

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 __ day of _____ 2019, and duly adopted at the next regular meeting of the Town Council on the __ day of _____ 2019, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN

Barbara Coler, Mayor

Attest:

Michele Gardner, 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.

