



# TOWN OF FAIRFAX

## STAFF REPORT

June 5, 2019

**TO:** Mayor and Town Council

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

**SUBJECT:** Introduce by title only two ordinances: 1) An Ordinance Amending Chapter 17.110 and Repealing Article III ("Medical Marijuana Cultivation") of Chapter 17.138, to Adopt Zoning Standards and Restrictions for Commercial Cannabis Uses and Cannabis Cultivation for Personal Use; and 2) An Ordinance Amending Chapter 5.56 to Regulate Commercial Cannabis Businesses within the Town of Fairfax; CEQA exempt pursuant to State CEQA Guidelines Section 15061(b)(3) and Business and Professions Code Section 26055(h)

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### RECOMMENDATION

- 1) Conduct Public Hearing
- 2) Introduce and read by title only an ordinance entitled "AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING AND RESTATING FAIRFAX MUNICIPAL CODE, TITLE 17 ("ZONING"), CHAPTER 17.110 ("MEDICAL MARIJUANA DISPENSARIES") AND REPEALING ARTICLE III ("MEDICAL MARIJUANA CULTIVATION") OF CHAPTER 17.138, TO ADOPT ZONING STANDARDS AND RESTRICTIONS FOR COMMERCIAL CANNABIS USES AND CANNABIS CULTIVATION FOR PERSONAL USE
- 3) Introduce and read by title only an ordinance entitled "AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING FAIRFAX MUNICIPAL CODE, DIVISION II, CHAPTER 5.56, ENTITLED "CANNABIS BUSINESSES," TO REGULATE COMMERCIAL CANNABIS BUSINESSES WITHIN THE TOWN OF FAIRFAX
- 4) Provide input on the Scoring Criteria for cannabis business applicants.

### BACKGROUND

This hearing will be the 17<sup>th</sup> formal public discussion the Town has conducted on the topic of cannabis regulations. The Planning Commission was unable to recommend proposed regulations, but conducted an exhaustive review of cannabis issues and proposed regulations, which in turn were integrated into what your Council is now reviewing. The Town Council held its first review and discussion of cannabis topics following the Planning Commission's review, at its May 1, 2019 meeting.

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.

## DISCUSSION

This discussion is divided into three sections: 1) Cannabis Regulations, 2) Cannabis Business Permits, and 3) Scoring Criteria.

### Cannabis Regulations (Chapter 17.110 Cannabis Uses)

The Town Council on May 1 discussed a number of policy and regulatory topics. The following reflects staff's understanding of the Town Council's direction on the key issues, with references where the pertinent sections of the proposed Municipal Code:

#### Prohibited Cannabis Uses

The Council supported the prohibition of the following uses:

- Temporary cannabis events
- Microbusinesses
- Manufacturing
- Distribution
- Commercial cultivation
- Laboratories
- Adult-Use Storefronts

#### Permitted Cannabis Uses

The Council was not in favor of allowing adult-use retail storefront businesses. However, the Council supported allowing adult-use delivery-only retail businesses and continuing to allow medical storefront and delivery operations. Some Councilmembers expressed interest in phasing out medical uses.

After much discussion, the majority of the Council seem to support allowing a maximum of *two (2) locations* for any combination of medical storefront/delivery and/or adult-use delivery only businesses in Town. The existing Medical Marijuana Dispensary and its pending Adult-Use Delivery-only Business would count as one of the two total locations.

#### Buffer setbacks

The Council appeared to support the following:

- Establish a 600-foot setback buffer (adopt State buffer zone) from schools, day care centers, and youth centers for medical storefront retailers. Staff also added a reduced 250 ft buffer from tutoring centers since the Council wanted such a buffer for delivery-only businesses.
- For a delivery-only business:
  - 1) A reduced 250-foot setback buffer is required from schools.
  - 2) A reduced buffer setback of 250 feet is required from a tutoring center.
  - 3) No buffer is required from day-care centers and youth centers.

The Council will need to provide direction on the following key issues:

1. *What should the setback be for a delivery-only business and/or medical storefront retailer be from a tutoring center?*

Staff used a 250 ft buffer since it is the mid-point between 200 and 300 ft. which is the range the Council discussed at its May 2019 meeting. The attached maps show the effect of 200, 250, and 300 ft. buffers from a tutoring center and school. Another map shows the combined buffer (i.e., 600 ft. from schools, day cares, youth centers and 250 ft. from schools and tutoring centers) for a combination medical storefront retailer and adult-use delivery only business.

2. *If there is a setback from a delivery-only business to a tutoring center, should there be a similar setback from day-care centers and/or youth centers?*

If a setback is required from a delivery-only business to a tutoring center, staff believes youth centers should be included because of the presence of youth and/or teens at such facilities. Children at day-care centers are younger and under constant adult supervision, so there is less of a concern.

Non-Commercial, Personal Cultivation

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.

The Council also supported an exception process for personal medical cannabis cultivation based on a physician's recommendation documenting the need, with a maximum 10 plant limit on the number of plants.

Development Provisions and Procedures

It is staff's understanding that the Town Council generally supported the following retail standards:

- Parking requirements for a medical storefront retailer 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. Plus, one space per delivery vehicle unless an employee vehicle is used to conduct deliveries.
- Parking Requirements for Cannabis Delivery-Only Retailers are the same as for any industrial uses, including wholesale and storage: one space per two employees of the maximum shift, plus one space per delivery vehicle unless an employee vehicle is used to conduct deliveries.
- Maximum business size is 1,500 square feet, consistent with the limits in the current regulations on medical dispensaries.
- 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 applications at one time.

### Other Regulatory Issues

The Town Council questioned whether the Town could or should limit the sale or delivery of some types of cannabis products either sold or delivered in Town (for example, flavored cannabis concentrates or candies), and similarly, limit the THC content of products. In our research, staff found that the State is making some effort to restrict cannabis products that might appeal to children.

State BPC §26130(c)(1) provides that “Edible cannabis products shall be .... Not designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain cannabis.” Additionally, the DPH Regulations, 17 CCR 40300 , subds. (k)-(l), prohibit any manufactured cannabis product that the Dept. of Public Health determines on a case by case basis is attractive to children, any product that is easily confused with commercially available foods that do not contain cannabis, and any cannabis product in the “shape of, or imprinted with the shape, either realistic or caricature, of a human being, animal, insect or fruit” (respectively). Insofar as chocolates, candies, gummies, etc. are currently being sold via multiple outlets, it is unclear to what extent the State is enforcing these regulations at this time. Packaging and labeling restrictions are addressed in the DPH Regulations, 17 CCR Section 40403 et seq. In particular, labeling restrictions in Section 40410(b) prohibit content designed to be attractive to minors. Packaging also has to be “child proof.” In our research, staff did not notice any products that had cartoon animals on the labels.

In addition, a local ban on certain types of products would be difficult to monitor and enforce. These products could still be delivered from out-of-town businesses to customers in Fairfax. Ultimately, the State, who already has regulations in place, and the adults to whom these products are delivered, bear the ultimate responsibility for keeping these products out of the hands of children and teens.

Similarly, attempting to locally regulate the THC content of cannabis products in Town would be easily circumvented by persons purchasing their products outside of the Town or having them delivered in Town. Furthermore, it should be noted that medical dispensaries have bona fide rationales for higher THC products (for example, greater painkilling efficacy for some patients). There is also a large degree of subjectivity in picking a maximum THC level. Enforcement of any of these regulations locally would be very challenging.

Staff recommends that, while not without its conceptual merits, in practice imposing either of these limitations locally would likely be ineffective. It could also adversely affect medical patients (in terms of concentration limits) and would make existing or proposed businesses less competitive.

## Chapter 5.56 – Commercial Cannabis Business Permits

The proposed amendments to Chapter 5.56 adopt a Business Permit process for commercial cannabis businesses. Consistent with prior Town Council direction, as proposed, business approvals should not 'run with the land', so the Town retains full discretion on whether or not to approve any proposed future owners/ operators of an existing business.

At the May 1st meeting, your Council appeared to generally support the following substantive provisions in Chapter 5.56:

### 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 Council majority 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.

### 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.

### 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. 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. The Council would decide which applicant(s) receive the available business permit(s) based on their final numerical score.

- 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.
- 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 and renewal provisions. The Town Manager has the discretion to renew the business permit or not, depending on the business’s compliance with Town regulations.
- 6) § 5.56.170 & 300 Application to existing medical marijuana dispensaries. These two sections address how to handle the existing medical marijuana dispensary that was legally operating as of April 3, 2018. Specifically, if such a medical marijuana dispensary has not received a permit to operate an adult-use cannabis delivery service as of December 31, 2019, the owner shall be required to apply for a commercial cannabis business permit and comply with the provisions of Chapter 5.56, including the application review procedures. It seemed like a majority of the Council supported the concept of the new regulations applying to the existing medical dispensary if the dispensary did not obtain its adult-use delivery only cannabis business permit.

**Proposed Scoring Criteria**

Attached to this report is the preliminary Scoring Criteria which the Planning Commission reviewed at their April 11 meeting. As proposed by staff, the criteria would not be part of the ordinance, but would rather be adopted by resolution. This would improve the Town’s ability to modify particular criteria elements in the future, should that be desired.

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.

**CEQA for Amendments to Chapter 17.110**

This Ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21000 et seq.) pursuant to State CEQA Guidelines Section 15061(b)(3) and Business and Professions Code Section 26055(h), each as separate and independent bases. This Ordinance is exempt under the general rule that CEQA

only applies to projects, which have the potential for causing a significant effect on the environment. Pursuant to State CEQA Guidelines, Section 15061(b)(3) it can be seen with certainty that the Ordinance will not have a significant effect on the environment because it would permit limited numbers of certain cannabis retailers in zones where medical marijuana dispensaries and other similar uses are currently permitted, and because it would impose reasonable regulations on personal cultivation of cannabis that was legalized under State law. With respect to personal cannabis cultivation, this Ordinance also 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. Additionally, Business & Professions Code Section 26055(h) 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.

### **CEQA for Amendment to Chapter 5.56**

This Ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") (California Public Resources Code §21000 et seq.) pursuant to State CEQA Guidelines Section 15061(b)(3) and Business and Professions Code Section 26055(h), each as separate and independent bases. Pursuant to State CEQA Guidelines, Section 15061(b)(3) it can be seen with certainty that the Ordinance will not have a significant effect on the environment because it would require a regulatory permit and impose operating criteria on cannabis retailers where medical marijuana dispensaries and other similar uses are currently permitted. Additionally, Business & Professions Code Section 26055(h) 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.

### **FISCAL IMPACT**

None at this time

### **ATTACHMENTS**

- A. Ordinance amending Town Code Chapter 17.110: Commercial Cannabis Uses, redline and clean versions
- B. Ordinance amending Town Code Chapter 5.56: Commercial Cannabis Business Permits, redline and clean versions
- C. Draft Scoring Criteria

The following maps will be distributed prior to the meeting:

- D. Map of Fairfax commercial zones with 250-foot buffer setback
- E. Map of Fairfax commercial districts with 600-foot buffer setback
- F. Map of Fairfax commercial districts without State buffer setback