



TOWN OF FAIRFAX

STAFF REPORT

August 7, 2019

TO: Mayor and Town Council

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

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

RECOMMENDATION

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

BACKGROUND

The Town has had over 20 meetings (including this one) to discuss cannabis. A description of all of 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, the Town Council focused on buffer setbacks, with a majority directing staff on options for consideration at the next meeting.

The current Town moratorium on commercial cannabis activities is due to expire on October 31, 2019, after which the State could issue licenses for various cannabis businesses to operate in Fairfax, if local regulations are not in place before the moratorium expires.

DISCUSSION

The majority of the Council agreed on the prohibited and permitted cannabis uses.

Prohibited Cannabis Uses

The Council supported the prohibition of the following uses:

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

Permitted Cannabis Uses

While the Council majority was not in favor of allowing adult-use retail storefront businesses, the Council majority did support allowing adult-use delivery-only retail businesses and continuing to allow medical storefront and delivery operations.

A majority of the Council supported allowing a maximum of two (2) cannabis business locations for any combination of medical storefront/delivery and/or adult-use delivery. The existing Medical Marijuana Dispensary and its 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.

The Council discussion at the July 17 meeting focused on buffer setbacks for the two types of cannabis businesses the Council previously supported – adult recreational cannabis delivery, and medical dispensaries. A majority of the Council directed staff to revise the buffer setbacks for these two types of businesses and requested maps illustrating the various buffer zones, including a 300-foot buffer setback from all youth-serving facilities.

Medical Storefront Retailer Buffer Setback

- For medical storefront retailers, a 600-foot setback buffer would be retained from schools and youth centers.

A majority of the Council supported modifying the medical storefront setback so that it no longer required a 600-foot buffer from “pre-schools”. Definitions have been revised to reflect this direction. The result is that the Montessori School would be defined as a “pre-school” under the Day Care definition and not a school.

A majority also agreed that daycare centers did not require a 600-foot buffer, but a reduced buffer of 300 ft would be adequate. The rationale was that permitted cannabis businesses would have negligible affect on youth who are under constant adult supervision during business hours.

- For medical storefront retailers, a reduced 300-foot setback buffer would be required for tutoring centers, preschools, and day care centers. The definition of a tutoring center was added into the ordinance.

Delivery Only Retailer Buffer Setback

- For a delivery-only business:
 - 1) A reduced 250-foot setback buffer is required from schools and youth centers.
 - 2) No buffer is required from day-care centers or tutoring centers.

It was not clear whether the Town Council intended there to be a setback buffer for delivery-only businesses from (newly-designated) preschools. Accordingly, staff has provided two diagrams for delivery-only businesses – one showing a 250-foot setback buffer which includes pre-schools, and one without pre-schools.

Other Regulatory topics

A majority of the Town Council appeared supportive of the remainder of the cannabis regulations in both Chapter 17.110 and Chapter 5.56 that were proposed in the July meeting. Accordingly, staff is not proposing further changes to those regulations.

Proposed Scoring Criteria

At the July meeting, the Mayor suggested that the Council consider a minor revision to the proposed Scoring Criteria. Specifically, she requested the weight assigned to the scoring criteria would consist of the following elements (previously proposed is shown in ~~strikeout~~).

A 110-point cumulative scoring system is proposed, consisting of the following three primary scoring criteria:

1. Business Plan	35 40 points
2. Operating Plan	35 30 points
3. Public Benefits	<u>30 points</u>
	100 points
Town Council discretionary points	<u>10 points</u>
Maximum potential total	110 points

As shown in the criteria rating scorecard, within each of the three primary scoring categories, a number of sub criteria are listed as factors to be considered towards the point total that is earned by a potential business in each of the primary criteria.

CEQA for Amendments to Chapter 17.110

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

separate and independent bases. This Ordinance is exempt under the general rule that CEQA only applies to projects, which have the potential for causing a significant effect on the environment. Pursuant to State CEQA Guidelines, Section 15061(b)(3) it can be seen with certainty that the Ordinance will not have a significant effect on the environment because it would permit limited numbers of certain cannabis retailers in zones where medical marijuana dispensaries and other similar uses are currently permitted, and because it would impose reasonable regulations on personal cultivation of cannabis that was legalized under State law. With respect to personal cannabis cultivation, this Ordinance also qualifies for the Class 3 and Class 4 exemptions because the amendments authorize indoor cultivation in existing structures and, for outdoor cultivation, only minor private alterations in the condition of land, water, and/or vegetation akin to new gardening on private residential property. Additionally, Business & Professions Code Section 26055(h) provides that CEQA does not apply to the adoption of an ordinance by a local jurisdiction that requires discretionary review and approval of permits to engage in commercial cannabis activity that includes applicable environmental review.

CEQA for Amendment to Chapter 5.56

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

FISCAL IMPACT

None at this time

ATTACHMENTS

- A. Ordinance amending Town Code Chapter 17.110: Commercial Cannabis Uses, redline and clean versions
- B. Ordinance amending Town Code Chapter 5.56: Commercial Cannabis Business Permits, clean version
- C. Draft Scoring Criteria
- D. Map of Fairfax commercial districts with 250-foot buffer setbacks from schools and youth centers for delivery-only businesses.
- E. Map of Fairfax commercial districts with 250-foot buffer setbacks from schools, preschools, and youth centers for delivery-only businesses.
- F. Map of Fairfax commercial districts with 600-foot buffer setbacks from schools and youth centers, and 300-foot buffer setbacks from preschools, daycare centers, and tutoring centers, for medical dispensaries.
- G. Map of Fairfax commercial districts with 300-foot buffer setbacks from schools, youth centers, preschools, daycare centers, and tutoring centers for medical dispensaries.
- H. Map of Fairfax commercial districts without State buffer setback