

## 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 (CO<sub>2</sub>, 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.**

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.