



TOWN OF FAIRFAX

STAFF REPORT

September 4, 2019

TO: Mayor and Town Council

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

SUBJECT: Second reading and adoption of 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) Read by title only and adopt 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"
- 2) Read by title only and adopt 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"

BACKGROUND

The Town has had over 20 meetings (including this one) to discuss cannabis. A description of all the prior meetings was included in the July 17 staff report. The three meetings since the Town Council took up draft regulations are summarized as follows:

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.

On June 5, 2019, the Council requested additional changes to the ordinance.

On July 17, 2019 the Town Council focused on buffer setbacks, with a majority directing staff on options for consideration at the next meeting.

DISCUSSION

On August 7, 2019, the Town Council introduced the two ordinances. Tonight, is the second reading and adoption of the ordinances. If adopted, the ordinances would become effective in

30 days, which is prior to the October 31, 2019 expiration date of the current moratorium on commercial cannabis activities.

The ordinance amending Chapter 17 adopts zoning standards and restrictions for commercial cannabis uses and cannabis cultivation for personal use. The ordinance amending Chapter 5.56 regulates commercial cannabis businesses (i.e., licensing process).

The ordinances reflect the following key provisions governing cannabis uses:

Prohibited Cannabis Uses

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

Non-Commercial, Personal Cultivation

- 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.
- 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.

Permitted Cannabis Uses

- 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 immediately adjacent 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.

Medical Storefront Retailer Buffer Setback

- A 600-foot setback buffer is required from schools and youth centers.
- A 300-foot setback buffer is required from tutoring centers and day care centers. The definition of a tutoring center was revised per Council direction.

Delivery Only Retailer Buffer Setback

- A 250-foot setback buffer is required from schools and youth centers.

FISCAL IMPACT

None at this time

ATTACHMENTS

- A. Ordinance amending Town Code Chapter 17.110: Commercial Cannabis Uses
- B. Ordinance amending Town Code Chapter 5.56: Commercial Cannabis Business Permits

ORDINANCE NO. ____

**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**

WHEREAS, in 1996 the voters of the State of California approved the Compassionate Use Act ("CUA") (Health and Safety Code §11362.5) to enable persons residing in California who are in need of marijuana/cannabis for medical purposes to possess and cultivate it without fear of criminal prosecution under specified circumstances; and

WHEREAS, in 2004 the State enacted the Medical Marijuana Program Act ("MMPA") (Health and Safety Code § 11362.7 et seq.), to clarify the scope of the Compassionate Use Act, including the circumstances under which qualified patients and their primary caregivers could associate collectively or cooperatively to cultivate marijuana/cannabis for medical purposes without being subject to criminal prosecution; and

WHEREAS, in 2011, the Town of Fairfax approved Ordinance No. 759 adopting zoning regulations for medical marijuana dispensaries consistent with the CUA and MMPA; and

WHEREAS, the Town of Fairfax is home to the first cannabis dispensary in the country ever to receive a permit to sell medical marijuana; and

WHEREAS, in 2015, the State enacted the Medical Cannabis Regulation and Safety Act ("MCRSA," previously known as the Medical Marijuana Regulation and Safety Act), which adopted comprehensive regulations and licensing for the commercial medical cannabis industry; and

WHEREAS, in 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"), which legalized the non-medical use of marijuana by adults over 21 years of age, and created comprehensive regulations and licensing for the adult-use commercial cannabis industry; and

WHEREAS, on June 27, 2017, the State approved Senate Bill 94, which repealed MCRSA, amended the MMPA, and consolidated the State licensing schemes applicable to both medical and adult-use commercial cannabis activity under a single regulatory framework titled the "Medicinal and Adult-Use Cannabis Regulation and Safety Act" ("MAUCRSA"); and

WHEREAS, the MAUCRSA recognizes, preserves and does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that regulate state licensed cannabis businesses, including, but not limited to, local zoning and land use requirements, business license requirements, or to completely prohibit the establishment or operation of one or more types of businesses licensed under MAUCRSA within the local jurisdiction (Business and Professions Code, § 26200); and

WHEREAS, the MAUCRSA restricts the location of a commercial cannabis business premises within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day

care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius (Business and Professions Code, § 26054); and

WHEREAS, MAUCRSA provides that any standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections established by the State shall be the minimum statewide standards, and a local jurisdiction may establish additional standards, requirements, and regulations (Business and Professions Code, § 26201); and

WHEREAS, the Town Council of the Town of Fairfax recognizes the ongoing potential for adverse impacts on the health, safety, and welfare of its residents and business from primary and secondary effects associated with commercial cannabis business activities, such as increased traffic and parking impacts, offensive odors, increased youth exposure and normalization, increased risk of theft or other crimes, negative impacts on nearby businesses, nuisance problems, and increased DUI incidents, and that there is a need to adopt local zoning regulations to avoid or mitigate adverse impacts on the community which may arise from commercial cannabis activity; and

WHEREAS, the AUMA, as amended by the MAUCRSA, legalizes cultivation of not more than six living cannabis plants by persons 21 years of age or older for personal use; and

WHEREAS, the AUMA, as amended by the MAUCRSA, provides that a local jurisdiction shall not completely prohibit personal cultivation of cannabis inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure, but that a local jurisdiction may completely prohibit personal cultivation of cannabis outdoors (Health and Safety Code, § 11362.2); and

WHEREAS, numerous court decisions confirm that a municipality has authority to regulate medical marijuana activities, including personal cultivation of medical marijuana under the CUA and the MMPA (*Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 964-967; see also, *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729; *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975); and

WHEREAS, the outdoor cultivation of cannabis unregulated by local law poses a risk of adverse effects to the public health, safety and welfare due to the potentially high cash value of the plants and the potential creation of strong odors, aesthetic impacts, noise from equipment and other impacts that can be detectable beyond the property boundaries; and

WHEREAS, the indoor cultivation of cannabis has potential adverse effects to the health and safety; including structural damage due to increased moisture and excessive mold growth and a risk of fire and electrocution due to improper wiring or equipment; and

WHEREAS, on November 1, 2017, the Town Council adopted Urgency Ordinance No. 809 pursuant to Government Code Section 65858, establishing a forty-five (45) day moratorium on all commercial cannabis uses to the extent allowed by law in light of the passage of the AUMA and MAUCRSA; and

WHEREAS, the Town Council extended the moratorium for the full two years authorized under Government Code Section 65858 pursuant to Urgency Ordinance Nos. 812 and 820, to allow the Town to complete its study of potential cannabis regulations; and

WHEREAS, the Town Council, Planning Commission and Town staff have conducted numerous meetings, community outreach, and analyses to determine what types of commercial cannabis uses should be

allowed to establish in the Town and what appropriate regulations should be required, if any, in light of the passage of the AUMA and MAUCRSA; and

WHEREAS, as a result of that study, and in accordance with Business and Professions Code, Sections 26054 and 26200, this Ordinance effects zoning regulations, including buffers for sensitive uses, for the physical establishment of certain commercial cannabis retail uses within Fairfax, while prohibiting all other commercial cannabis uses at this time (including all commercial cultivators, manufacturers, testing laboratories, distributors and microbusinesses), to meet the unique local needs of the community and to protect the public health, safety, and welfare; and

WHEREAS, the Town Council of the Town of Fairfax has determined that reasonable regulations regarding the establishment and operation of cannabis delivery-only retailers (also known as non-storefront retailers) and medicinal cannabis storefront retailers in the Town, subject to a commercial cannabis business permit, will provide an appropriate balance between the Town's interests in fostering retail commercial activities and lawful community access to cannabis, while also protecting the public health, safety, and welfare of Fairfax residents; and

WHEREAS, it is also the desire of the Town Council to update the Town's regulations applicable to cultivation of cannabis for personal medical use and for personal adult-use for consistency with AUMA, as amended by MAUCRSA, and to protect the public health, safety, and welfare; and

WHEREAS, nothing in this Ordinance shall be construed to allow any activity relating to cannabis that is otherwise not expressly allowed in the Fairfax Municipal Code or is illegal under State law, or allow persons to engage in conduct that endangers others or causes a public nuisance; and

WHEREAS, nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. 841 or to permit any activity that is prohibited under said Act except as mandated by State law; and

WHEREAS, the Town Council directed the Planning Commission to consider zoning amendments to address commercial cannabis uses on August 15, 2018; and

WHEREAS, the Planning Commission held eight public hearings, and ultimately voted on April 11, 2019 against the proposed zoning text amendments; and

WHEREAS, the Town Council held a study session on May 1, 2019 and a duly noticed public hearing on June 5, 2019 concerning proposed commercial cannabis regulations, and has received public comment on the matter; and

NOW, THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

Section 1. **Recitals.** The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. **Code Amendment.** Chapter 17.110, entitled "Medical Marijuana Dispensaries" of Fairfax Municipal Code, Title 17 ("Zoning") is hereby amended and restated as set forth in full on Exhibit "A," attached hereto and incorporated herein by reference.

Section 3. **Code Repeal.** Article III, entitled “Medical Marijuana Cultivation,” of Fairfax Municipal Code, Title 17 (“Zoning”), Chapter 17.138 (“Regulations Applying In Multiple Zoning Districts”) is hereby repealed.

Section 4. **General Plan Consistency.** The Town Council finds and determines that the amendments to the Town’s zoning code would, in fact, conform to the Town’s General Plan on the basis of the following:

- (a) The Ordinance permits limited numbers of certain commercial cannabis retail uses in existing commercial zones. This Ordinance is consistent with Fairfax General Plan Land Use Element Goal LU-5 to “manage future growth while preserving the area’s natural resources” and with Policy LU-5.1.1, which provides that “[n]ew and renewed development shall occur primarily as infill development;” and
- (b) By allowing local cannabis retailers and mitigating the need for residents to utilize cannabis retailers located in other jurisdictions, the Ordinance is also consistent with Fairfax General Plan Conservation Element, Program CON-1.3.1.4: Educate citizens on primary means to reduce GHG emissions, such as transportation choices and supporting the local economy, including locally-grown foods and local businesses, to reduce GHG emissions; and
- (c) The Ordinance allows cannabis retailers to provide cannabis deliveries in Town. This is consistent with Fairfax General Plan Circulation Element Goal C-6, which seeks to “promote less reliance on single-occupant vehicles” because private delivery services can potentially reduce the need for “errand-running” trips, thereby potentially reducing traffic congestion (General Plan, p. C-3); and
- (d) The Ordinance permits personal cultivation of up to six plants of medical or adult-use cannabis per private residence pursuant to State law, subject to reasonable regulations to minimize potential adverse impacts to surrounding neighbors and the general public. Additionally, the Ordinance limits the number of commercial cannabis retail locations to two and limits storefront retailers to medical-use sales only. No other community in Marin County provides for adult-use cannabis storefront retailers and allowing adult-use storefront retailers in Fairfax could create undue traffic, parking impacts and strain on town’s resources and quality of life. By addressing potential neighborhood and community impacts, this Ordinance is consistent with Fairfax General Plan Land Use Element Goal LU-7 to “preserve community and neighborhood character” and with Objective LU-7.2 to “[p]reserve, maintain, and enhance in a sustainable manner, the existing character, scale, and quality of life in Fairfax’s residential neighborhoods;” and
- (e) By limiting the wattage of indoor grow lights and prohibiting the use of gas products in connection with personal cannabis cultivation, the Ordinance is also consistent with Fairfax General Plan Safety Element, Goal S-3, to minimize risk due to fires, and Objective S-3.1.1 to protect people and property from risks associated with urban and wildland fire.

Section 5. **Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each and every section,

subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 6. **CEQA.** The Town Council hereby determines that 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. The Town Council hereby directs the Town Manager or his/her designee to prepare and file a Notice of Exemption within five business days following adoption of this Ordinance.

Section 7. **Effective Date; Posting.** This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

Section 8. **Filing with State Licensing Authorities.** The Town Clerk shall submit a copy of this ordinance to the Bureau of Cannabis Control as provided by Business and Professions Code, Section 26055.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 7th day of August 2019, and duly adopted at the next regular meeting of the Town Council on the 4th day of September, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Barbara Coler, Mayor

Attest:

Hannah Politzer, Deputy Town Clerk Date

EXHIBIT “A”

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. “Adult-use cannabis” or “adult-use” means cannabis or cannabis products intended to be used for non-medical purposes by persons twenty-one years of age or older in conformance with the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10) and the provisions of State law regarding cannabis use and sale (Health and Safety Code, §11362.1 et seq.), as each may be amended from time to time.
- B. “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.
- C. “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.
- D. “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.
- E. “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.

- F. “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.
- G. “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.
- H. “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.
- I. “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 selling 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.
- J. “Cannabis testing laboratory” means a laboratory, facility, entity, or site that offers or performs tests or testing of cannabis or cannabis products.
- K. “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.
- L. “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.

- M. “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.”
- N. “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.
- O. “Indoor” means within a fully enclosed and secure structure.
- P. “Medicinal cannabis” or “medical use” means cannabis or cannabis products intended to be used for medical purposes in accordance with the Compassionate Use Act of 1996 (California Health and Safety Code §11362.5) and the Medicinal Marijuana Program Act (California Health and Safety Code §11362.7 *et seq.*), as each may be amended from time to time.
- Q. “Outdoor” means any location not within a fully enclosed and secure structure, such as a location exposed to the open air or within a greenhouse.
- R. “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.
- S. “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.
- T. “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.

- U. “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.
- V. “School” means a place of instruction at the primary, secondary or high school level for at least four grades within a range from transitional kindergarten or kindergarten through 12 (whether public, private, or charter), but does not include any place where instruction is conducted primarily in a private home.
- W. “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.
- X. “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.
- Y. “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.
- Z. “Tutoring center” means a place that provides instruction supplemental to that provided by a school, requires compensation, and offers such instruction to at least ten clients who do not reside on the premises, for at least 37 weeks a year. A tutoring center may be located in a residence as long as the residence is in a commercial zone.
- AA. “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, 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, and provided there shall be no more than two (2) cannabis retailer locations at any one time in the following use categories, or in any combination thereof:

1. Medical-use cannabis storefront retailer(s); and/or
2. Delivery-only retailer(s), which may be medical-use, adult-use 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 17.110.050 ("Adult-Use Cannabis Deliveries By Certain Existing Medical Marijuana Dispensaries"), below. In the event that the existing medical marijuana dispensary ceases to operate in accordance with a legally-issued permit, another a permit may be issued for another operator or location such that at all times, two (2), but not more than two (2), retail locations may hold permits to legally operate. One retail location may consist of side-by-side licensed premises as defined in 16 California Code of Regulations, Section 5025, in order to permit the licensing and operation of both a medical use storefront retailer and adult-use delivery-only retailer by a single operator.

- B. Cannabis retailers may be permitted in the following zones:

1. Medical-Use 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).

- C. 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. Medical-Use Cannabis Storefront Retailers: Within a 600-foot radius of a school, or youth center. (See Business and Professions Code, § 26054.) Within a 300 foot radius of a daycare center or tutoring center.
2. Cannabis Delivery-Only Retailers: Within a 250-foot radius of a school. or youth center. 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 other potentially sensitive uses, beyond the radii contained herein.

The distances specified in this Section shall be the horizontal distance measured in a straight line from the property line of the specified use 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 and Safety Code, § 11362.768(c).)

D. 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. Medical-Use 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, plus one space per delivery vehicle unless an employee vehicle is used to conduct deliveries.
 - 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, plus one space per delivery vehicle unless an employee vehicle is used to conduct deliveries.
2. Size of facility. The size of the facility shall not exceed 1,500 square feet exclusive of restroom facilities and common areas.
3. 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.
4. 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.
5. 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, except signage shall be limited to a single window or wall sign and in no circumstances shall any signage for a cannabis retailer exceed six square feet in area.

§ 17.110.050 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.

§ 17.110.060 - § 17.110.090 RESERVED.

§ 17.110.100 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 (CO₂ , 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 and Professions Code, Division 10) is prohibited within the Town of Fairfax.

§ 17.110.110 MEDICAL CANNABIS ADMINISTRATIVE EXCEPTION.

- A. Any qualified patient or primary caregiver may seek a medical cannabis administrative exception to Section 17.110.100, 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 17.110.100, 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 § 17.110.100(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 ten (10) 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 § 17.110.110 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.

§ 17.110.120 ENFORCEMENT.

- A. *Public nuisance.* The violation of this Chapter is hereby declared to be a public nuisance and may be enforced pursuant to the provisions of Chapter 1.12 of the Fairfax Town Code.
- B. *Seizure and destruction of cannabis.* To the extent authorized by state law, all cannabis seized by the Town Police in the enforcement of this Chapter shall be seized, retained and destroyed in the same 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 Chapter. 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.

§ 17.110.130 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.

ORDINANCE NO. __

**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**

WHEREAS, on June 27, 2017, the State of California approved Senate Bill 94, which consolidated the State licensing schemes applicable to both medical and adult-use commercial cannabis activity under a single regulatory framework titled the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (“MAUCRSA”); and

WHEREAS, the MAUCRSA sets forth a comprehensive framework to regulate commercial cannabis activity from seed to sale, which includes product labeling, a track-and-trace program, and other consumer protections, which mitigates against some of the potential adverse impacts to public health, safety and welfare due to commercial cannabis activities; and

WHEREAS, the Town of Fairfax is home to the first cannabis dispensary in the country ever to receive a permit to sell medical marijuana; and

WHEREAS, the Town Council of the Town of Fairfax recognizes ongoing potential for adverse impacts on the health, safety, and welfare of its residents and business from secondary effects associated with commercial cannabis business activities, such as increased traffic and parking impacts, offensive odors, increased youth exposure and normalization, increased risk of theft or other crimes, negative impacts on nearby businesses, nuisance problems, and increased DUI incidents, and that there is a need to adopt local regulations to avoid and mitigate adverse impacts on the community which may arise from commercial cannabis businesses; and

WHEREAS, the MAUCRSA recognizes, preserves and does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that regulate state licensed cannabis businesses, including, but not limited to, local zoning and land use requirements, business license requirements, or to completely prohibit the establishment or operation of one or more types of businesses licensed under MAUCRSA within the local jurisdiction (Business and Professions Code, § 26200); and

WHEREAS, the MAUCRSA provides that any standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections established by the State shall be the minimum statewide standards, and a local jurisdiction may establish additional standards, requirements, and regulations (Business and Professions Code, § 26201); and

WHEREAS, the Town Council, Planning Commission and Town staff have conducted numerous meetings, community outreach, and analyses to determine what types of commercial cannabis businesses should be allowed in the Town, if any, and appropriate regulations, in light of the passage of the AUMA and MAUCRSA in the State of California; and

WHEREAS, as a result of that study, and in accordance with Business and Professions Code, Section 26200, this Ordinance effects business permitting regulations for the establishment and operation of certain commercial cannabis retail uses within Fairfax as the best course of action for the Town’s citizens and the community at large; and

WHEREAS, the Town Council of the Town of Fairfax has determined that reasonable regulations regarding the establishment and operation of delivery-only retail businesses (also known as non-storefront retailers) and medicinal cannabis storefront retailers in the Town, as permitted in the Town’s Zoning Code,

will provide an appropriate balance between the Town's interests in fostering certain retail commercial activities and community access to cannabis while also protecting the public health, safety, and welfare of Fairfax residents; and

WHEREAS, nothing in this Ordinance shall be construed to allow any activity relating to cannabis that is otherwise not expressly allowed in the Fairfax Municipal Code or is illegal under State law, or allow persons to engage in conduct that endangers others or causes a public nuisance; and

WHEREAS, nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to permit any activity that is prohibited under said Act except as mandated by State law; and

NOW, THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

Section 1. **Recitals.** The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. **Code Amendment.** Chapter 5.56, entitled "Cannabis Businesses," of the Fairfax Municipal Code, Title 5 ("Business Taxes, Licenses and Regulations"), Division II ("Specific Business Regulations") is hereby amended and restated as set forth in full on Exhibit "A," attached hereto and incorporated herein by reference.

Section 3. **Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 4. **CEQA.** The Town Council hereby determines that 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. The Town Council hereby directs the Town Manager or his/her designee to prepare and file a Notice of Exemption within five business days following adoption of this Ordinance.

Section 5. **Effective Date; Posting.** This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

Section 6. **Filing with State.** The Town Clerk shall submit a copy of this ordinance to the Bureau of Cannabis Control as provided by Business and Professions Code, Section 26055.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 7th day of August 2019, and duly adopted at the next regular meeting of the Town Council on the 4th day of September 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN

Barbara Coler, Mayor

Attest:

Hannah Politzer, Deputy Town Clerk

Date

EXHIBIT “A”

Fairfax Municipal Code

CHAPTER 5.56: CANNABIS BUSINESSES

ARTICLE I: COMMERCIAL CANNABIS BUSINESS PERMITS

5.56.010 Purpose and intent.

It is the purpose and intent of this Chapter to regulate commercial cannabis activities located within the Town of Fairfax in order to promote the health, safety, and general welfare of residents and businesses within the Town. Commercial cannabis activities shall comply with all provisions of the Fairfax Municipal Code, State law, and all other applicable local codes and regulations, including all applicable land use and zoning regulations imposed on cannabis activities.

5.56.020 Definitions.

The definitions for commercial cannabis business uses and activities in this Chapter shall be as defined in Section 17.110.020 of the Municipal Code. In addition, for purposes of this Chapter, the following words and phrases whenever used in this Chapter shall have the meanings defined in this Section:

- A. “Adult use” shall refer to cannabis goods intended to be sold for nonmedical use by persons twenty-one years of age or older in conformance with the MAUCRSA and the provisions of State law regarding cannabis use and sale (California Health & Safety Code, §11362.1 et seq.).
- B. “Application period” shall be the time stated in the notice of availability during which the Town will accept applications for commercial cannabis business permits for one or more categories of commercial cannabis activities.
- C. “Cannabis business” means the actual or intended conduct of commercial cannabis activity, as defined by MAUCRSA, or of one or more commercial cannabis use(s), as defined by this Code.
- D. “Cannabis goods” means cannabis, including dried flower, cannabis products, and products containing cannabis.
- E. “Chief of Police” shall refer to the Town of Fairfax Chief of Police or the person designated by the Chief of Police.
- F. “Day” shall refer to calendar days.
- G. “Financial interest” shall have the same meaning as that term is defined in 16 California Code of Regulations, Section 5004, as may be amended from time to time.
- H. “Manager” shall mean a person can or does have or share ultimate control over the day-to-day operations of a business.

- I. "MAUCRSA" shall mean the Medical and Adult-Use Cannabis Regulation and Safety Act (California Business & Professions Code, Division 10), as may be amended from time to time.
- J. "Medical use" shall refer to cannabis goods intended to be sold for medicinal use by a qualified patient in California who possesses a physician's recommendation pursuant to the Compassionate Use Act of 1996 (California Health & Safety Code §11362.5), the Medicinal Marijuana Program Act (California Health & Safety Code §11362.7 *et seq.*) and MAUCRSA, as each may be amended from time to time.
- K. "Owner" shall have the same meaning as that term is defined in 16 California Code of Regulations, Section 5003, as may be amended from time to time.
- L. "Person" shall mean any natural person, partnership, cooperative, association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- M. "Planning department" means the Department of Planning and Building Services of the Town of Fairfax.
- N. "Police department" means the Police Department of the Town of Fairfax.

5.56.030 Prohibited commercial cannabis activities.

- A. All medicinal and adult-use commercial cannabis uses or other activities requiring a State commercial cannabis license under the MAUCRSA are prohibited, except as expressly allowed by this Chapter and Chapter 17.110.
- B. The foregoing prohibition shall not apply to:
 - a. Conduct specified in California Business & Professions Code Sections 26054(c) and (d), 26080(b), or 26090(e).
 - b. Cannabis delivery originating from a retailer located outside of the Town, which is not prohibited or regulated by this Chapter.
- C. Cannabis temporary events, as provided under California Business & Professions Code Section 26200, are prohibited in the Town of Fairfax.

5.56.040 Permit requirements.

- A. Any person seeking to establish or operate a medicinal or adult-use cannabis business from a premises located in the Town must first obtain and maintain a commercial cannabis business permit in accordance with this Chapter prior to establishing and/or operating.
- B. Commercial cannabis business permits may be issued to no more than two (2) cannabis retail locations at any one time in the following activity categories, or in any combination thereof:
 - 1. Medical-use only storefront retailer; and/or

2. Delivery-only retailer(s) (non-storefront retailer), which may be medical-use, adult-use or both.

The existing medical marijuana dispensary that has been legally and continually operating as of April 3, 2018 shall be counted as one location. In the event that the existing medical marijuana dispensary ceases to operate in accordance with a legally-issued permit, another permit may be issued for another operator or location such that at all times, two (2), but not more than two (2), retail locations may hold permits to legally operate. One retail location may consist of side-by-side licensed premises as defined in 16 California Code of Regulations, Section 5025, in order to permit the operation of both a medical use storefront retailer and adult-use delivery-only retailer by a single operator.

- C. When the number of commercial cannabis business permit locations falls below the limit set forth above, the Town Manager (or his or her designee) shall post a notice of availability that the Town will be accepting applications for commercial cannabis business permit(s). The notice shall include the dates during which applications will be accepted, information regarding application requirements and directions, and the contact information for questions. The notice shall be posted on the Town's website and on the three public places in the Town of Fairfax designated for official postings.

5.56.060 Permit application.

- A. All applications for a commercial cannabis business permit shall be filed with the Town Manager or designee, using forms provided by the Town, within the application period that is established by the Town Manager, and which period may be extended from time to time. It is the responsibility of the applicant to provide a complete application and all information required for approval of the permit. The application shall be made under penalty of perjury. At a minimum, each application shall contain:
 1. A complete identification of the applicant including name, address and phone number to which notice of action on the application and correspondence is to be mailed;
 2. A description of the statutory entity or business form that will serve as the legal structure for the applicant and a copy of its formation and organizing documents, including, but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement;
 3. Names, residence and business addresses of each and every owner. If one or more owners is a statutory entity or other business form, the name of the entity shall be set forth exactly as shown in its formation and organizing documents together with the names, residence and business addresses of each of the owners and other persons with a financial interest in the entity;
 4. The names, residence and business addresses of each and every manager;

5. The name, residence and business address of the owner of the property, who shall indicate in writing his/her/its consent to cannabis business being conducted on the property by signing the application in the space provided;
6. A complete list of every individual who has a financial interest in the commercial cannabis business, who is not an owner, as defined;
7. A site plan, floor plan, and elevations of the property where the business will operate, and indicate whether any exterior building improvements, including façade improvements or exterior signage is proposed. If exterior building improvements or signage is proposed, then compliance with Chapters 17.020 and 17.064 is required, and the applicant shall submit its application for any design review approval and/or sign permits concurrently with the application for the commercial cannabis business permit;
8. An operations plan for the business and the name under which it is to be operated;
9. A traffic study for the proposed location, if a traffic impact permit is required under Chapter 17.056. If required, the applicant shall submit its application for the traffic impact permit concurrently with the application for the commercial cannabis business permit;
10. Evidence of compliance with the California Environmental Quality Act (California Public Resources Code §21000 et seq.);
11. Whether or not any person referred to in subsection (1), (3), (4), (5) or (6) has had a license, permit or use permit for the same or any similar business suspended or revoked anywhere, and, if so, the circumstances of such suspension or revocation;
12. The proposed hours of operation;
13. The applicant's certificates of automobile and general commercial liability insurance coverage and evidence of workers' compensation insurance (if required) related to the operation of the commercial cannabis business;
14. An executed release of liability and indemnity agreement in the form set forth by the Town; and
15. Such other related information or documentation consistent with this Code and state law as the Town Manager may require.

The residential addresses required in subsections (3), (4) and (5), as well as the name(s) of managers listed in subsection (4), shall be kept private and not made available to the public.

- B. An application shall be accompanied by an application review fee, as established by resolution of the Town Council from time to time. This application review fee shall not include fingerprinting, photographing, and background check costs and shall be in addition to any other business license fee or other charge imposed by this Code or other governmental agencies.

5.56.070 Review and action on applications.

The processing of new permit applications will include the following phases:

A. Phase 1 – Prescreening and Criminal History:

1. Upon close of the application period, Town staff shall review each complete application for general compliance with the Town’s municipal code, and shall reject any application which does not meet such requirements or is incomplete. Rejected applications shall not be scored. The Town shall also disqualify any application that contains any false or misleading information.
2. All exterior building improvements, including façade improvements and proposed signage, shall be reviewed for conformance with the Town’s zoning and land use standards. If required, the applicant shall 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. The prescreening approval may be conditioned upon the applicant submitting complete application materials for design review, traffic impact and/or sign permits. All applications will be required to comply with environmental review pursuant to the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21000 et seq.).
3. Each applicant shall submit to the Chief of Police a recent photograph of the applicant (if an individual), each owner and current or prospective manager. The applicant, owner(s) and manager(s) shall also submit fingerprints pursuant to “Livescan” procedures and pay all costs associated with such submittal. Upon receipt of the Livescan results, the Chief of Police shall review and report if the criminal history of the applicant, owner(s) and manager(s) satisfies the minimum criteria pursuant to Section 5.56.080.
4. The applicant prescreening decisions will be made by the Town Manager within 60 days of the close of the application period or receipt of Livescan results, whichever is later. Only applicants who receive approval of the prescreening review may proceed to the next phase of the selection process.

B. Phase 2 – Application Scoring:

1. Upon approval of the prescreening review, the Town Manager or designee shall refer the application to the Planning Commission for preliminary scoring of the application(s) and recommendation to the Town Council. A public hearing on a commercial cannabis business permit application(s) may be consolidated with any required hearing for design review approval, traffic impact permit and/or sign permits.
2. The Town Council will issue the final score on the commercial cannabis business permit application, relying only upon the written application itself, any other written Town materials generated in connection with the review, and the applicant presentation and representations at the public hearing. The decision of the Town Council will be made at a

duly noticed public hearing and may be consolidated with any required hearing for design review approval, traffic impact permit and/or sign permits.

3. The specific scoring criteria, weighting (points per criteria), minimum qualifying scores and any additional application procedures will be determined by resolution of the Town Council prior to the commencement of the application period and posted publically on the Town's website.
 4. If the number of applicants who receive minimum qualifying scores at Phase 2 exceeds the maximum number of permits available, then applicants will be selected and issued a commercial cannabis business permit based on highest score.
 5. Qualified applicants that are not selected will be placed on a qualified applicant list. Applicants placed on the qualified applicant list will be notified when future applications are accepted. A qualified applicant will remain eligible for three years.
- C. Issuance of a commercial cannabis business permit does not create a land use entitlement. Furthermore, no permittee may begin operations, notwithstanding the issuance of a permit, until all of the State and local laws and regulations, including but not limited to the requirements of this Chapter and of the permit, have been complied with and the Town verifies such compliance. The issuance of a commercial cannabis business permit does not excuse compliance with any other requirement in the Zoning Ordinance or Building Code. Any additional permits required may be obtained after the business permit is issued but before operation.
- D. The Town reserves the discretion to not grant any applications in the interest of the health, safety, or general welfare of the Town.

5.56.080 Minimum criteria for issuance of a permit.

- A. The applicant, each owner, and any existing or prospective manager, must be at least twenty-one years of age.
- B. The applicant, each owner, and any existing or prospective manager, must not have had a similar type of license or permit previously revoked or denied for good cause within the immediately preceding two years prior to the permit application.
- C. Neither the applicant, any owner, nor any proposed or prospective manager, shall have been convicted of:
 1. Any offense relating to possession, manufacture, sales, or distribution of a controlled substance, with the exception of cannabis-related offenses;
 2. Any offense involving the use of force or violence upon the person of another;
 3. Any offense involving theft, fraud, dishonesty or deceit;

4. Any offense involving sales of cannabis to a minor or use of a minor to distribute cannabis;
5. Any common law felony.

For purposes of this subsection (C), a conviction includes a plea or verdict of guilty or a conviction following a plea of nolo contendere. The above criteria are in addition to any applicable provisions of state law.

5.56.090 Operating requirements.

- A. **State and Local Licenses.** The permittee shall obtain and maintain a State commercial cannabis license for the equivalent State cannabis commercial activity. The permittee shall obtain and maintain all other required State and local licenses, permits, or approvals as required.
- B. **MAUCRSA Compliance.** The permittee shall meet all operating requirements of the MAUCRSA, and any regulations promulgated thereunder.
- C. **Criminal History.** No permittee, its owners, managers, employees, or volunteer workers, shall have been convicted of an offense listed Section 5.60.080(C).
- D. The permittee shall ensure that its operations conform to the following requirements in addition to the State regulations, which shall include:
 1. **Signage and notices.**
 - i. All signage shall meet the Town Zoning Code's sign requirements.
 - ii. A notice shall be clearly and legibly posted in the business premises indicating that smoking, ingesting or consuming cannabis on the premises is prohibited.
 - iii. Signs on the premises shall not obstruct the entrance or windows in any amount.
 - iv. Address identification shall comply with Fire Department illuminated address signs requirements.
 2. **Entrances.** The primary entrance shall be located and maintained free of barriers, landscaping and similar obstructions so that it is visible from public streets, sidewalks or driveways.
 3. **Records.** A current register of all employees and volunteer workers shall be maintained.
 4. **Odor Control.** An odor absorbing ventilation and exhaust system shall be installed so that odor generated inside the business is not detected outside the property lines or lease area boundaries, or anywhere on adjacent property or public rights-of-way, or within any other unit located within the same building as the cannabis business.
 5. **Consumption.** Cannabis and cannabis products shall not be consumed (whether eaten, smoked, vaporized, applied or other method of ingestion) on the premises of the cannabis business, including parking areas, or in a delivery vehicle.

6. Operating Hours. A permittee may operate between the hours of 9:00 a.m. to 9:00 p.m., up to seven days a week.
7. Display of permit. Each commercial cannabis business permit shall be prominently displayed at the business premises in a location readily visible to Town officials, such as a lobby or entryway, and on any business website or advertisement.
8. Contact Person. A permittee shall provide the Town with the name and phone number of an on-site community relations staff person or designee to whom one can provide notice if there are operating concerns. The permittee shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating concerns before any calls or complaints are made to the Town.
9. State License Application. The permittee shall submit to the Planning Department within seven (7) days of submission to the State cannabis licensing authority, a copy of any State commercial cannabis license application, renewal application and/or any business modification request or notification submitted to the State licensing authority (for retail, the Bureau of Cannabis Control) related to the permitted business.
10. Inspections. The Fairfax Code Enforcement and Police Department shall have the right, without warrant, to inspect the premises for which the permit was obtained on the following conditions:
 - i. The scope of the inspection is limited to determining compliance with this Chapter;
 - ii. The inspection shall be conducted not more often than once every six months, except in the event of a complaint by a member of the public;
 - iii. The inspection shall be conducted during regular business hours; and
 - iv. The inspection shall be conducted at a time and in a manner that will minimize business interruption.
11. State and Local Law Compliance. The permittee shall comply with all state and local laws, rules and regulations, including payment of all applicable fees and taxes and payment of any future-adopted cannabis taxes.
12. Notification of State and Local Law Violations. A permittee shall immediately report to the Chief of Police any of the following:
 - i. Arrests of any employees, directors, managers, owners or volunteer workers for an offense other than a misdemeanor traffic offense.
 - ii. Any disciplinary action taken by a State licensing authority regarding the permittee's State commercial cannabis license and submit a copy of any notice or order.

- iii. The occurrence of any event that constitutes a violation of this Chapter or State law related to the conduct of the commercial cannabis business.
- 13. The permittee shall be responsible for all violations of this Chapter and MAUCRSA or its implementing regulations, whether committed by the permittee, its owners, or any employee, volunteer worker, director, manager or other agent of the permittee, for violations that occur in or about the premises of the commercial cannabis business whether or not said violations occur within the permit holder's presence.

5.56.100 Term of permit and renewal procedure.

- A. Permits issued under this Chapter shall be valid for 24 months from the date of issuance. The permit may be renewed annually.
- B. Permits may be renewed by the Town Manager unless the permit is suspended or revoked in accordance with the provisions of this Chapter or if the application for renewal fails to comply with the provisions of this Chapter.
- C. Applications for renewal shall be made at least 90 days before the expiration date of the permit and shall be accompanied by the nonrefundable application review fee. Applications for renewal shall be acted upon by the Town Manager and the Town Manager shall notify the permittee within 60 days of his or her decision. Applications for renewal made less than 90 days before the annual expiration date shall not stay the expiration date of the permit.
- D. A permittee shall be responsible for paying an annual permit fee, as established by resolution of the Town Council from time to time. This deposit shall cover the full cost borne by the Town to administer the permit program and all responsibilities established in this Chapter.

5.56.110 Permit suspension and revocation.

- A. The Town Manager may suspend or revoke a commercial cannabis business permit if any of the conditions identified in this Section exist. On determining that grounds for permit suspension or revocation exist, the Town Manager shall serve the permittee with written notice of the proposed suspension or revocation. The notice shall state the ground or grounds upon which the decision is based, the effective date of the decision, the right of the permittee to appeal the decision to the Town Council, and that the Town Manager's decision will be final if no written appeal is timely submitted to the Town in accordance with Section 5.56.140. The notice is effective within fifteen (15) days from the date of service of the notice. If an appeal is timely and properly filed, then the effective date of the notice is stayed.
- B. A permittee is subject to suspension or revocation of the permit, or subject to other appropriate disciplinary action, for any of the following causes arising from the acts or omissions of the permittee, or an employee, volunteer worker, agent, owner, director or manager of a commercial cannabis business:

1. The permittee has made a false, misleading or fraudulent statement or omission of facts in the application for a permit, or in any report or record required to be filed with the City.
 2. The commercial cannabis business has been operated as a nuisance, as defined in Fairfax Municipal Code or as defined in State law.
 3. A violation of any provision of this Chapter, or any other provision of the Municipal Code.
 4. There has been one or more violations of State law, including but not limited to violations of MAUCRSA or its implementing regulations.
- C. Upon revocation, no new permit may be issued for the applicant or any other business entity in which the applicant is a partner or owner of ten percent or more of the business for a period of five years from the date of revocation.

5.56.120 Expiration.

A permit shall expire if not in active use for a period of six months at any time after the date of issuance. "Active use" means conducting the commercial cannabis activity authorized by the permit following receipt of a certificate of occupancy, if required. This period may be extended if the permit has applied for a State commercial cannabis license that has been delayed through no fault of the permittee. Expired permits may not be renewed but the permit holder may apply again when a permit vacancy occurs.

5.56.130 Transfer of permits.

A commercial cannabis business permit issued under this Chapter is valid only as to the permittee and approved site, and is therefore nontransferable to other persons or locations. A commercial cannabis business permit is not property and has no value. A commercial cannabis business permit may not be transferred, sold, assigned or bequeathed expressly or by operation by law. Any attempt to directly or indirectly transfer a commercial cannabis business permit shall be deemed to constitute a voluntary surrender of such permit and such permit shall therefore be automatically rendered null and void. Except, however, if the permittee is a partnership, corporation, limited liability company or other entity, and one or more of the owners should die, one or more of the surviving owners may acquire, by purchase or otherwise, the interest of the deceased owner without affecting a surrender or termination of such permit and in each case the permittee shall thereafter be deemed to be the surviving owner(s). Additionally, a commercial cannabis business permit may be endorsed to add an additional owner, provided such prospective new owner satisfies the requirements for applicants, including but not limited to, a criminal history check and the qualifications listed in Section 5.56.080, as approved by the Town Manager.

5.56.140 Appeals.

- A. Within fifteen (15) days after the date of service of a decision of the Town Manager to revoke, suspend, deny renewal of a permit, or deny prescreening review, the permittee or applicant may appeal such action by filing a written appeal with the Town Clerk.

- B. The notice of appeal shall be in writing and signed by the person making the appeal, or his or her legal representative, and shall contain the following:
1. The name, address, telephone number of the appellant.
 2. A true and correct copy of the notice of the decision issued by the Town Manager from which the appellant is appealing.
 3. A specific statement of the reasons and grounds for making the appeal in sufficient detail to enable the Town Council to understand the nature of the controversy, the basis of the appeal, and the relief requested, not to exceed five pages.
 4. All documents or other evidence pertinent to the appeal that the appellant requests the Town Council to consider at the hearing.
- C. At the time of filing the appellant shall pay the designated appeal fee, established by resolution of the Town Council from time to time.
- D. Failure of the Town Clerk to receive a timely and proper appeal, or the requisite fee, constitutes a waiver of the right to appeal the decision of the Town Manager and a failure to exhaust all administrative remedies. In this event, the Town Manager's decision is final and binding.
- E. In the event a notice of appeal is timely filed, the Town Manager's decision is stayed until a final order has been rendered and issued by the Town Council. If a notice of appeal is not timely filed, in the event of a decision of nonrenewal, the permit expires at the conclusion of the term of the permit and in the event of a suspension or revocation, the suspension or revocation is effective upon the expiration of the period for filing a written notice of appeal.
- F. Upon receipt of a timely notice of appeal, the Town Clerk shall set the matter for a hearing before the Town Council. The Town Council shall preside over the hearing on appeal, hear the matter de novo and conduct the hearing pursuant to the procedures set forth by the Town. The Town Manager bears the burden of proof to establish the grounds for his or her decision by a preponderance of the evidence. The issuance of the Town Manager's decision constitutes prima facie evidence of grounds for the nonrenewal, suspension, or revocation.
- G. The appeal shall be held within a reasonable time after the filing of the notice of appeal, but in no event later than ninety (90) days from the date of such filing. The Town shall notify the appellant in writing of the date, time and location of the hearing at least ten (10) days prior to the date of the hearing.
- H. At the hearing the appellant may present witnesses and evidence relevant to the decision appealed. Appeal hearings are informal, and the formal rules of evidence and discovery applicable in a court of law shall not apply to the hearing. However, rules of privilege shall

be applicable to the extent they are permitted by law, and irrelevant, immaterial and repetitious evidence may be excluded.

- I. After the conclusion of the appeal hearing, the Town Council shall determine if any grounds exists for the Town Manager's decision.
 1. If the Town Council determines that no facts exist to support the Town Manager's decision, the Town Manager's notice of decision shall be deemed cancelled.
 2. If the Town Council determines that any facts exist to support the Town Manager's notice of decision, the decision shall be upheld.

The Town Council shall issue a written final order. The decision of the Town Council shall be final and shall be served on the appellant. The decision shall contain the following statement: "The decision of the Town Council is final and binding. Judicial review of this decision is subject to the time limits set forth in California Code of Civil Procedure section 1094.6."

5.56.150 Service of Town notices.

Except as otherwise expressly required by a provision of this Chapter, any notice required by this Chapter may be served by personal delivery to any applicant or permittee, or by first class mail. The date of service shall be the date it is personally delivered or placed in a U.S. Postal Service receptacle. Any notice issued to any applicant or permittee may be sent to the mailing address as listed on the application submitted to the Town. Failure of any applicant or permittee to receive a properly addressed notice by mail shall not invalidate any action, decision, determination or proceeding under this Chapter.

5.56.160 Enforcement.

- A. It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this Chapter. A failure to obtain a commercial cannabis permit required by this Chapter shall be punishable in accordance with the Fairfax Municipal Code and State law.
- B. All remedies prescribed under this Chapter shall be cumulative and the use of one or more remedies by the Town shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.
- C. Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.
- D. Any use or condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is declared a public nuisance and may be summarily abated by the Town.

- E. The violation of any provision of this Chapter shall be and is declared to be contrary to the public interest and shall, at the discretion of Town Manager, create causes of action, including but not limited to, for injunctive relief.
- F. In addition to the civil and administrative remedies set forth above, any person that violates the provisions of this Chapter may be subject to administrative penalties as set forth by the Fairfax Municipal Code, Chapter 1.10.

5.56.170 Application of this article to existing medical marijuana dispensaries.

An existing medical marijuana dispensary that was legally operating as of April 3, 2018 does not require a permit pursuant to this Chapter to continue its existing operations as storefront medicinal cannabis retailer.

However, if such a medical marijuana dispensary has received a permit to operate an adult-use cannabis delivery service from its existing premises pursuant to Section 5.56.300 as of December 31, 2019, then such adult-use deliveries may continue until expiration of the adult-use delivery permit. Upon expiration of adult-use delivery permit approved under Section 5.56.300, the owner shall be required to obtain a commercial cannabis business permit and comply with the provisions of this Article I for the adult-use cannabis delivery service, without the need to undergo the application review procedure set forth in Section 5.56.070.

Alternatively, if such a medical marijuana dispensary has not received a permit to operate an adult-use cannabis delivery service pursuant to Section 5.56.300 as of December 31, 2019, the owner shall be required to apply for a commercial cannabis business permit and comply with the provisions of Article I, including the application review procedure set forth in Section 5.56.070, in order to operate an adult-use cannabis delivery service.

ARTICLE II. RESERVED

ARTICLE III. CANNABIS DELIVERIES

§ 5.56.300 Adult-Use Cannabis Deliveries By Certain Existing Medical Marijuana Dispensaries.

A medical marijuana dispensary that was legally operating as of April 3, 2018 and is permitted to operate a medical marijuana delivery service, may operate an adult-use cannabis delivery service from the location of its existing premises upon obtaining a cannabis business permit pursuant to this section and in conformance with the requirements of § 17.110.230 of this Code. The Town Council shall adopt permit procedures and permit regulations by resolution. If no permit has been issued as of December 31, 2019, this Section 5.56.300 sunsets and shall be of no further force and effect.