



TOWN OF FAIRFAX

STAFF REPORT

May 1, 2019

TO: Mayor and Town Council

FROM: Ben Berto, Planning and Building Services Director
Garrett Toy, Town Manager *GT*

SUBJECT: Discuss regulations pertaining to certain commercial cannabis uses including store-front retail and delivery-only businesses, non-commercial cannabis cultivation, cannabis business permit process, and scoring criteria for applications

RECOMMENDATION

- 1) Discuss key policy issues regarding commercial cannabis uses.
- 2) Discuss Chapter 5.56, Cannabis Business Permit Process.
- 3) Discuss draft 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 15th workshop/meeting on cannabis, including eight hearings by the Planning Commission (PC). At their last meeting on April 11, the Planning Commission concluded their review of the proposed cannabis regulations, providing staff with recommendations on many of the regulatory policy questions and issues relating to Chapter 17.110. The Commission was ultimately unable to affirmatively vote for a resolution recommending the draft regulations to the Town Council. Town Code requires that 5 of the 7 Commissioners vote to approve a resolution supporting Zoning Code changes. However, since the Town Council referred the matter to the PC and PC did take an action, staff can move the regulations discussed by the PC to the Town Council for discussion.

While the PC was unable to agree on all the provisions of the proposed regulations, the Commission's exhaustive review of cannabis topics and issues and the proposed regulations are very helpful in framing the topics, issues, and ultimately regulations.

The current Town moratorium on commercial cannabis activities is due to expire on October 31, 2019, after which the State could issue licenses for various cannabis businesses to operate in Fairfax, if local regulations are not in place before the moratorium expires. Staff is therefore bringing draft regulations to the Town Council for discussion now to provide adequate time for

Council discussion, review, and ultimately decision.

DISCUSSION

The Planning Commission (PC) reviewed amendments to Town Code Chapter 17.110 which would establish the regulations governing commercial cannabis uses and locations. Staff also requested PC comments on the Cannabis Business Permit Process proposed for Chapter 5.56. However, Chapter 5.56 is not under the zoning code and therefore does not require PC approval. However, it was helpful for the PC to review the chapter so that the Council could benefit from their feedback. The PC also reviewed the draft Scoring Criteria by which the PC will evaluate businesses permit applicants. It is anticipated the scoring criteria will be adopted by resolution and not incorporated into the Town Code. Attached are the March 14 and the draft April 11 PC minutes for the Council's reference.

The goal this evening is to have a broad discussion on key regulations and policies. As appropriate, we will indicate if a PC majority supported a certain regulation/policy. The cannabis regulations attached to this report are as presented to the PC at their April 11 meeting, except for minor changes to Chapter 5.56 suggested by the PC.

CANNABIS REGULATIONS AND KEY POLICIES

The following reflects staff's understanding of the Town Council's direction to the Planning Commission and the PC's position on the key policy issues.

Permitted Cannabis Uses (§17.110.030 Prohibited Commercial)

Consistent with prior Town Council direction, a PC majority recommended that permitted commercial uses be limited to medical marijuana, adult use retail businesses, and cannabis delivery.

At this time, the PC supported the prohibition of the following uses:

- Temporary cannabis events
- Microbusinesses
- Manufacturing
- Distribution
- Commercial cultivation
- Laboratories

Key Policy Issue:

1. *Confirm the permitted and prohibited uses.*

Adult-Use Storefront and/or Delivery (§17.110.040 Cannabis Retail Uses)

A majority of the Council seem to support the concept of some type of adult-use retail business. A majority of the PC supported some type of adult-use retail business uses, but could not agree on the type, buffer zone, or number of locations.

A majority of the PC seem to support the following:

- Cannabis storefront retail would be permitted only in Highway Commercial (CH) and Central Commercial (CC) zoning districts. Cannabis delivery would also be allowed in the Limited Commercial (CL) zoning district.
- Establish a 600-foot setback buffer (adopt State buffer zone) from schools, day care centers, and youth centers for storefront retailers.
- For delivery-only businesses, a 600-foot setback buffer is only required from schools. No buffer is required from day-care centers and youth centers. The PC also recommended a revised definition of youth center.
- Establish a specific number for business locations of any type.

The PC discussed the allowable number at length and was not able to reach a majority, with opinions on the allowable number ranging from the one existing business to nine (three of each of the permitted types). The reason 'cannabis locations' was used was in recognition of the potential for adjoining businesses (for example the existing medical dispensary with a potential delivery business next door), and the problems with attempting to further split the number of uses when the overall number is so low.

Key Policy Issue:

1. *In which zones should businesses be located?*
2. *Establish a buffer zone for adult-use retail storefront and delivery-only businesses*
3. *Establish a limit on the number of businesses or locations.*

Development Standards/Process

A majority of the PC supported the following retail standards: :

- Parking requirements for storefront retailers are the same as for any other retail establishment: 3 spaces for the first 500 square feet of net floor area, and 1 space for each additional 500 square feet. Delivery-only businesses are required to have 1 parking space per 2 employees.
- Maximum business size is 1,500 square feet., consistent with the current medical dispensary limit.
- If a Traffic Impact Permit (TIP) is required, the traffic study methodology would no longer require Town Council approval. This is in recognition that the extended timelines required

for Town Council input would add unreasonable delays to business application processing and selection.

- If additional discretionary applications such as Design Review or a Sign Permit are required for a business, Town Council would decide whether or not to approve said applications. This allows for the Town Council to consider all the required discretionary at one time.

Key issues:

- 1) *Provide direction on the above standards.*

Non-Commercial, Personal Cultivation (Section §17.110.310)

The Council supported a limit of up to 6 cannabis plants, whether for medical or non-medical, that may be grown indoors and/or outdoors, so long as it doesn't exceed 6 plants per property.

A majority of the PC recommended a 6 plant limit indoors per residence to account for multi-family units and a limit of 6 plants outdoors per property. The PC also wanted to allow an exception process for personal medical cannabis cultivation based on a physician's recommendation documenting the need with no limit on the number of plants.

Key issues:

1. *Should a maximum of six cannabis plants be allowed per residence indoors?*
2. *Should an exception process be allowed for the personal cultivation of medical cannabis?*

CHAPTER 5.56 – COMMERCIAL CANNABIS BUSINESS PERMITS

Chapter 5.56 directs Business Permit process for commercial cannabis businesses. Consistent with prior Town Council direction, the Planning Commission agreed that business approvals should not 'run with the land', and that the Town should retain full discretion on whether or not to approve any proposed subsequent owners/operators for any business location.

This section focusses on substantive provisions in Chapter 5.56 and staff is seeking direction on the key issues.

1) §5.56.040 Permit requirements

- A. This sets forth that a business permit is required in order to operate a commercial cannabis business.
- B. Two business locations are allowed (based on previous PC direction), and one of the two locations is specified as the existing medical marijuana dispensary.
- C. This sets forth the application submittal process, including a submittal deadline, if/when the number of existing cannabis businesses is below the numerical limit.

Key issues:

1. *Should the Town use the proposed business permit process for reviewing potential cannabis businesses, so that it retains full approval discretion on any subsequent proposed business operators?*
2. *How many business locations should there be?*

2) §5.56.060 Permit application

- A. Application submittal requirements are described, including detailed information on items such as who is financially involved with the business, site and floor plans, operating plan, traffic study, and insurance.
- B. 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.

Key issue:

1. *Should all discretionary planning permit applications be processed concurrently with the business permit application?*

3) §5.56.070 Review and action on applications Two formal phases are proposed for the commercial cannabis business permit application process. The PC discussed the issue of criminal background checks and potential disqualification resulting therefrom.

- A. Phase 1 Pre-screening and criminal history Staff reviews submitted applications for completeness and rejects any that are incomplete. It notes the various other zoning permit applications (e.g., design review, traffic impact permits, sign permits and CEQA approval) that may have to accompany the business permit application. Livescan background checks for criminal history are required, to be reviewed by the Police Chief. If/once applicants have satisfied the pre-screening process, they may proceed to Phase 2.
- B. Phase 2 Application scoring The Town Manager would forward qualified applications to the Planning Commission for review at a public hearing, preliminary numerical scoring, and subsequent recommendation(s) to the Town Council.

After applicant presentations, the Town Council would make a final decision on relative scoring of each application, and any related zoning permits. In the event more applicants score high enough on the Planning Commission's preliminary review than there are available business permits, the Council would decide which

applicant(s) receive the available business permit(s) based on their final numerical score.

- C. This subsection clarifies that issuance of a business permit does not constitute a land use entitlement (i.e., the permit is specific to a business).

Key issue:

1. *Is the process acceptable involving staff completion screening, Planning Commission preliminary scoring, and Town Council final decision on successful applicant(s)?*
 2. *Should the Town regulate qualification potential applicants based in part on criminal background criteria?*
- 4) §5.56.080 Minimum criteria for issuance of a permit This section describes in more detail the criteria for issuance of a business permit, including criminal issues that can disqualify an applicant.

Key issue:

1. *Are the criminal background disqualification criteria acceptable?*
- 5) §5.56.100 Term of permit and renewal procedure Similar to a business license, the term of a business permit is 12 months, and is subject to annual reapplication, with applicable renewal provisions. The Town Manager has the discretion to renew the business permit or not, depending on the business's compliance with Town regulations.

Key issue:

1. *Should the Town require a business permit to be renewed annually?*

Draft Scoring Criteria

Staff has included a preliminary Scoring Criteria which the Planning Commission reviewed at their April 11 meeting.

Scoring Criteria elements:

A 110-point cumulative scoring system is proposed, consisting of the following 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 primary scoring criteria, a number of sub criteria are listed as factors to be considered in arriving at a point total for each of the primary criteria.

NEXT STEP

Based on the Council's direction, staff would return in June/July with the revised ordinances for Council consideration.

FISCAL IMPACT

None at this time

ATTACHMENTS:

- A. Draft Town Code Chapter 17.110 - Commercial Cannabis Uses
- B. Draft Commercial Cannabis Business Permits Town Code Chapter 5.56
- C. Draft Scoring Criteria
- D. Map of Fairfax commercial zones with State-mandated buffer zone
- E. Map of Fairfax commercial districts without State buffer zone
- F. Planning Commission minutes dated 3/14/19 (final) and 4/11/19 (draft)