



TOWN OF FAIRFAX

STAFF REPORT

July 17, 2019

TO: Mayor and Town Council

FROM: Ben Berto, Planning and Building Services Director
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)

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) Adopt Scoring Criteria for cannabis business applicants.

BACKGROUND

This hearing is be the 18th formal public discussion the Town has conducted on the topic of cannabis regulations. The prior meetings are summarized as follows:

On December 11, 2017, the Town sponsored a panel discussion on cannabis as well as an online survey of cannabis issues.

On March 7, 2018, the Town Council discussed the general parameters for commercial cannabis businesses.

On May 30, 2018, the Council held a special workshop to receive additional information on the topics discussed at the March meeting. The Council also heard a presentation from HdL Companies, a firm specializing in municipal cannabis regulation.

On July 18, 2018, the Council discussed general cannabis issues.

On August 1, 2018, the Council continued its policy discussion on desired/eliminated categories of use, buffer zones, number of retailers, cultivation, standards and revenue. Following their discussion, the Council forwarded the matter to the Planning Commission for development of draft regulations.

On September 20, 2018, the PC started general discussions regarding commercial cannabis.

On October 25, 2018, the PC considered a draft ordinance permitting existing medical cannabis dispensaries to conduct adult-use deliveries.

On November 15, the PC continued its general cannabis discussions, restated/confirmed its position on some issues and requested additional information on other issues.

On November 29th, the PC continued its general discussions, restated/confirmed its position on some issues and requested additional information on issues.

On December 20, 2018, the PC continued its general discussion on commercial cannabis.

On January 17, 2019, the PC reviewed cannabis regulatory options.

On February 21, 2019, the PC's review of cannabis was curtailed by the lateness of the hour.

On March 14, 2019 the PC discussed potential cannabis regulations.

On March 21, 2019, the PC discussed draft cannabis regulations and a resolution recommending those regulations to the Town Council.

On April 11, 2019, the PC voted on, but was unable to approve the resolution recommending cannabis regulations to the Town Council.

On May 1, 2019 the Town Council again took up cannabis regulations, discussing policy issues regarding commercial cannabis uses and draft regulations which the PC reviewed. The Council requested certain changes to the draft ordinance regulations.

On June 5, 2019 (the last Town Council meeting), the Council requested some additional regulations changes.

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 June 5 discussed a number of policy and regulatory topics. The following reflects staff's understanding of the Town Council's majority direction on the key issues, with references to 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 majority 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.

A majority of the Council supported allowing a maximum of two (2) cannabis business locations for any combination of medical storefront/delivery and/or adult-use delivery. The existing Medical Marijuana Dispensary and its Adult-Use Delivery-only Business would count as one of the two total cannabis business locations, as long as the business(es) remain in operation. If the business(es) at the current location cease operation, a maximum of two (2) cannabis business locations would still be allowed in Fairfax. Since the June 5th meeting, Councilmember Reed requested staff to indicate that he plans to broach the topic of an advisory measure on the November ballot to address certain permitted cannabis uses.

Buffer setbacks

A majority of the Council supported the following:

- For medical storefront retailers, a 600-foot setback buffer (adopt the State's default setback buffer distances) from schools, day care centers, and youth centers. Per Council direction on June 5, staff has eliminated any buffer from tutoring centers.
- For a delivery-only business:
 - 1) A reduced 250-foot setback buffer is required from schools and youth centers.

2) No buffer is required from day-care centers or tutoring centers.

Some Councilmembers suggested alternative approaches for establishing the buffer zones.

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 for outdoor cultivation,

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

The Town Council majority 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 as well as allowing the Town Council to consider all the required discretionary applications at the same time.
- 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 the Town Council to consider all the required discretionary applications at one time.

At their June 5 meeting, the majority of the Town Council supported the following changes from the previous draft ordinance:

- A cannabis business permit is valid for 2 years.

- A cannabis business owner would have 90 days prior to business permit expiration to apply for business license renewal.

Other Regulatory Issues

A majority of the Town Council concurred that it would be extremely difficult to restrict or enforce the sale or delivery of certain types of cannabis products in Town (for example, flavored cannabis concentrates or candies), and similarly, limit the THC content of products. The Town is limited to the State’s efforts to restrict cannabis products that might appeal to children.

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 permits do not ‘run with the land’, so any owner/operator of a cannabis business would need to renew their business permit every two years.

At the June 5th meeting, the Council requested clarification on the number of cannabis business locations as it pertains to the existing Marin Alliance dispensary and pending delivery business. Staff has accordingly modified §5.56.040 B. to clarify that the total number of business locations is two (2), regardless of whether or not Marin Alliance is in business.

The Council also requested extending the time period for a business permit to two years from the previously proposed one, and extended the renewal deadline to 90 days before permit expiration from the previously proposed 60 days. Staff has modified §5.56.100 A. and C. to incorporate this direction.

Other provisions of Chapter 5.56 remain as proposed on June 5 (please refer to June 5 staff report for additional details of Chapter 5.56).

Proposed Scoring Criteria

At its June 5th meeting, the Council supported the establishment of Scoring Criteria for applications. Staff does not believe the Council majority requested any revisions to the proposed Scoring Criteria.

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
- 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