attached hereto as **Attachment 1** and finds that it is consistent with the Town General Plan, as set forth above.

SECTION 3. The Planning Commission hereby recommends that the Town Council amend Chapter 17.110 of Title 17 of the Fairfax Town Code as set forth in to **Attachment 1** hereto and recommends the repeal of Article III ('Medical Marijuana Cultivation') of Chapter 17.138 ('Regulations Applying In Multiple Districts') in order to allow commercial cannabis retailers subject to regulation, to prohibit all other commercial cannabis uses, and to regulate personal cultivation of medical and adult-use cannabis.

The forgoing Resolution was duly passed and adopted at a regular meeting of the Planning Commission of the Town of Fairfax held in said Town on the 11th day of April 2019 by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Cindy Swift, Chair

Attest:

Ben Berto, Secretary

CHAPTER 17.110: CANNABIS USES

§ 17.110.010 PURPOSE.

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

§ 17.110.020 DEFINITIONS.

For purposes of this Chapter, the following definitions apply:

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

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

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

- Y. "Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades where 10 or more video games or game machines or devices are operated, and where minors are legally permitted to conduct business, or similar amusement park facilities. 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 for youth programs or organizations.

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

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

17.110.040 CANNABIS RETAIL USES.

- A. Cannabis retailers may be permitted subject to the approval of a commercial cannabis business permit pursuant to Chapter 5.56 of this Code, in the following zones:
1. Cannabis Storefront Retailers: Highway Commercial (CH) and Central Commercial (CC).
 2. Cannabis Delivery-Only Retailers: Highway Commercial (CH), Central Commercial (CC) and Limited Commercial (CL).
- B. Cannabis retailers shall not be allowed within the specified distances to the following uses that are in existence at the time the cannabis use is established. Specifically, a cannabis retailer shall not locate or establish:
1. 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.
 - 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.
 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 two (2) cannabis retailer locations at any one time, whether as storefront retailers or delivery-only retailers, and whether selling medical-use cannabis, adult-use cannabis, or both. This limit shall include any medical marijuana dispensary that was legally operating as of April 3, 2018, and continues to operate, and which may be permitted to conduct adult-use cannabis deliveries pursuant to Section 17.110.230 ("Adult-Use Cannabis Deliveries By Certain Existing Medical Marijuana Dispensaries"), below.
 4. If an application for a proposed cannabis retailer requires compliance with Chapter 17.020 ("Design Review Regulations"), then notwithstanding any provision of Chapter 17.020 to the contrary, the Planning Commission shall provide a recommendation on such design review application and final approval authority shall be vested in the Town Council. The Town Council's review and decision shall in all respects comply with the criteria set forth in Chapter 17.020.
 5. If an application for a proposed cannabis retailer requires a traffic impact permit pursuant to Chapter 17.056 ("Traffic Impact Permit"), then notwithstanding any provision of Chapter 17.056 to the contrary, the Town Council shall not be required to approve the methodology used in the traffic study pursuant to Section 17.056.070.
 6. If an application for a proposed cannabis retailer requires a sign permit pursuant to Chapter 17.064 ("Signs"), then notwithstanding any provision of Chapter 17.064 to the contrary, the Planning Commission shall make a recommendation on such sign permit, and final approval authority shall be vested in the Town Council. The Town Council's review and decision shall in all respects comply with the criteria set forth in Chapter 17.064.

17.110.050 -17.110.220 RESERVED.

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

- A. A medical marijuana dispensary that was legally operating as of April 3, 2018 and is permitted by the Town to operate a medical marijuana delivery service, may operate as a permitted use in any commercial district, an adult-use cannabis delivery-only service from its then existing premises, subject to each of the following conditions:
 - 1. The dispensary shall, prior to conducting any adult-use cannabis deliveries, obtain and maintain at all times:
 - (a) A valid state cannabis license authorizing adult-use cannabis deliveries issued by the appropriate state licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (California Business and Professions Code, Division 10);
 - (b) A commercial cannabis business permit pursuant to Title 5, Division II, Chapter 5.56 of this Code; and
 - (c) Any other state and local licenses or permits required by this Code or state law.
 - 2. All cannabis deliveries must conform to State laws and regulations adopted pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act except as set forth herein regarding the State buffer zone.
 - 3. No adult-use customers shall be permitted to access or remain in the business premises of a medical marijuana dispensary.
 - 4. No adult-use cannabis retail sales shall be permitted to occur at the premises of a medical marijuana dispensary.
- B. Pursuant to California Business and Professions Code Section 26054(b), as may be amended, the Town finds that no setback or radius is necessary for the conduct of adult-use cannabis deliveries by an eligible, existing medical marijuana dispensary pursuant to this section, beyond the zoning regulations contained herein.
- C. This Section is not intended to give any person or entity independent legal authority to operate an adult-use cannabis non-storefront retail delivery service, it is intended only to clarify the zoning restrictions regarding certain existing medical marijuana dispensaries that may conduct adult-use cannabis deliveries in the Town pursuant to this Code and state law. This Section is in addition to any other business license and regulatory requirements imposed on medical marijuana dispensaries and non-storefront retail cannabis delivery services by this Code or other applicable state law.

17.110.240 -17.110.290 RESERVED.

§ 17.110.300 PERSONAL CULTIVATION OF CANNABIS.

Personal cultivation of cannabis shall comply with the following:

- A. No more than six cannabis plants per private residence are allowed to be cultivated, whether indoors or outdoors upon the grounds of a private residence, regardless of the number of individuals residing at the residence. However, outdoor cultivation shall not exceed 6 plants per lot, regardless of the number of private residences located upon the lot.
- B. *Outdoor Cultivation.* Outdoor personal cultivation of cannabis shall comply with the following standards:
 - 1. Outdoor cannabis plants shall be located a minimum of five feet from property lines.

2. Outdoor cannabis plants shall be located only in the rear and side yards of a lot, and are not permitted to be located in front yards of any lot.
3. No cannabis plants cultivated shall be visible from a public right-of-way or any other public place by normal unaided vision.
4. No cannabis plants cultivated 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 shall have fencing of no more than six feet in height surrounding the lot or that portion of the lot upon which the plants are cultivated. In no event shall netting or plastic screening be used in conjunction with cannabis cultivation.
7. Outdoor cultivation is prohibited on parcels within 200 feet of any school or day care center.

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

1. Plants shall be contained within a locked space of a fully enclosed and secure structure, as defined, either within the primary residence or within an accessory structure on the same lot as the primary residence.
2. Indoor grow lights shall not exceed 1,200 watts and comply with the California Building, Electrical, Plumbing and Fire Codes as adopted by the town. Gas products (CO₂, butane, propane, natural gas, kerosene, etc.) or generators may not be used indoors or outdoors.
3. All electrical equipment used in the cultivation or processing of cannabis (e.g. lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation or processing of cannabis is prohibited.
4. All cannabis cultivation areas shall be in compliance with the current, adopted edition of the California Building Code as regards mechanical ventilation.
5. Shall not be conducted in a manner that results in the creation of mold or mildew inside the residence or the accessory structure.

D. *General.* All personal cultivation of cannabis, whether indoors or outdoors, shall comply with the following generally applicable standards:

1. A copy of documentation of qualified patient status must be maintained at any location at which medical cannabis cultivation occurs. If cultivation is to be conducted by a primary caregiver, documentation of the legally-required relationship shall be maintained at the location where medical cannabis cultivation occurs.
2. The residence shall maintain fully functional and usable kitchen, bathrooms, and bedrooms for their intended use, and the premises shall not be used primarily or exclusively for cannabis cultivation.
3. No cannabis cultivation area shall be maintained or operated in such a way as to adversely affect the health or safety of the nearby residents in any manner, including but not limited to by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes. A public nuisance may be deemed to exist, if such cultivation activity produces: (a) odors which

are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public, (b) repeated responses to the residence from law enforcement officers, (c) repeated disruption to the free passage of persons or vehicles in the neighborhood, (d) excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public, or (e) any other impacts on the neighborhood which are disruptive of normal activity in the area.

4. Any cannabis cultivation that would require a license or permit from the State of California per the Medical and Adult-Use Regulation and Safety Act (Cal. Business & Professions Code, Division 10) is prohibited within the Town of Fairfax.

§ 17.110.310 MEDICAL CANNABIS ADMINISTRATIVE EXCEPTION.

- A. Any qualified patient or primary caregiver may seek a medical cannabis administrative exception to Section 17.110.300, subdivisions (A) or (B)(7).
- B. Any request for a medical cannabis administrative exception shall be submitted to the Town Manager, along with documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, demonstrating why the standard required by Section 17.110.300, subdivisions (A) or (B)(7), is not feasible.
- C. The Town Manager may grant a medical cannabis administrative exception only if the following findings can be made:
 1. The individual requesting the exception can demonstrate a medical need for the exception, as evidenced by the written recommendation of a treating physician;
 2. The requested exception shall not constitute a public nuisance, as set forth in § 17.110.300(D).
 3. For indoor cultivation, the Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers, code-compliant electrical systems or one-hour firewall assembly.
 4. The cultivation of no more than eighteen (18) cannabis plants shall be authorized through a medical cannabis administrative exception.
- D. The Town Manager, or his or her designee, shall prepare a written approval or denial of any request for an exception within ten business days of its submission to the town. Approval of the requested exception may be made subject to conditions designed to lessen the impact of the exception on neighboring uses and the community generally.
- E. Any exception granted under this section shall be personal to the party to whom such exception was granted and shall not run with the land or otherwise be transferable.
- F. Notwithstanding any other provision of the Town Code, any person aggrieved by the decision of the Town Manager, or his or her designee, with respect to an exception requested under this § 17.110.310 may appeal said decision within ten days of the date of the decision to the Planning Commission. Upon review, the Planning Commission shall issue the requested exception if it meets the requirements of subdivision (C) above, and subject to any conditions imposed per subdivision (D) above.

§ 17.110.320 ENFORCEMENT.

- A. *Public nuisance.* The violation of this Chapter is hereby declared to be a public nuisance and may be enforced pursuant to the provisions of Chapter 1.12 of the Fairfax Town Code.
- B. *Seizure and destruction of cannabis.* To the extent authorized by state law, all cannabis seized by the town police in the enforcement of this Chapter shall be seized, retained and destroyed in the same manner and subject to the same procedures as are provided in California Health and Safety Code §§ 11472 through 11479, for cannabis possessed in violation of Division 10 of the Health and Safety Code.
- C. *Right of entry.* The Code Enforcement Officer, Building Official, Planning Director, Chief of Police, Fire Inspector, or a designee is authorized to enter upon and inspect private properties to ensure compliance with the provisions of this section. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other person in lawful possession of the property. If consent cannot for any reason be obtained, an inspection warrant shall be obtained from a court of law prior to any such entry and inspection. In those cases where consent is denied, the town may seek to recover the costs it incurs in obtaining a warrant from the property owner and/or person in lawful possession of the property.
- D. *Abatement.* The Town Attorney, in the name of and on behalf of the town and/or the people of the town, may bring a civil action in a court of competent jurisdiction to enforce any provision of this Chapter, or to restrain or abate any violation of the provisions of this Chapter as a public nuisance.
- E. *Penalties not exclusive.* The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the town from using any other remedy at law or in equity which may be available to enforce this Chapter or to abate a public nuisance.

§ 17.110.330 LIABILITY.

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

CHAPTER 17.110: CANNABIS USES

§ 17.110.010 PURPOSE.

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

§ 17.110.020 DEFINITIONS.

For purposes of this Chapter, the following definitions apply:

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

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

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

Y. "Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades where 10 or more video games or game machines or devices are operated, and where minors are legally permitted to conduct business, or similar amusement park facilities. 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 for youth programs or organizations.

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

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

17.110.040 CANNABIS RETAIL USES.

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

Deleted: <#>Within a 600-foot radius of a school, day care center, or youth center. (See Business and Professions Code, § 26054.)
 ALTERNATIVE: ¶

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.
 - 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.
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 two (2) cannabis retailer locations at any one time, whether as storefront retailers or delivery-only retailers, and whether selling medical-use cannabis, adult-use cannabis, or both. This limit shall include any medical marijuana dispensary that was legally operating as of April 3, 2018, and continues to operate, and, which may be permitted to conduct adult-use cannabis deliveries pursuant to Section 17.110.230 ("Adult-Use Cannabis Deliveries By Certain Existing Medical Marijuana Dispensaries"), below.
4. If an application for a proposed cannabis retailer requires compliance with Chapter 17.020 ("Design Review Regulations"), then notwithstanding any provision of Chapter 17.020 to the contrary, the Planning Commission shall provide a recommendation on such design review application and final approval authority shall vested in the Town Council. The Town Council's review and decision shall in all respects comply with the criteria set forth in Chapter 17.020.
5. If an application for a proposed cannabis retailer requires a traffic impact permit pursuant to Chapter 17.056 ("Traffic Impact Permit"), then notwithstanding any provision of Chapter 17.056 to the contrary, the Town Council shall not be required to approve the methodology used in the traffic study pursuant to Section 17.056.070.
6. If an application for a proposed cannabis retailer requires a sign permit pursuant to Chapter 17.064 ("Signs"), then notwithstanding any provision of Chapter 17.064 to the contrary, the Planning Commission shall make a recommendation on such sign permit, and final approval authority shall vested in the Town Council. The Town Council's review and decision shall in all respects comply with the criteria set forth in Chapter 17.064.

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 The distances specified in this Section [for day care centers or youth centers only] shall apply unless Town Council finds that the proposed site will not pose a threat to the public health, safety and welfare of the surrounding properties. In exercising its discretion, the Town Council shall consider the following factors:
 <#>Whether natural or manmade features provide an intervening barrier to the exposure of any minors at a sensitive use [day care center or youth center] located within 600 feet of the proposed site: ¶
 <#>Whether the proposed site is located in an area that does not feature high concentrations of minors or pedestrian traffic: ¶
 <#>Whether there is a history of police or crime-related problems in the area of the proposed location and whether the proposed location creates potential public safety risks; and¶
 <#>Whether the proposed site would provide traffic circulation benefits through provision of additional parking, ease of vehicular and/or pedestrian access, or other features that mitigate potential traffic congestion impacts: ¶

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 <#>[] storefront retailers, whether medical-use, adult-use or both; and¶
 <#>[] cannabis delivery-only retailers (medical-use, adult-use or both) located in the Town of Fairfax. ¶
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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 restrictions regarding certain existing medical marijuana dispensaries that may conduct adult-use cannabis deliveries in the Town pursuant to this Code and state law. This Section is in addition to any other business license and regulatory requirements imposed on medical marijuana dispensaries and non-storefront retail cannabis delivery services by this Code or other applicable state law.

17.110.240 -17.110.290 RESERVED.

§ 17.110.300 PERSONAL CULTIVATION OF CANNABIS.

Personal cultivation of cannabis shall comply with the following:

- A. No more than six cannabis plants per private residence are allowed to be cultivated, whether indoors or outdoors upon the grounds of a private residence, regardless of the number of individuals residing at the residence. However, outdoor cultivation shall not exceed 6 plants per lot, regardless of the number of private residences located upon the lot.
- B. *Outdoor Cultivation.* Outdoor personal cultivation of cannabis shall comply with the following standards:
 - 1. Outdoor cannabis plants shall be located a minimum of five feet from property lines.

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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 shall be visible from a public right-of-way or any other public place by normal unaided vision.

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4. No cannabis plants cultivated shall exceed seven feet in height.

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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 shall have fencing of no more than six feet in height surrounding the lot or that portion of the lot upon which the plants are cultivated. In no event shall netting or plastic screening be used in conjunction with cannabis cultivation.

7. Outdoor cultivation is prohibited on parcels within 200 feet of any school or day care center.

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

1. Plants shall be contained within a locked space of a fully enclosed and secure structure, as defined, either within the primary residence or within an accessory structure on the same lot as the primary residence.

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2. Indoor grow lights shall not exceed 1,200 watts and comply with the California Building, Electrical, Plumbing and Fire Codes as adopted by the town. Gas products (CO₂, butane, propane, natural gas, kerosene, etc.) or generators may not be used indoors or outdoors.

3. All electrical equipment used in the cultivation or processing of cannabis (e.g. lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation or processing of cannabis is prohibited.

4. All cannabis cultivation areas shall be in compliance with the current, adopted edition of the California Building Code as regards mechanical ventilation.

5. Shall not be conducted in a manner that results in the creation of mold or mildew inside the residence or the accessory structure.

D. *General.* All personal cultivation of cannabis, whether indoors or outdoors, shall comply with the following generally applicable standards:

1. A copy of documentation of qualified patient status must be maintained at any location at which medical cannabis cultivation occurs. If cultivation is to be conducted by a primary caregiver, documentation of the legally-required relationship shall be maintained at the location where medical cannabis cultivation occurs.

2. The residence shall maintain fully functional and usable kitchen, bathrooms, and bedrooms for their intended use, and the premises shall not be used primarily or exclusively for cannabis cultivation.

3. No cannabis cultivation area shall be maintained or operated in such a way as to adversely affect the health or safety of the nearby residents in any manner, including but not limited to by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes. A public nuisance may be deemed to exist, if such cultivation activity produces: (a) odors which

are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public, (b) repeated responses to the residence from law enforcement officers, (c) repeated disruption to the free passage of persons or vehicles in the neighborhood, (d) excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public, or (e) any other impacts on the neighborhood which are disruptive of normal activity in the area.

- 4. Any cannabis cultivation that would require a license or permit from the State of California per the Medical and Adult-Use Regulation and Safety Act (Cal. Business & Professions Code, Division 10) is prohibited within the Town of Fairfax.

§ 17.110.310 MEDICAL CANNABIS ADMINISTRATIVE EXCEPTION.

- A. Any qualified patient or primary caregiver may seek a medical cannabis administrative exception to Section 17.110.300, subdivisions (A) or (B)(7).
- B. Any request for a medical cannabis administrative exception shall be submitted to the Town Manager, along with documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, demonstrating why the standard required by Section 17.110.300, subdivisions (A) or (B)(7), is not feasible.
- C. The Town Manager may grant a medical cannabis administrative exception only if the following findings can be made:
 - 1. The individual requesting the exception can demonstrate a medical need for the exception, as evidenced by the written recommendation of a treating physician;
 - 2. The requested exception shall not constitute a public nuisance, as set forth in § 17.110.300(D).
 - 3. For indoor cultivation, the Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers, code-compliant electrical systems or one-hour firewall assembly.
 - 4. The cultivation of no more than ~~eighteen~~ (18) cannabis plants shall be authorized through a medical cannabis administrative exception.
- D. The Town Manager, or his or her designee, shall prepare a written approval or denial of any request for an exception within ten business days of its submission to the town. Approval of the requested exception may be made subject to conditions designed to lessen the impact of the exception on neighboring uses and the community generally.
- E. Any exception granted under this section shall be personal to the party to whom such exception was granted and shall not run with the land or otherwise be transferable.
- F. Notwithstanding any other provision of the Town Code, any person aggrieved by the decision of the Town Manager, or his or her designee, with respect to an exception requested under this § 17.110.310 may appeal said decision within ten days of the date of the decision to the Planning Commission. Upon review, the Planning Commission shall issue the requested exception if it meets the requirements of subdivision (C) above, and subject to any conditions imposed per subdivision (D) above.

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§ 17.110.320 ENFORCEMENT.

- A. *Public nuisance.* The violation of this Chapter is hereby declared to be a public nuisance and may be enforced pursuant to the provisions of Chapter 1.12 of the Fairfax Town Code.
- B. *Seizure and destruction of cannabis.* To the extent authorized by state law, all cannabis seized by the town police in the enforcement of this Chapter shall be seized, retained and destroyed in the same manner and subject to the same procedures as are provided in California Health and Safety Code §§ 11472 through 11479, for cannabis possessed in violation of Division 10 of the Health and Safety Code.
- C. *Right of entry.* The Code Enforcement Officer, Building Official, Planning Director, Chief of Police, Fire Inspector, or a designee is authorized to enter upon and inspect private properties to ensure compliance with the provisions of this section. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other person in lawful possession of the property. If consent cannot for any reason be obtained, an inspection warrant shall be obtained from a court of law prior to any such entry and inspection. In those cases where consent is denied, the town may seek to recover the costs it incurs in obtaining a warrant from the property owner and/or person in lawful possession of the property.
- D. *Abatement.* The Town Attorney, in the name of and on behalf of the town and/or the people of the town, may bring a civil action in a court of competent jurisdiction to enforce any provision of this Chapter, or to restrain or abate any violation of the provisions of this Chapter as a public nuisance.
- E. *Penalties not exclusive.* The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the town from using any other remedy at law or in equity which may be available to enforce this Chapter or to abate a public nuisance.

§ 17.110.330 LIABILITY.

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

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY**Fairfax Municipal Code****CHAPTER 5.56: CANNABIS BUSINESSES****ARTICLE I: COMMERCIAL CANNABIS BUSINESS PERMITS****5.56.010 Purpose and intent.**

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

5.56.020 Definitions.

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

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

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

5.56.030 Prohibited commercial cannabis activities.

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

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

5.56.040 Permit requirements.

- A. Any person seeking to establish or operate a medicinal or adult-use cannabis business from premises located in the Town must first obtain and maintain a commercial cannabis business permit in accordance with this Chapter prior to establishing and/or operating.

~~B. The Town Council shall adopt by resolution a limit on the number of each type of commercial cannabis business permit to be issued.~~

ALTERNATIVE 1:

- B. There shall be no more than the following number of commercial cannabis business permits issued pursuant to this Article at any one time in the following activity categories:

1. ~~Two (2) cannabis retailer(s)~~ retailers, whether operating as a storefront or retailer or a delivery-only (non-storefront) retailer, and whether selling medical-use, adult-use or both medical and adult-use cannabis.

ALTERNATIVE 2:

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

OPTIONS:

~~The above totals shall include any existing medical marijuana dispensary that was~~ has been legally and continually operating as of April 3, 2018, which shall be counted as a medical-use-only storefront one cannabis retailer, regardless of whether such dispensary is also permitted to conduct adult-use cannabis deliveries pursuant to Section 17.110.230 and this Chapter ~~Section 5.56.300.~~

OR

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

- C. When the number of commercial cannabis business permits falls below the number of permits set ~~by Town Council [OR set forth above]~~, the Town Manager (or his or her designee) shall post a notice of availability that the Town will be accepting applications for commercial cannabis business ~~permits~~ permit(s). 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.

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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 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;

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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.

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

- A. Phase 1 – Prescreening and Criminal History:
 1. Upon receipt of a completed application, Town staff shall review applications for general compliance with the Town's municipal code, and shall reject any application which does not meet such requirements. Rejected applications shall not be scored. The Town shall also disqualify any application that contains any false or misleading information.
 2. All exterior building improvements, including façade improvements and proposed signage, shall be reviewed for conformance with the Town's zoning and land use standards. If required, the applicant shall apply for any design review approval, traffic impact permit and/or sign permit necessary under Chapters 17.020, 17.056 and/or 17.064 concurrently with the application for the commercial cannabis business permit. The prescreening approval may be conditioned upon the applicant submitting complete application materials for design review, traffic impact and/or sign permits. All applications will be required to comply with environmental review pursuant to the California Environmental Quality Act ("CEQA") (California Public Resources Code §21000 et seq.).

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3. Each applicant shall submit to the Chief of Police a recent photograph of the applicant (if an individual), each owner and current or prospective manager. The applicant, owner(s) and manager(s) shall also ~~be responsible for submitting~~ submit 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)~~ Livescan results, the Chief of Police shall review and approve or deny the criminal history of the applicant, owner(s) and manager(s) pursuant to Section 5.56.080.

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

B. Phase 2 – Application Scoring:

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

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

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

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

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

C. Issuance of a commercial cannabis business permit does not create a land use entitlement. Furthermore, no permittee may begin operations, notwithstanding the issuance of a permit, until all of the State and local laws and regulations, including but not limited to the requirements of this Chapter and of the permit, have been complied with and the Town verifies such compliance. 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.

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

5.56.080 Minimum criteria for issuance of a permit.

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

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

5.56.090 Operating requirements.

- A. **State and Local Licenses.** The permittee shall obtain and maintain a State commercial cannabis license for the equivalent State cannabis commercial activity. The permittee shall obtain and maintain all other required State and local licenses, permits, or approvals as required.
- B. **MAUCRSA Compliance.** The permittee shall meet all operating requirements of the MAUCRSA, and any regulations promulgated thereunder.

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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 in any amount.
 - 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.
3. Records. A current register of all employees and volunteer workers 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 lines 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 (whether eaten, smoked, vaporized or other method of ingestion) 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.

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9. State License Application. The permittee shall submit to the Planning Department within seven (7) days of submission to the state licensing authority, 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, except in the event of a complaint by a member of the public;
 - 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.
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 or volunteer workers 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, volunteer worker or other agent of the permittee, which violations occur in or about the premises of the commercial cannabis business whether or not said violations occur within the permit holder's presence.

5.56.100 Term of permit and renewal procedure.

- A. Permits issued under this Chapter shall be valid for 12 months from the date of issuance. The permit may be renewed annually.

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

5.56.110 Permit suspension and revocation.

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

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- C. Upon revocation, no new permit may be issued for the applicant or any other business entity in which the applicant is a partner or owner of ten percent or more of the business for a period of five years from the date of revocation.

5.56.120 Expiration.

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

5.56.130 Transfer of permits.

A commercial cannabis business permit issued under this Chapter is valid only as to the permittee and approved site, and is therefore nontransferable to other persons—~~projects~~ or locations. A commercial cannabis business permit is not property and has no value. A commercial cannabis business permit may not be transferred, sold, assigned or bequeathed expressly or by operation by law. Any attempt to directly or indirectly transfer a commercial cannabis business permit shall be deemed to constitute a voluntary surrender of such permit and such permit shall therefore be automatically rendered null and void. Except, however, if the permittee is a partnership, corporation, limited liability company or other entity, and one or more of the owners should die, one or more of the surviving owners may acquire, by purchase or otherwise, the interest of the deceased owner without affecting a surrender or termination of such permit and in each case the permittee shall thereafter be deemed to be the surviving owner(s). Additionally, a commercial cannabis business permit may be endorsed to add an additional owner, provided such prospective new owner satisfies the requirements for applicants, including but not limited to, a criminal history check and the qualifications listed in Section 5.56.080, as approved by the Town Manager.

5.56.140 Appeals

- A. Within fifteen (15) days after the date of service of a decision of the Town Manager to revoke, suspend or deny renewal of a permit or deny prescreening review, the permittee or applicant may appeal such action by filing a written appeal with the Town Clerk.
- B. The notice of appeal shall be in writing and signed by the person making the appeal, or his or her legal representative, and shall contain the following:
1. The name, address, telephone number of the appellant.
 2. A true and correct copy of the notice of the decision issued by the Town Manager for which the appellant is appealing.

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3. A specific statement of the reasons and grounds for making the appeal in sufficient detail to enable the Town Council to understand the nature of the controversy, the basis of the appeal, and the relief requested. not to exceed five pages.
 4. All documents or other evidence pertinent to the appeal that the appellant requests the Town Council to consider at the hearing.
- C. At the time of filing the appellant shall pay the designated appeal fee, established by resolution of the Town Council from time to time.
 - D. Failure of the Town Clerk to receive a timely and proper appeal, or the requisite fee, constitutes a waiver of the right to appeal the decision of the Town Manager and a failure to exhaust all administrative remedies. In this event, the Town Manager's decision is final and binding.
 - E. In the event a notice of appeal is timely filed, the ~~nonrenewal, suspension or revocation is not effective~~ Town Manager's decision is stayed until a final order has been rendered and issued by the Town Council. If a notice of appeal is not timely filed, in the event of a decision of nonrenewal, the permit expires at the conclusion of the term of the permit and in the event of a suspension or revocation, the suspension of revocation is effective upon the expiration of the period for filing a written notice of appeal.
 - F. Upon receipt of a timely notice of appeal, the Town Clerk shall set the matter for a hearing before the Town Council. The Town Council shall preside over the hearing on appeal, hear the matter de novo and conduct the hearing pursuant to the procedures set forth by the Town. The Town Manager bears the burden of proof to establish the grounds for ~~nonrenewal, suspension or revocation~~ his or her decision by a preponderance of the evidence. The issuance of the Town Manager's decision constitutes prima facie evidence of grounds for the nonrenewal, suspension, or revocation.
 - G. The appeal shall be held within a reasonable time after the filing of the notice of appeal, but in no event later than ninety (90) days from the date of such filing. The Town shall notify the appellant in writing of the date, time and location of the hearing at least ten (10) days prior to the date of the hearing.
 - H. At the hearing the appellant may present witnesses and evidence relevant to the decision appealed. Appeal hearings are informal, and the formal rules of evidence and discovery applicable in a court of law shall not apply to the hearing. However, rules of privilege shall be applicable to the extent they are permitted by law, and irrelevant, ~~collateral~~ immaterial and repetitious evidence may be excluded.
 - I. After the conclusion of the appeal hearing, the Town Council shall determine if any ~~ground~~ grounds exists for the ~~nonrenewal, suspension, or revocation of the commercial cannabis business permit.~~ Town Manager's decision.

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1. If the Town Council determines that no ~~ground for nonrenewal, suspension, or revocation exists~~ facts exist to support the Town Manager's decision, the Town Manager's notice of decision shall be deemed cancelled.
2. If the Town Council determines that ~~a ground enumerated in~~ many facts exist to support the Town ~~Manager's~~ Manager's notice of decision ~~exists~~, the decision shall be upheld.

The Town Council shall issue a written final order ~~via resolution~~. The decision of the Town Council shall be final and shall be served on the appellant. The decision shall contain the following statement: "The decision of the Town Council is final and binding. Judicial review of this decision is subject to the time limits set forth in California Code of Civil Procedure section 1094.6." ~~The Town Council's order shall be served by first class mail on the appellant.~~

5.56.150 Service of Town Notices.

Except as otherwise expressly required by a provision of this Chapter, any notice required by this Chapter may be served by personal delivery to any applicant or permittee, or by first class mail. The date of service shall be the date it is personally delivered or placed in a U.S. Postal Service receptacle. Any notice issued to any applicant or permittee may be sent to the mailing address as listed on the application submitted to the Town. Failure of any applicant or permittee to receive a properly addressed notice by mail shall not invalidate any action, decision, determination or proceeding under this Chapter.

~~5.56.150~~ **5.56.160 Enforcement.**

- A. It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this Chapter. A failure to obtain a commercial cannabis permit required by this Chapter shall be punishable in accordance with the Fairfax Municipal Code and state law.
- B. All remedies prescribed under this Chapter shall be cumulative and the use of one or more remedies by the Town shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.
- C. Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.
- D. Any use or condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is declared a public nuisance and may be summarily abated by the Town.
- E. The violation of any provision of this Chapter shall be and is declared to be contrary to the public interest and shall, at the discretion of Town Manager, create ~~a cause~~ causes of action, including but not limited to, for injunctive relief.

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- F. In addition to the civil and administrative remedies set forth above, any person that violates the provisions of this Chapter may be subject to administrative penalties as set forth by the Fairfax Municipal Code, Chapter 1.10.

~~5.56.160~~**5.56.170** **Application of this article to existing medical marijuana dispensaries.**

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

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

DRAFT SCORING CRITERIA
FAIRFAX COMMERCIAL CANNABIS BUSINESS PERMITS
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Review Criteria Rating System

- i. 40 points: **Business qualifications and business plan** as demonstrated by:
 - Industry experience
 - Financial capacity to start up and sustain business operations
 - Business design/layout: secure, attractive, unobtrusive design
 - Innovative or boutique business models consistent with the Fairfax community
 - Additional information that demonstrates the ability to operate in a manner consistent with the values of the Town, including, without limitation, local residency of principals (3+ years), connection to Fairfax, ability to serve Fairfax, familiarity with the Town

- ii. 30 points: **Quality of operating plan** as demonstrated by:
 - Demonstrated understanding of all State requirements, including but not limited to security, financial, other recordkeeping
 - Inventory controls and sales procedures to prevent diversion to illegal market and access by minors
 - Employee training above State requirements
 - Parking, circulation, and traffic plan, including truck and delivery parking if applicable, to ensure safe access and minimize traffic congestion
 - Complaint response program
 - Additional operational procedures demonstrating safety, commitment to community welfare and community responsiveness

- iii. 30 points: **Public benefits**, including, but not limited to the following:
 - All employees paid living wage and benefits
 - Social equity: One or more principals who earn at or below median household income; women or minority owned business; small business
 - Offer medical cannabis:
 - Patient services, such as physician or caregiver networking
 - Experience serving patients
 - Reduced-cost products to low-income medical patients
 - Locally-sourced, organic/pesticide-free products
 - Green business rating: Is certified or qualifies for certification
 - Participation and support of local youth-serving prevention and education programs, and/or adult addiction programs

Minimum qualifying score = 80 points

Scoring:

- (a) The Planning Commission will review each application at a public hearing based on the written materials and an applicant presentation.

DRAFT SCORING CRITERIA
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- (b) Planning Commissioners decide scores based on the scoring criteria above. All Planning Commissioners' scores shall be totaled and averaged for each application for a preliminary score. This preliminary score would be referred to the Town Council.
- (c) The Town Council would hold a second hearing and review the Planning Commission's preliminary scoring. The Town Council would have the opportunity to issue an additional **10 points** based on the quality of the applicant's presentation.

