

FAIRFAX PLANNING COMMISSION MEETING MINUTES
FAIRFAX WOMENS CLUB
THURSDAY, MARCH 14, 2019

Call to Order/Roll Call:

Chair Swift called the Special meeting to order at 6:00 p.m.

Commissioners Present: Norma Fragoso
Philip Green (arrived at 7:00 p.m.)
Mimi Newton
Michele Rodriguez
Cindy Swift (Chair)

Commissioners Absent: Esther Gonzalez-Parber
Laura Kehrlein

Staff Present: Ben Berto, Planning Director
Linda Neal, Principal Planner
Garrett Toy, Town Manager
Janet Coleson, Town Attorney
Amanda Charne, Assistant Town Attorney

APPROVAL OF AGENDA

Chair Swift noted Public Comment on Non-Agenda Items was not on the agenda. Town Manager Toy stated this item is not usually included on a Special Meeting agenda.

M/s, Newton/Fragoso, motion to approve the agenda but hear the Approval of the Minutes prior to Regular Agenda Item #1.

AYES: Fragoso, Newton, Rodriguez, Chair Swift
ABSENT: Gonzalez-Parber, Green, Kehrlein

Minutes from the February 21, 2019 Planning Commission meeting.

M/s, Newton/Rodriguez, motion to approve the February 21, 2019 Planning Commission minutes as corrected.

AYES: Fragoso, Newton, Rodriguez, Chair Swift
ABSENT: Gonzalez-Parber, Green, Kehrlein

PUBLIC HEARING ITEMS

1. Discuss/consider local cannabis regulations and provide direction to staff.

Chair Swift noted Commissioner Kehrlein has recused herself from this item. She noted she would like the Commission to forward a finished product to the Council for its May meeting.

Planning Director Berto presented a staff report regarding Chapter 17.110, Cannabis Uses.

Assistant Town Attorney Charne presented a staff report regarding Chapter 5.56, Commercial Cannabis Businesses.

Commissioner Rodriguez asked if staff has received any feedback on the draft ordinance from the Fire or Police Departments. Town Attorney Coleson stated the Police Chief understands the general direction and does not have any comments except for a concern about the number of background checks that might be required. Commissioner Rodriguez had questions about the ordinance recently approved by the City of San Rafael. Planning Director Berto stated that San Rafael had added cannabis delivery-only businesses.

Commissioner Newton asked if moving the medical cannabis cultivation requirements into Chapter 17.110 has resulted in combining some of the definitions from the Business and Professions Code and the Health and Safety Code. She was concerned that combining the two sets of definitions would change the meaning of the State definitions. Assistant Town Attorney Charne stated the personal cultivation definitions are carried forward with the exception of the 200-foot buffer- it would be more inclusive.

Commissioner Newton had a question about the definition of “non-manufactured cannabis products” and “cannabis products”. Assistant Town Attorney Charne stated the concept of the “non-manufactured cannabis product” comes from the Cal Cannabis Licensing Program Regulations. Staff was trying to set forth the broadest definition of commercial cultivation possible.

Commissioner Newton asked for clarification about signage for medical cannabis dispensaries. Planning Director Berto stated the sign requirements would be the same as other businesses. Commissioner Newton asked if the parking requirements were “extra and special”. Planning Director Berto stated “no- it matches the Town’s requirements for retail uses and industrial requirements for the delivery uses, with the potential exception for an extra parking space for a delivery business vehicle”.

Commissioner Newton asked how they are justifying the “six plants per lot” limit (regardless of the number of residents or units on the property) with respect to State law. Assistant Town Attorney Charne stated each residence would be allowed six plants, whether indoors or outdoors. State law allows jurisdictions to ban outdoor cultivation. Commissioner Newton stated she sees this as a constitutional question.

Commissioner Newton stated she thought the Commission would be reviewing scoring criteria with respect to the application process. Planning Director Berto stated staff outlined this in broad terms. This will be a fluid and much discussed topic, and staff is recommending adopting the scoring criteria by resolution, separate from the ordinances.

Commissioner Newton asked if the items in the background checks were derived from State law or something staff is creating. Assistant Town Attorney Charne stated it was the latter.

Commissioner Green arrived at 7:00 p.m.

Chair Swift referred to page 6 of the staff report, the bottom paragraph, and asked if the definition for day care or schools omits private facilities. Assistant Town Attorney Charne stated “yes- they are using the new definition of pre-school”.

Chair Swift referred to page 6 of the draft ordinance, Section 17.110.040, “Cannabis Retail Uses, (C)(5) and asked for clarification on the Traffic Impact Permit and the methodology for the study. Planning Director Berto discussed the permit and how the Town Council normally approves the methodology for the study, but would not do that for purposes of processing cannabis applications because doing it that way is a three public hearing process and would take too long.

Chair Swift referred to Chapter 5.56, Cannabis Businesses, and asked if the process would coincide with Chapter 17.110, Cannabis Uses. Planning Director Berto stated “yes, they are looking at the totality of regulations”.

Chair Swift opened the Public Hearing.

Mr. Lew Tremaine, representing Marin Alliance, made the following comments:

- He gave a packet of information to Principal Planner Neal.
- The packet represents the first of many opportunities for funding for communities that want to foster a cannabis industry.
- He discussed a \$10 million grant program for start-ups.

Commissioner Rodriguez asked Mr. Tremaine his opinion on certain sections of the ordinance. Mr. Tremaine stated the fees for the annual renewal were onerous. People were harmed by the prohibition and need a helping hand.

Ms. Lynette Shaw, Marin Alliance, made the following comments:

- She noted the Town allowed a Recreational Delivery License for her medical-only dispensary but the State has never heard of a medical dispensary/recreational delivery configuration.
- This has caused a lot of red-tape to occur including the need to install two new doors at a cost of \$7,000.
- She urged the Commission to make this a simple process.
- Fairfax is a cannabis community with a long history.

Ms. Jasmine Garrety made the following comments:

- Fairfax will be the first city in Marin County to have a recreational store front.
- They need to think about the community as a whole.
- She was concerned about the high THC potency levels of the products.
- Putting regulations on certain products will be very important.

Commissioner Rodriguez asked Ms. Garrety about THC levels. Ms. Garrety discussed the testing and researching of THC levels had not been above 15 percent THC.

Ms. Fiona Core, Laurel Way, made the following comments:

- She is a student at Drake High School. She and her friends spend a lot of time in Fairfax.
- She asked the Commission to think about the impact this decision will have to the community.
- Marijuana use is prevalent among students.

Mr. Sebastian Myer made the following comments:

- He is a student at College of Marin.
- He experimented and developed a dependence on cannabis products- he was able to come out on the other side.
- He is concerned about the legitimization and commercialization of marijuana. The perception of harm drops as these products are legalized.
- Products are marketed towards kids- fruity flavors, etc.
- A storefront would negatively impact the perception of harm and normalize kids perception of how cannabis use affects people.

Ms. Linda Hammon, Kentfield, made the following comments:

- She works to reduce underage alcohol and drug use in the community.

- She is concerned that a commercial storefront would decrease the perception of harm and increase access and normalization.
- They should wait on retail until cannabis is legal on a Federal level- systems will be in place including testing, taxation, etc.

Mr. Don Carney, resident of Mountain View Road, made the following comments:

- He runs the Marin County Youth Court and 70% of the cases are substance abuse driven- 80% of these cases involve marijuana.
- He is concerned with how rapidly young people have become involved in the concentrates.
- Kids are being targeted- it is a business plan.
- He did not support a retail outlet.

Ms. Melissa Strauss, Health and Human Services, made the following comments:

- She is the Substance Abuse Prevention Coordinator for the County.
- She provided the Commission with a packet of information.
- Health considerations are vital.
- A panel of researchers found positive and negative health effects from cannabis. The study did not include the effects of newly available high potency cannabis products (oils and concentrates).

Ms. Kelsey Fernandez made the following comments:

- Large commercial cannabis farms are negatively impacting the environment.
- Banned toxic substances are sometimes used on these farms.

Ms. Kelly Murphy, San Anselmo, made the following comments:

- She asked if consideration has been given to storefronts and the proximity to Contratti Field.
- Her son plays Little League and loves to go to Scoop and hang out in Fairfax.

Mr. David Stampanado, Fairfax, made the following comments:

- He is on the West Little League Board of Directors.
- The Board would like to see a buffer of greater than 600 feet.
- They are opposed to any exceptions to the buffer for recreational storefronts.
- Making exceptions for individuals or certain businesses is not sound policy.

Ms. Rosanne Olive, Director of First Friends Montessori, made the following comment:

- First Friends Montessori is a licensed child care center with a kindergarten program.

Chair Swift closed the Public Hearing.

Chair Swift stated she would like to address the policy issues regarding cultivation.

Chair Swift provided the following comment:

- She referred to indoor cultivation and stated she did not see the need for the cultivation to occur in a locked room within a locked private residence.

Commissioner Green provided the following comments:

- A locked door inside the house where the cultivation is going on is important.
- The plants could be an attractive nuisance to children.

Commissioner Newton provided the following comments:

- She disagreed- requiring a lock on the inside is far too intrusive.

- Responsible parents will take precautions.

Commissioner Rodriguez supports the staff recommendation as proposed. .

Commissioner Fragoso provided the following comment:

- She does not have a preference for locked rooms.

Chair Swift asked for comments on buffers for outdoor cultivation and having a 200 foot buffer from a school or day care center.

Commissioners Green, Rodriguez, Fragoso, provided the following comments:

- They support this policy.

Commissioner Newton and Chair Swift provided the following comments:

- They were not in favor of a buffer for outdoor cultivation.

Chair Swift asked for comments on an exception policy to the number of plants and/or the 200 foot buffer.

Commissioner Newton provided the following comments:

- She strongly supported the exception policy.
- They should allow for an exception to the personal cultivation limit of 6 plants on a case-by-case basis.
- They are talking about medication.

Commissioner Green provided the following comments:

- He agreed with Commissioner Newton.
- The medical aspect is an important thing and the ordinance should allow for exceptions.
- They buffer and number of allowable plants go hand-in-hand.

Commissioner Rodriguez provided the following comments:

- She supports the ordinance as written.
- Maintain the exception section and amend Section 17.110.310 “Medical Cannabis Admin. Exception” to delete the 200-foot buffer.
- Section 17.110.310(F) should include a notification opportunity.

Commissioner Fragoso provided the following comment:

- She agreed with the comments made by Commissioner Rodriguez.
- She did not agree with an exception to the buffer but agreed to an exception to the number of plants and is willing to go to a maximum of eighteen.

Commissioner Newton provided the following comments:

- She referred to Section 17.110.310(C)(4) and stated the limit of six plants should be removed.
- They should trust the decision maker to use his or her discretion.
- She did not want to limit the additional number of plants.

Commissioner Green provided the following comments:

- They are dealing, somewhat, with the unknown. One plant could be as big as a Christmas trees.
- If someone needs 18 plants and the findings can be made then he would go with it.

Town Attorney Coleson stated there was a difference between “cultivating your own” and “using”. They are not talking about a medical patient’s right to use.

Chair Swift provided the following comment:

- She is in favor of the exceptions for both the buffer and the number.
- She supports taking out the limit of six additional plants.

Commissioner Green provided the following comment:

- He could support eighteen plants, and maybe more, if the individual has a “prescription” from a doctor.
- The clause about not creating a public nuisance is a protective measure.
- He now supported cultivation on balconies.

Chair Swift asked for comments on the definition of “youth center” and the optional language.

Commissioner Fragoso, Newton, and Rodriguez, provided the following comments:

- They supported the optional language.

Commissioner Green provided the following comments:

- The optional language is fine except he would delete the words “or facility” in the last part of the sentence.

Chair Swift asked for comments on buffers.

Commissioner Fragoso provided the following comments:

- She supports the buffers for storefront retailer- Alternative #1 on page 5 of Attachment #1.
- She is not in support of the exception process.

Commissioner Green provided the following comments:

- The 600-foot buffer for storefronts should remain.
- If the delivery service adheres to the regulations there should be no odor, visibility, etc.- he agrees with the 600-foot radius of a school.
- He does not support the exception process- it could be a “can of worms”.

Chair Swift provided the following comments:

- They have discussed the desire for competition.
- The optional section talks about an exception process for a location if the criteria are met.

Commissioner Newton provided the following comments:

- She is opposed to Chapter 17.110.040 “Cannabis Retail Use” (A)(1)- it should include the Limited Commercial (CL) Zone.
- She is not in favor of the buffer.
- She would allow retail and delivery in the commercial zones.
- She would support the exception process.

Commissioner Rodriguez provided the following comments:

- She supports the alternative with the added language that clarifies that if delivery is included in the retail business, then the buffer should be 600 feet.
- She does not support the exception process (optional).
- She supports Chapter 17.110.040(A)(1), Cannabis Storefront Retailers: Highway Commercial (CH) and Central Commercial (CC) and 17.110.040(A)(2), Cannabis Delivery-Only Retailers: Highway Commercial (CH), Central Commercial (CC) and Limited Commercial (CL), as written.

Chair Swift provided the following comments:

- The buffers should be flexible.
- She would go along with all three buffers for retail.
- The exception process is important if a location meets the criteria.

Chair Swift referred to Chapter 17.110.040(A)(1) and asked if the Limited Commercial Zone should be included.

Commissioners Fragoso and Rodriguez provided the following comments:

- They would not include the CL Zone.

Commissioner Green provided the following comments:

- The two, small CL Zones are not good locations for retail outlets.
- They could accommodate delivery businesses.

Chair Swift asked for comments on parking.

Commissioner Fragoso provided the following comments:

- She would recommend the parking standards remain as written without the optional phrases for both retail and delivery.
- They should meet standards of the retail zone. She would not additionally restrict them.

Commissioner Green provided the following comments:

- There might be another way to look at the delivery aspect- to have a loading zone instead of a space. Planning Director Berto stated if they were dealing with larger businesses they would be looking at the loading zones questions.
- Storefront retailers should conform to the same retail requirements that currently exist.
- There should be an off-street space for delivery vehicles.

Commissioner Newton provided the following comments:

- They are making assumptions- the delivery drivers might take his or her car home and “take the sign off the top of the car”.
- She was not in favor or asking for special requirements for cannabis businesses over and above what is asked of any other business.

Commissioner Rodriguez provided the following comments:

- She agreed with Commissioner Newton.
- She was concerned since they have not really talked about square footage. Planning Director Berto noted they will be reviewing operating plans for individual businesses when evaluating proposals.
- She supported 17.110.040(C)(1)(ii) with the option included, “plus one space per delivery vehicle”.
- Parking should be required for only the delivery vehicles and not the employees.

Commissioner Green provided the following comments:

- There could be a compromise.
- A cannabis retail business should be subject to the same parking requirements as any other retail business but if there is a delivery component then one of the spaces must be reserved for the delivery vehicle.

Chair Swift provided the following comments:

- One of the concerns is that a retail business will have a lot of customers.
- She was not sure the three spaces plus the additional two spaces would be sufficient.

- They need to at least meet the requirements of any other retail businesses in town- a 1,500 square foot facility would need five spaces.
- She did not want one of the spaces used for the delivery vehicle- that would be taking away parking.
- She was in favor of the stated parking for retail and delivery plus the additional vehicle spaces.

Chair Swift asked for comments on the number of businesses and the type of businesses.

Commissioner Fragoso and Chair Swift provided the following comments:

- The current dispensary should be folded into whatever number they come up with.

Commissioner Green provided the following comments:

- He is in favor of two businesses based on two entities/locations- this would include the current dispensary.
- He is in favor of fair competition.

Commissioner Newton provided the following comments:

- She does not want to include the current dispensary in the number of allowable businesses.
- She would recommend rewriting the limitation on the number so each use is addressed separately or make the first category any combination of delivery and medical with storefront/retail. There could be a separate provision for delivery only and a separate provision for medical only. Assistant Town Attorney Charne stated that was what Alternative 2 is intending to do.

Commissioner Rodriguez provided the following comments:

- She agreed with the comments made by Commissioner Green.
- She supported two total locations including the existing.

Chair Swift provided the following comments:

- She supports a limitation of three locations. The current dispensary should be included in that number.
- It is too complicated to break out the different categories (storefront, delivery, medical, etc.)

Commissioner Newton provided the following comments:

- She is opposed to a limit on the number.
- If there is a limit she would prefer the alternative approach and go with the maximum number.

Commissioner Green provided the following comments:

- He noted they will see the end of medical marijuana programs.
- They should limit the number to two, and the language should be “cannabis retail locations”.
- They could be a combination of retail and delivery.

Commissioner Fragoso provided the following comments:

- She asked if retail included microbusinesses. Planning Director Berto stated they are not talking about vertical operations or bud only- they are talking about cannabis products.
- She agreed with “two cannabis locations” including the current medical delivery service as one of the two.

The Commission took a 10-minute break at 9:30 p.m.

Commissioner Newton referred to Chapter 17.110.020 “Definitions” and stated she would like to discuss the definitions of “cannabis cultivation”, “cannabis manufacturing” and “cannabis products”.

She would like to add the following definition: “non-manufactured cannabis products” so they can allow establishments to engage in rolling and packaging cannabis products. Assistant Town Attorney Charne stated Section 5412 of the Bureau of Cannabis Control Regulations prohibits packaging and labeling by a retailer. Planning Director Berto stated this gets into the microbusiness issue.

Chair Swift stated she would like to address Chapter 5.56, Cannabis Businesses.

Commissioner Green asked if the Town can regulate businesses to the extent of what they have in stock to sell (products with scents, THC levels, etc.). Assistant Town Attorney stated “yes” since Proposition 64 gives specific authority to local jurisdictions to adopt health and safety regulations. The extent of this provision has not been tested.

Commissioner Rodriguez asked about limiting the THC levels, marketing and using packaging that is attractive to children, etc. Assistant Town Attorney Charne stated if the Town chose to adopt those standards it would be included in Chapter 5.56 as a business regulation- it would not be a zoning standard.

Chair Swift asked for comments on Chapter 5.56, Cannabis Businesses.

Assistant Town Attorney Charney asked for feedback on the overall application and scoring process.

Chair Swift referred to Section 5.56.090 “Operating Requirements” (D)(3) and asked about the State requirements for record keeping. Assistant Town Attorney Charne stated the State regulations have detailed requirements on keeping personnel records (7 years). Chair Swift noted the requirements about volunteers were not consistent.

Chair Swift asked for clarification on Section 5.56.090(D)(13). She referred to Section 5.56.120 “Expiration” and asked for the definition of “active use”. Assistant Town Attorney Charne stated this could be fleshed out.

Commissioner Green provided the following comments:

- He referred to Section 5.56.060 “Permit Application” and stated he would like to add #16 that would say: “Proof of compliance with BCC Code #5017”.
- He referred to Section 5.56.070 “Review and action on applications” (A)- Phase 1 (1) and suggested the following language: “Upon receipt....Town’s municipal code *and State licensing regulations...*”.
- He referred to Section 5.56.070 (A)- Phase 1 (3) and suggested the following language: “The applicant.... *shall submit fingerprints* to Livescan...”; and “The fingerprints shall... *FBI or other applicable agencies* for evaluation”.
- He referred to Section 5.56.070 (A) (4) and noted prescreening decisions were not appealable and he asked if that was legal. Town Attorney Coleson stated it was intended to be a “yes or no” and not a discretionary type of thing. Staff will look at that.
- He referred to Section 5.56.070 (A) (4) and stated it should clearly specify the application period (i.e. midnight).
- He referred to Section 5.56.070 (C) and suggested the following language: “Furthermore...have been complied with *and the Town verifies compliance*”.
- He referred to Section 5.56.080 “Minimum criteria for issuance of a permit” (C) and suggested adding #5 to include the common law felonies (murder, mayhem, etc.).
- He referred to Section 5.56.090, “Operating requirements” (D) (1) and stated these businesses should not be afforded the standard signage abilities. Signs should be smaller and less obtrusive.

- He referred to Section 5.56.090 (D)(3) and stated the business should comply with State recordkeeping regulations.
- He referred to Section 5.56.090 (D)(9) and suggested the following language: “The permittee.....within 7 days of *application submittal*...”.
- He referred to Section 5.56.120 “Expiration”, and stated they need a better definition of “active use”.
- He referred to Section 5.56.140 “Appeals” (A) suggested the following language: “Within 15 days of the date of *mailing*.....”. Assistant Town Attorney Charne stated she will check on the service provision.
- He referred to Section 5.56.0140(E) and suggested the following language: “In the event...or revocation is *stayed* pending final...”.
- He referred to Section 5.56.140(H) and suggested the following language: “However, and irrelevant, *immaterial*, collateral...”.
- He referred to Section 5.56.140 (I) and suggested language be added that defines when the Town would make a determination. The paragraph should be broken up with the second sentence becoming (A), the third sentence would become (B), etc.
- He referred to Section 5.56.150 “Enforcement” (E) and stated the end of the sentence should include causes of action including, but not limited, to injunctive relief.

Commissioner Newton provided the following comments:

- She referred to Section 5.56.080, “Minimum criteria for issuance of a permit”, (C) (1) and stated she is concerned about people who have served time, paid their debt to society, and felt this provision limits their abilities to run a business.
- She wondered about the purpose of the criminal prohibition.

Chair Swift provided the following comments:

- She asked staff to look at what the Alcoholic Beverage Control Board does in these circumstances (*ex-felons*).
- She would be more comfortable knowing there has been a certain length of time after a convictions has occurred.

Commissioner Rodriguez provided the following comments:

- She is interested in limiting the THC levels and eliminating packaging geared towards children and stated she would leave this up to staff to determine the appropriate section.
- She referred to Section 5.56.07, “Review and action on applications” and stated she felt this was a land use entitlement. She sees two pathways. There could be a simple checklist with standards of operation that would be reviewed by staff. The Commission could be the deciding body with the Council as the appealable body.
- She referred to Section 5.56.090, “Operating requirements” (D)(1)(ii) and stated “vicinity” should be defined.
- She referred to Section 5.56.090(D(1)(iii) and suggested the following language: “ 25 % of the window shall not be covered”.
- She referred to Section 5.56.100 “Terms of permit and renewal procedure” and stated the permit should be good for two years
- She referred to Section 5.56.130 “Transfer of permits” and stated the word “projects” should be deleted.

Commissioner Newton provided the following comments:

- The issues she wanted to pursue would focus on the anti-franchise ordinance and the ability to limit products by requiring organic, no pesticide use, etc.
- She asked if they could impose organic standards. Planning Director Berto stated this could be part of the scoring criteria.

- She would like to include preferences for minority-owned or female-owned small businesses.
- She is also interested in limiting the big guys (Phillip Morris, etc.) from coming in with respect to obtaining business licenses and products.
- In terms of the phases and the application process, she would prefer to see a more ministerial procedure. This is doable if they can craft the criteria tight enough.
- There should be the ability for reconsideration during the pre-screening process if there is some kind of error.
- She is in favor of keeping signage for cannabis business the same as for other retail businesses.
- She is opposed to requiring the business to keep records of customers.
- She is opposed to prohibiting consumption in the retail establishment.
- Annual renewals would be fine if the process is ministerial.
- She referred to Section 5.56.160 “Application of this article” and stated she is in favor of the language as written.

Commissioner Green provided the following comments:

- He wants organic products and he does not want flavorings that cater to children.
- He wants to limit the THC levels.

Chair Swift provided the following comments:

- She agrees with Commissioner Newton about the signage- it should be the same for other businesses
- She likes the language as written with respect to consumption on the premises.
- She referred to limitation on products and noted this could be discussed by the Council in the future.

Planning Director Berto asked for comments on who reviews applications. Staff is proposing that the Commission does the scoring/ranking to set who qualifies to go to the Council for the final decision.

Chair Swift provided the following comment:

- She is fine with it as it is.

Commissioner Green provided the following comments:

- He is fine with the staff proposal but wants to see the criteria.
- He is aligned, in general, with the idea of ministerial permits.

Planning Director Berto stated staff would bring the draft ordinance back to the Commission.

Planning Director’s Report

Planning Director Berto reminded the Commission to submit his or her Form 700 to Town Clerk Gardner before April 1st.

Commissioners Comments and Requests

Commissioner Newton asked if staff plans to bring the fence ordinance to the Commission for review. A member of the public had expressed concern about the type of materials that are being used.

Commissioner Rodriguez stated the Marin Municipal Water District (MMWD) has scheduled an Eco Garden Tour for Saturday, May 4th from 10:00 a.m. to 4:00 p.m. It is free!

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:05 p.m.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary