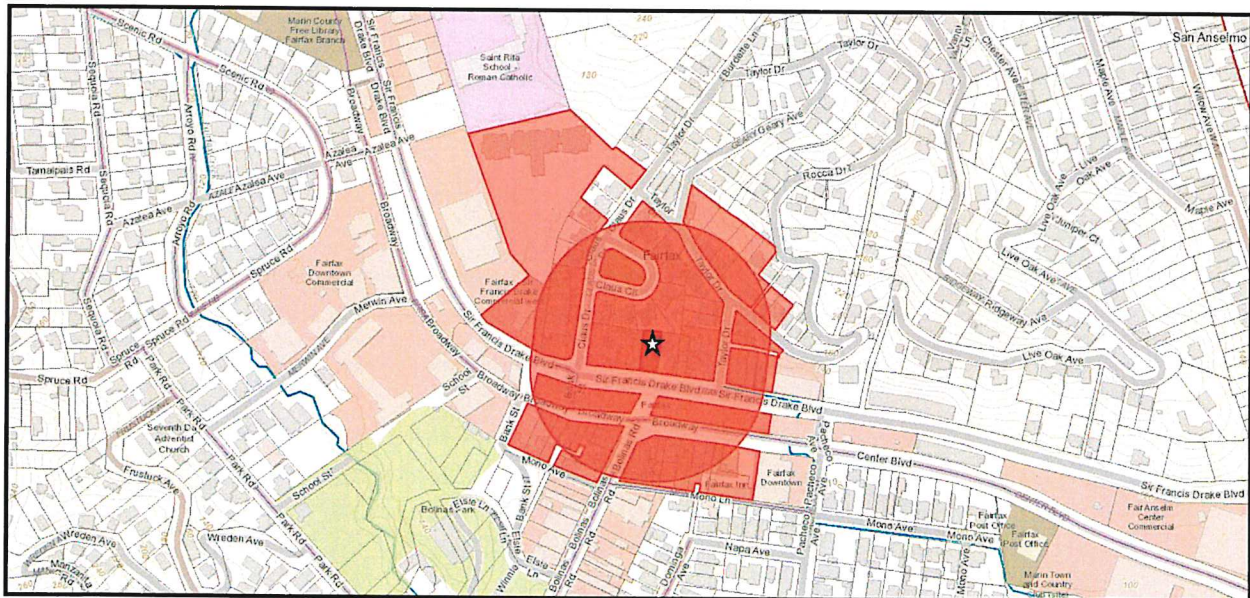


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: September 16, 2021
FROM: Linda Neal, Principal Planner
Ben Berto, Director of Planning and Building Services
LOCATION: 1930 Sir Francis Drake Boulevard; APN # 001-223-10
PROJECT: Creation of a medical cannabis dispensary/adult retail delivery business in an existing commercial building
ACTION: Formula Business Conditional Use Permit and recommendations to the Town Council on Design Review and Sign Permits and scoring on the Element 7 Fairfax LLC Cannabis Business Permit; Application # 21-02
APPLICANT: Element 7 Fairfax, LLC
OWNER: Adham Nasser
CEQA STATUS: Categorically exempt, § 15301(a), 15303(a) , 15304(b).



1930 SIR FRANCIS DRAKE BLVD.

DESCRIPTION

The project is for a medical cannabis dispensary/adult delivery business, upon which the Planning Commission, pursuant to Zoning Chapter 17.110 Cannabis Uses, §§ 17.110.040(3) and (5) will be making recommendations to the Town Council on a Design Review permit, Sign Permit, and scoring criteria for a cannabis business permit in accordance with Town Code Chapter 5.56, Cannabis Businesses, § 5.56.070B)(1), and acting on a Formula Business Conditional Use Permit per Town Code § 17.040.220. Building exterior changes include reconfiguration and reconstruction of the front entry deck, and ADA accessible ramp in conformance with building code and ADA regulations, reorientation of the rear deck steps to accommodate the creation of an accessible parking space, installation of an electric vehicle charging station in the parking lot to the rear of the building, exterior color and materials changes to the building, erection of two business identification signs and replacement of the front window, which had been modified from the original mullioned window style by the previous nail salon, with a window design matching the remaining existing windows and restoring the building to its original condition, relocation of the front door to meet ADA accessing requirements and removal of the second front door that faces east replacing the opening with stucco wall to match the existing building siding. The access driveway will also be widened from roughly 15 feet to 16 feet by removing the narrow landscaping strip on the eastern side of the site with the entrance reoriented to provide a small landscape bed at the southeastern corner of the site and a small landscaping bed will be created at the rear of the building between the structure and the new ADA parking space and delivery stairs and entrance deck.

BACKGROUND

The approximately 5,003 square-foot, level site is developed with a structure the original portion of which was built in 1939. The structure was expanded towards the rear of the site to its existing 575 square feet in 1994. The 1994 remodel/expansion replaced the original front window and added a rear deck and a front deck stairway/ramp access system at the front (which does not meet current Americans with Disabilities Act (ADA) requirements).

DISCUSSION

The applicant is requesting a Formula Business Conditional Use Permit from the Planning Commission and seeking recommendations on the Design Review and Sign Permits the project requires as well as a cannabis business use permit score to move forward to the required final hearing before the Town Council.

Below staff reviews the applications subject to the Planning Commission's review and/or approval.

Formula Business Conditional Use Permit

Town Code § 17.110.010 indicates the purpose of the Formula Business Ordinance is as follows:

The vitality and character of the town's economy is dependent upon its small-town, village character and pedestrian scale. It is the purpose of this article to regulate formula businesses and formula restaurants in the zones permitting commercial uses in town to ensure the service of local demand for goods and services, provide a diverse mix of businesses that are compatible with the needs of area residents, preserve opportunities for owner-operator businesses, maintain the town's unique village character, and promote the pedestrian orientation of the Town Center Planning Area and pedestrian usage of the town's commercial zones.

Town Code §17.040.210, Definitions, defines a Formula Business as "Any business that is required by a corporate headquarters or franchise or other arrangement to maintain any of the following: standardized services, décor, uniforms, architecture, signs or other similar features. This shall include but not be limited to any retail sales, service, visitor accommodation, wholesale or industrial operations that was not in business within the Town of Fairfax prior to April 1, 2000."

After the applicant's initial submittal, staff brought to their attention the formula business characteristics of the Element 7 business. They have taken steps to personalize the business to Fairfax by already making the following modifications to their submittal: Established a separate LLC - Element Fairfax LLC - for the Fairfax business, changed the business name from "Element 7" to "Fairfax Remedy", eliminated any uniforms for their employees, and changed the exterior colors from the green and white used by Element 7 to blue and brown.

They have indirectly addressed the sale of standardized goods in their letter dated January 12, 2021 (Attachment B). State licensing requirements are complicated and changeable and require constant vigilance to remain in compliance. Each step of the growing, packaging and transporting of the cannabis is regulated by the State and licenses must be renewed annually with new regulations for operating often being amended and new ones being adopted. For example, an emergency regulation was recently put in place in response to the increased number of reported vaping deaths resulting from persons using vaping products from unlicensed cannabis establishments. The original regulations just required a business to post their state license inside the building, while the new emergency regulation requires posting of a visible license outside an establishment where it can be viewed before customers enter the building. This allows customers to avoid entering an unlicensed cannabis business to purchase vaping products.

A result of the State's complicated, everchanging requirements is what is sold in licensed cannabis facilities must be standardized to a certain extent. For example, cannabis itself can only be purchased from licensed growers, and must be prepackaged by only facilities licensed to do such packaging.

Staff agrees with the applicants when they indicate in their information letter and Section 7 Business Plan section of their binder submittal that certain aspects of the Formula Business model are necessary and of benefit to the Town of Fairfax. Having a vertically integrated business that provides full time head office compliance staff, regulatory advisors, lawyers, and centralized purchasing of product to ensure it comes from other licensed establishments, etc. will enable the business to remain in compliance with the State and to remain in business period (competing with black- and gray-market cannabis sellers that currently comprise an estimated three-quarters of the total CA market). Approving a Formula Business Conditional Use Permit for these applicants will allow the "Fairfax Remedy" cannabis business to be competitive and persevere, and not run afoul of the complicated and ever-changing State of California regulatory process. The contents of regulated products are known and listed, providing consumer confidence in their ingredients, a definite safety benefit.

The following are the findings the Commission must be able to make to approve a Formula Business Conditional Use Permit for "Fairfax Remedy".

1. The proposed formula business will promote diversity and variety to assure a balanced mix of commercial uses available to serve both resident and visitor populations.
2. The proposed formula business together with its design and improvements, will be consistent with the unique and historic village-like character of the town, and preserve the unique visual appearance and shopping and dining experience of the town for its residents and visitors.
3. The proposed formula business will provide services or products which compliment existing businesses in the zoning district in which it is proposed to operate, considering the existence of and proximity to the same or similar businesses within that zone, and will not have significant adverse financial impacts to same or similar businesses within that zone.
4. If located within the Town Center Planning Area, the proposed formula business will be consistent with the pedestrian orientation of the Town Center Planning Area.

After holding 22 meetings on cannabis regulations over almost two years (2018-2019) the Fairfax Town Council determined that it would be to the benefit of the citizens of Fairfax to allow two cannabis business locations in Town at any one time. The question of whether a second cannabis business per se should be allowed has already been

settled. The Town already has one cannabis retailer. The business will provide an alternative to purchasing cannabis from the existing medicinal retail/adult delivery dispensary with different products and a different shopping experience promoting diversity and variety. Therefore, having a second viable cannabis business will promote diversity and variety of commercial cannabis experiences to serve both resident and visitor populations [Attachment C – Town Council staff report dated 9/4/19 including attachment Town Code § 17.110.040(A)].

Similarly, the Council has already determined where a potential cannabis business can be located, placing severe restrictions on potential locations. The Council has also already determined that any proposed location cannot be within 600 feet of any school or youth center, or within 300 feet of a daycare or tutoring center (Attachment D – maps showing school, youth center daycare and tutoring center radii where cannabis businesses cannot locate).

The proposed formula business together with its proposed exterior changes, including ADA accessible side ramp, front entry and ADA accessible parking space, refreshed landscaping, electric charging station and rooftop solar panels, will be consistent with the unique and historic village-like character of the town, and preserve the unique visual appearance and shopping experience of the town for its residents and visitors.

The existing cannabis store is approximately 575 ft. from the proposed site in a space that does not front on Sir Francis Drake Boulevard, but on School Street. Fairfax and surrounding areas of San Anselmo, West Marin and western San Rafael have populations adequate to sustain two legal and licensed Cannabis establishments. Fairfax Remedy's products will not be identical with Marin Alliance, having more of a boutique design and feel than the well-established original dispensary. Therefore, the proposed formula business will provide services or products which complement existing businesses in the zoning district in which it is proposed to operate, considering the existence of and proximity to the same or similar businesses within that zone, and will not have significant adverse financial impacts to same or similar businesses within that zone.

The shop is proposed in the Town Center Planning Area but the changes to the building and the change in use will not modify or impact the pedestrian sidewalk that runs along the property frontage. Staff has included in the conditions of approval that the applicants will create a bicycle parking area at the rear of the parking lot adjacent to the proposed trash enclosure for customers and employees Therefore, the proposed Formula Business Use will be consistent with the pedestrian orientation of the Town Center Planning Area.

Historic Building Status

The California Office of Historic Preservation (OHP) considers a building or site for listing in the California Historic Register if the building or site meets one or more of the following criteria:

1. Is associated with certain events that has made a significant contribution to the broad pattern of local or regional history or the cultural heritage of California or the United States.
2. Is associated with the lives of persons important to local, California or national history.
3. Has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation.
4. The applicant has had a historian do an assessment of the property and the structure to determine if it might qualify as a historical site/structure

The building and site do not meet any of the above criteria. Although Dr. Snead built the building and was a noted local dentist in Fairfax and it was unusual for dentists at that time to have their own office building, it was not the only single-practitioner dentist office in Marin. There also is no indication in available historic documents that Dr. Snead was associated with any dental health discoveries or historic events in Marin or Fairfax that could be pointed to that would support the statement that the site/structure was associated with certain events that have made a significant contribution to the broad pattern of local or regional history or the cultural heritage of California or the United States.

The applicants hired a historian to review the architectural features of the building to ascertain whether the changes that are proposed to bring the building into compliance with the Americans with Disabilities Act and to replace a window at the front of the building and relocate the access door are consistent with the character defining features of the building. She determined that the building has not been retained in its original condition, has had various changes made to it and to the grounds of the building over the years and has no intrinsic architectural merit being a combination of Mediterranean Revival style but with Spanish or Mexican influences. The one unique feature of the building that she identifies is the curved stucco awning overhang on the front reminiscent of Streamline Moderne architecture and that features two parallel, horizontal, metal bands. The proposed exterior changes will not modify this feature. The historian has determined after reviewing the facts that "The building at 1930 Sir Francis Drake Boulevard, in Fairfax, has always been of a utilitarian character. It has never been an outstanding example of a particular architectural style, a primary test for historic resource status in California. It has been altered in significant ways since its construction. None of the current proposed modifications will compromise any architectural integrity" (Attachment E – historian analysis).

The building is not listed in the California Register of Historic Resources, has not been determined to be eligible for listing in the California Register by the State Historic Preservation Office nor has it been included in any local register or historic resources, nor has the Town determined the site or the building, based on substantial evidence,

are historically relevant because of its association with significant events, association with significant persons, it is not architecturally distinct and it does not have the potential to yield information important in history or prehistory.

Design Review Permit

Staff believes that the proposed exterior changes to the structure will add articulation and visual interest to the building, which has already been modified from its original construction condition. The replacement of the modified front window with a mullioned window to match the original window on the side of the building will restore the southern side of the building to its original design and the two access doors that will be removed to be replaced with a mullioned ADA accessible door will compliment the original structure design and architecture while making the structure ADA compliant. The new stairway/deck/ADA compliant ramp system will be of wood stained a blue-grey color using Cabot high quality wood stain – Newburyport Blue. The deck railings will be horizontal black metal, the sign will be shades of blue (Deep River and Nocturne Blue) while the side and rear of the building will be a light bluish white color (Helium). Note that the wood feature panels are no longer being proposed.



The two buildings adjacent to the project site do not have distinctive historical exterior features that put them in the same league as many of the core “historic buildings” in the Fairfax Town Center area such as the Alpine Building, Nave’s bar with its art-deco style façade, or the Fairfax Theater with its art deco neon sign. The slightly “mission” style of the building, achieved with its stucco finish, lacks the arched window designs and/or terra cotta roof of a true “mission style” building, and has already been altered with the replacement of the front window with a standard two panel aluminum framed window. The buildings on either side of the project site, a multiple pump gas station/car repair facility and the Peri’s deli buildings are simple and undistinguished. Much like this building and site, both only add modestly to the village-like character of the town. Neither the Fairfax General Plan nor the Zoning Ordinance define what “village-like character” means. The proposed exterior changes will fit in with the other architectural styles found along that portion of Sir Francis Drake Boulevard.

The exterior lighting for the business will be security lighting, continuously illuminated at night and potentially during the day as determined necessary by the on-site manager. Each light will provide a 1.0-foot candle intensity. Staff has done a cursory review of other communities lighting requirements for cannabis establishments, and they seem to indicate that exterior lighting shall be 1.0-foot candle illumination level. Six exterior security lights are proposed, two at the front of the building, two on the east side of the building and two at the rear. Staff considers the lighting levels to be modest and consistent with levels in the downtown.

Staff is concerned that lighting at the rear of the site may be inadequate. Therefore, the following conditions are proposed in the Resolution for this project relating to exterior lighting:

1. If, after opening, the business determines that a freestanding outdoor light fixture is necessary for security at the rear of the parking lot, the fixture shall be limited to a maximum height of 15 feet, measured from adjacent normal grade to the top of the fixture(s). The fixture shall be the highest portion of the light structure.
2. Outdoor lighting shall utilize energy-efficient (high pressure sodium, low pressure sodium, hard-wired compact fluorescent, LED, or other lighting technology that is of equal or greater energy efficiency) fixtures and lamps.
3. All lighting fixtures shall be properly directed, recessed, and fully shielded (e.g., downward, and away from adjoining properties) to avoid light bleed and glare onto adjacent properties or public rights-of-way, by ensuring that the light source (e.g., bulb, etc.) is not visible from off the site and confining glare and reflections within the boundaries of the subject site to the maximum extent feasible.
4. No lighting on the private property shall produce an illumination level greater than two foot-candles on site and one foot-candle on any property within a residential zone except on the site of the light source.

5. All outdoor light fixtures are subject to the backlight, uplight and glare (BUG) rating limits established by the California Energy Code (CALGreen 5.106.8) prior to the issuance of an electrical permit.
6. No permanently installed lighting shall blink, flash, flutter, or be of unusually high intensity or brightness, or change light brightness, color, or intensity.
7. Exterior lights shall be regulated by an automatic timer.
8. If the Town receives 3 or more complaints about the lighting levels or intensity from persons residing in different residences adjacent to the site, the staff shall review the lighting plan with the applicant's security team and the Fairfax Building Official to determine if lower levels or intensity lighting can and should be put in place keeping the safety of the adjacent community and the business as the end goal but maintaining the privacy of the adjacent residential properties on Claus Circle.
9. All the exterior fixtures must be dark sky compliant (fully shielded and emit no light above the horizontal plane with no sag or drop lenses, side light panels or uplight panels) as well as compliance with color temperature to minimize blue rich lighting. The lighting plan shall be submitted with the building permit application and be approved by the Planning Department prior to issuance of the project building permit. The lighting shall not emit direct offsite illumination and shall be the minimum necessary for safety.

The landscaping areas on the site are limited with a small area at the front of the building, on the east side of the driveway entrance, at the rear in an area that will become available when an existing storage shed is removed and a small planting area on the south side of the access path to the delivery entrance deck and stairs (see the landscaping plan, sheet L1.0 of the project plan set). The landscaping plan proposes planting two trees on the site and retaining the two existing redwood trees at the rear of the property. A Western redbud tree and 20 perennial grass (Berkeley sedge) plants will be planted in the front landscaping bed at the southeast corner of the building, 14 perennial grass plants (Berkeley sedge) will be planted in the landscaping bed on the east side of the driveway entrance and an Arbutus 'Marina' tree along with 44 perennial grass (Berkeley sedge) plants will be planted in the rear planting bed. Existing Canna plants at the front of the site will be relocated to the immediate rear of the building adjacent to the northwestern rear wall and the existing ivy plant at the front southwest corner will be retained. The landscaping will be irrigated with an irrigation system (see page L1.1 contained in the project plan set). Staff has included a condition in the Resolution that the landscaping and irrigation must be installed, and the irrigation system tested in front of the planning staff prior to issuance of the final inspection/occupancy permit unless drought regulations in place at that time require that the landscaping and irrigation be postponed. If MMWD regulations prohibit the installation of the landscaping, the conditions of approval include a condition that a deposit, in an amount to be determined by the Staff, shall be remitted to the town, and

held until the landscaping and irrigation are installed, inspected, and are approved by the Planning Department. Once the final approval of the landscaping has occurred the Town will refund the deposit amount.

Sign Permit

Town Code § 17.110.040(D)(5) limits cannabis businesses to having one business identification sign only that does not exceed six square-feet in size and complies with the Sign Ordinance, Town Code Chapter 17.064, signs. The applicants are proposing two business identification signs, each measuring 2 ½ feet by 1 ½ feet for a total sign square footage of 7.5 square feet. The signs will display the business name "Fairfax Remedy" and will have a dark blue background (Nocturne Blue, HDC-CL-28) with blue and white sign copy with all the letters in white except the "MED" of "REMEDY" will be in a bright blue (Deep River, PS00-6).

Town Code § Chapter 17.064, Signs, limits each business to having only two business identification signs with the total sign square footage not to exceed the linear building frontage footage, and if one of the signs is a projecting sign [Town Code §17.064.050(A)(1), (b)]. Only one face of a projecting sign is counted towards the total sign square-footage [Town Code § 17.064.050(D)(3) – how the square footage of double-faced signs such as projecting signs is calculated]. The Sign Ordinance, Town Code § 17.064.100 allows the Planning Commission to grant exceptions to sign regulations if they find that the exception is not inconsistent with the purposed and intent of the sign ordinance and the strict adherence to the regulations may cause unnecessary hardship if one of the following exists:

1. Exceptional or extraordinary circumstances or conditions, not resulting from any act of the owner or applicant, apply to the location under consideration and not generally to other business or properties in the vicinity.
2. The exception is the minimum necessary to serve its intended purpose.
3. The application submitted is extraordinary in design; or
4. The sign is of historical significance.

The building at 1930 Sir Francis Drake Boulevard is "L" shaped, is set back nine feet from the edge of the sidewalk and only presents a small, approximately 12-foot frontage to the street before the building shifts away from Sir Francis Drake Boulevard and the rear half is set 21 feet from the sidewalk along Sir Francis Drake Boulevard. Traffic often travels faster on Sir Francis Drake Boulevard than along Broadway and Bolinas Road where most of the commercial businesses are set at the front of their sites with the façade at the back of the sidewalk area.

Having two signs, one facing east where the sign can be seen from vehicles passing by on Sir Francis Drake Boulevard, and another sign on the south frontage of the building

facing the parkade where pedestrians may be viewing the site after parking in the parkade or getting off public transportation, would serve the same purpose as the permitted building sign and one projecting sign for a total of two business identification signs afforded businesses by the Sign Ordinance. Neither sign individually would exceed the maximum six square feet in size, the limit set for the one cannabis business sign allowed each cannabis business by Town Code § 17.110.040(D)(5) and the total square-footage of the two signs being 7.5 square feet, only 1.5 square-feet over the maximum size. This requested exception is the minimum necessary to serve the

unique building due to its location set back nine feet from the street and in an "L" configuration with only 12 feet of the frontage being located adjacent to the street.

Traffic and Parking

The applicant submitted an initial traffic analysis prepared by W-Trans traffic Engineers that was deemed incomplete by the Town Traffic Engineer on July 8, 2020. At that time, he requested the following additional information be provided and analyzed in the traffic analysis:

1. Walking, bicycling and linked vehicle trips shall not be counted in the trip generation estimates for the existing Mana Bowl use; it is possible that the existing use generates fewer vehicle trips than a fast casual restaurant per the International Transit Engineer's (ITE) manual.
2. Use actual vehicle trip rates from two or more local cannabis marijuana dispensaries that offer similar services to those proposed by the applicant's use. Consider counting traffic from an existing dispensary in Marin as well as one or more neighboring communities that are in similar environments i.e., along major arterials in or near downtown settings.
3. It is important that the sample marijuana dispensaries offer similar services to those proposed by the applicant's project, e.g., walk-up services for medical customers and on-demand retail delivery by vehicle.
4. If there is a specific weekday peak time that cannabis dispensaries have a high-level vehicle demand (e.g., Fridays), please provide an estimate of peak vehicle traffic generated during that time frame.

The applicant's traffic engineer's took traffic counts from two similar cannabis businesses, one in Santa Rosa and one in Napa, and considered the Town Traffic Engineer's other directives and revised their analysis of the traffic generation expected from the proposed business in the analysis dated 11/16/20, contained in the applicant's submittal packet under tab 13.

The Town Traffic Engineer has reviewed the revised report and determined that the proposed business will not generate 100 average daily traffic trips (ADT) or more

beyond the existing business "The Mana Bowl", as defined in Town Code § 17.056.020, Definitions. Therefore, the proposed use will not generate an amount of increased traffic beyond the previous use that would make it subject to the Traffic Impact Permit process (Town Code § 17.056.050(A)(2) (Attachment D – Town Traffic Engineer final memorandum dated 11/18/20).

California Environmental Quality Act

Repurposing an existing commercial building and parking lot to accommodate another use is exempt from the environmental review process in accordance with CEQA categorical exemptions 15301(a), 15303(c) and 15304(b). Projects that involve little or only minor interior or exterior alteration to an existing structure to convert the structure from one use to another and to provide new landscaping have been determined not to have a significant effect on the environment, and have been declared to be categorically exempt from the requirement for the preparation of environmental documents (Public Resources Code 21084).

Scoring the Business – Scoring Criteria

Chapter 5.56 Cannabis Businesses of the Fairfax Municipal Code would normally lie outside the Planning Commission's scope. However, in adopting this chapter in 2019, the Town Council determined that the Commission should have a role in making recommendations regarding certain aspects of a proposed cannabis business. Accordingly, pursuant to §5.56.070 Review and action on application, B. Phase 2 – Application Scoring, the Town Manager is directed to refer a cannabis business application to the Planning Commission for scoring.

The Town Council also adopted Resolution 19-34 containing the scoring criteria (see Attachment F). While it should be noted that when original scoring criteria were created, the Town expected that it would be receiving multiple applications for the one remaining cannabis business permit and would have to comparatively rate the different business candidates. The Town instead received only one cannabis business application during the submittal period - the project being reviewed tonight.

The scoring criteria are divided and scored through the three following primary criteria:

- Business Qualifications and Business Plan 35 points**
- Quality of Operating Plan 35 points**
- Public Benefits 30 points**

Various sub criteria are listed under each of the three primary criteria to assist in reaching a point total. While it is true that some of the items listed in the scoring criteria are somewhat open to interpretation, they provide a distinguishable basis for rating the three different aspects of businesses and determining if any reach the minimum qualifying score of 80 points out of a potential total of 100 points. In the case of this project, as the sole cannabis business applicant the main purpose of the criteria will be

to determine if it achieves the 80-point minimum qualifying score. The Commission's scoring determination will serve as a recommendation to the Town Council, who will make a final determination.

Staff has pulled specific information from the applicant's extensive supplemental information to evaluate consistency (or lack) with the scoring criteria. Overall, the application shows both a willingness and ability to satisfy the criteria and sub criteria. Staff also points out some areas that might be improved upon to assist the Planning Commission in reaching their scoring determination(s).

1. **Business qualifications and business plan as demonstrated by:**
 - **industry experience**
 - **financial capacity to start up and sustain business operations**
 - **business design/layout – secure, attractive, unobtrusive design**
 - **innovative or boutique business models consistent with the Fairfax community**
 - **additional information that demonstrates the ability to operate in a manner consistent with the values of the Town, including local residency of the principals, connection to Fairfax, ability to serve Fairfax, familiarity with the Town**

The applicants have provided business formation documents in section 5 of their supplemental information document and have indicated in that business plan section that they have financial funding from a private equity bank and backing from a family fund from Southern California that provides them with the financial capacity to start and sustain a cannabis business operation. They have recently opened a similar business in Fort Bragg which shows that they have the experience and knowledge to navigate the State Licensing process. They have provided large project plans sets by SKS Architects (San Rafael based), dated 5/22/20, pages A1 and A2, and landscaping and irrigation plans dated 5/18/20, pages L0.0, L1.0 and L1.1 by Roth/Lamotte Landscape Architects (Fairfax Residents). As discussed in the Design Review section of this staff report, staff recommends approval of building design. Their detailed security arrangements provide assurance that this important aspect has been adequately addressed. As discussed in the formula business analysis of this staff report, the applicants have a sophisticated understanding of cannabis consumers and marketing that will enable them to compete with the heretofore dominant cannabis black market. Two of the principals, Nicholas Pommier and Matthew Brown are lifelong Marin Residents, one attended Sir Francis Drake High School and runs a local real estate business and the other operates a fitness business in San Anselmo. Both reside in San Anselmo, so they are very familiar with Fairfax.

Staff believes they have the local experience and knowledge of Fairfax to operate in a manner consistent with the values of Fairfax and to open a successful cannabis business in Town.

2. **Quality of operating plan as demonstrated by:**
- **an understanding of all State requirements, including but not limited to security, financial, other recordkeeping**
 - **inventory controls and sales procedures to prevent diversion to illegal market and access by minors**
 - **employee training above State requirements**
 - **parking, circulation, and traffic plan, including truck and delivery parking if applicable to ensure safe access and minimize traffic congestion**
 - **complaint response program**

 - **additional operational procedures demonstrating safety, commitment to community welfare and community responsiveness.**

The applicants have provided the Town with their LLC Registration – Articles of Organization, that they have filed with the Secretary of the State of California and the operating agreement for Element 7 Fairfax, a limited liability company (section 5 of supplemental information) as well as with a copy of their completed State Cannabis Licensing application (section 7 of the supplemental information).

They have put considerable thought into their security, their financial and product sales recordkeeping, inventory controls and sales procedures to prevent problems with cannabis falling into the hands of unlicensed minors or becoming missing and unaccounted for. The information contained in supplemental information section 8 include: operating plan including track and trace procedures, destruction and disposal of cannabis procedures, what to do if the electronic track and trace system goes down and established practices including utilization of a cannabis industry specific tracking software METRIC (a requirement to comply with the terms of their state cannabis license to ensure that cannabis product in their establishment is accounted for is that businesses must be credentialed into the California Cannabis Track and Trace (CCTT) system). Remedy Fairfax plans to also utilize Flowhub, a preferred point of sale program that can be integrated with METRIC and allows information to be downloaded to desktop computers and handheld devices. Monthly inventory audits will be performed by the inventory control manager and inventory logs will be retained for five years and will be made available to the Town upon request.

Buyers ages and whether they have a physician recommendation will be electronically verified utilizing age checking software and delivery personnel will check the customers ID upon delivery with the cannabis goods only being released to the customer that ordered them who will have to be 21 years of age, or 18 years old with a valid physician's recommendation for cannabis. First time, on-line buyers, after uploading their government identification card to allow age verification, will have to run through a three-screen educational component in the process educating them on cannabis potency, absorption, and effects (page 211, section 8). This thoughtful process for educating first time buyers shows a commitment to community responsiveness, making an attempt to address Community concerns about the increased potency of modern

cannabis strains.

Fairfax Remedy plans to require their employees to participate in a training process that will include an employee handbook and other reading materials, lectures by qualified professionals, hands on training and will include testing to ensure the employees have mastered the material presented. They plan to provide over 80 hours of training for new employees, when the industry standard for number of hours of training are 16 (8x greater than average). They propose using their preferred teaching partners Clover Leaf University to provide the training, as well as bringing new hires to their existing Fort Bragg dispensary for hands-on training. For a breakdown of the specific information to be covered in the training and the number of hours spent on each subject see page 220 of section 8 of the applicant's supplemental application information. It is noteworthy that 16 of the training hours will be spent on security procedures. Initially training will be provided by the California Training Institute until the Clover Leaf University is operational in California (it currently operates in Colorado but provides on-line training and in person seminar training in other locations). Overall staff finds their training program to be exemplary, and thoroughly consistent with their overall boutique business model.

The site provides ample space in the back parking lot where the delivery entrance will allow delivery vehicle parking and off-loading without interfering with traffic passing by the site on Sir Francis Drake Boulevard. The site's 5 parking spaces will provide parking for customers as well as the delivery vehicles. It is not clear from the submitted materials how many employees will be onsite at any given time and where they are expected to park. Staff has included a condition that employees be encouraged, with incentives, to take public transportation or ride bicycles, which should be possible if the business follows through with their goal to hire 80% Fairfax residents to operate the business, and if it installs a bicycle rack on site.

The information addressing complaints provided by the applicants can be found on page 227 in section 8, the operating plan. It appears to address only complaints about product quality and not complaints about the business operations. Staff's experience with complaints about the existing dispensary is that when a customer is dissatisfied with some facet of the existing cannabis dispensary operations, they file their complaints with the Town. The business should have in place a procedure with the specifics posted in plain view in the lobby for how a customer can complain if they are dissatisfied with, for example: treatment by an employee, perceived lack of or too much presence of a security guard during business hours, their inability to qualify for affordable product, etc. An orientation towards encouraging customers to contact the business management directly with their complaints, and responsiveness to any complaints, would be beneficial both to the business and the Town. This type of complaint has not been addressed by the applicants.

Furthermore, it is important that the applicants have an immediate response mechanism whereby any neighbors or other concerned parties can easily and immediately notify a business manager in the event of any complaints or concerns. While staff does not

anticipate that there will be problems, it is imperative for a good neighborhood fit that the business be prepared to immediately resolve any problems that might arise and have an adaptive program to avoid recurrence.

- 3. Public benefits including but not limited to:**
- **all employees paid living wage and benefits**
 - **social equity – one of more principals who earn at or below median household income – women or minority owned business – small business**
 - **offer medical cannabis – patient services, such as physician or caregiver networking, experience serving patients**
 - **reduced cost products to low-income medical patients**
 - **green business rating – is certified or qualifies for certification**
 - **participation and support of local your-serving prevention and education programs, and/or adult addiction programs.**

The applicants aim to exceed any living wages dictated by the Town or the state (page 262, section 9, Public Benefits Plan), provide employee health benefits (page 263, section 9), recognizing the importance of a healthy lifestyle will provide \$300 to full time employees to be used for a fitness or health club membership, preference will be given to hiring local employees with equity, diversity and social responsibility with a commitment to filling 9 of the 11 positions available with Fairfax residents. They have indicated their willingness for their employees to participate in and be members of the United Food and Commercial Workers International Union (pages 254, 285-288 of section 9). Element 7 participates and helps organize Expungement and Resource Fairs in Fresno and other locations. Letters of support from the National Diversity and Inclusion Cannabis Alliance and Latinos for Cannabis organizations found on pages 282 and 283 of section 9 of the supplemental information speaks to Element 7's commitment and belief in the importance of equity, diversity and social responsibility which should carry over to their operations and treatment of their staff and the community of Fairfax.

The applicants are committed to providing an undetermined percentage of their proceeds to the following local programs (pages 231 and 232 of supplemental information section 8):

Marin County Community Medical Program which provides essential health care services to indigent adults who are ineligible for benefits under Medical and whose incomes are insufficient to pay medical bills.

To liaison with local educational organizations, youth, and law enforcement groups to provide monetary or educational materials to educate youth on the dangers of substance abuse.

They propose holding community educational outreach programs four times a year in conjunction with the local cannabis community including panels of cannabis experts

giving lectures on topics such as Myth and Facts of Cannabis, Patient Treatment Options, Safe Use Practices, etc. (page 263, supplemental information section 9), partnering with local law enforcement or other organizations to support existing drug education programs being conducted in the community, and will provide a medical cannabis discount program to provide safe and affordable access to medical cannabis to patients and primary caregivers (page 268 through 270, supplemental information section 9).

They have included their sustainability and environment plan on pages 273 through 278 of the supplemental application information and the plans includes the use of energy efficient lighting, water saving fixtures, use of recycled building materials, when possible, to reduce the business carbon footprint and recycling of packaging materials. Deliveries will be made using electric vehicles and a vehicle charging station will be provided in the parking lot for the use of delivery vehicles and customers. They also plan to erect solar panels on the roof to provide power to the facility and charging station and plant a living wall to reduce carbon dioxide in the air positively contributing to the prevention/slowing of climate change.

The applicant has also provided numerous letters of support and signed support petitions for their business locating at 1930 Sir Francis Drake Boulevard which are contained on pages 373 through 321 of section 15 of the supplemental application information.

CONCLUSION

Without assigning a numerical score (left to the Planning Commission), staff generally finds that the business reaches or exceeds the numerical qualification thresholds in all three of the scoring criteria. While it would be pleasant to imagine that a home-grown one-off business-like Marin Alliance could start from scratch today and be successful, the numbers tell a different story. Such businesses today that lack Marin Alliance's long history and loyal customer base are struggling to compete against the black market, Staff therefore believes that Remedy Fairfax, with its efficient, vertically integrated operation and sophisticated customer service and marketing approach is likely the only viable way currently for a legitimate cannabis business to comply with the myriad of State regulations and its overall taxes, and effectively still compete with black market operators. The applicants have put considerable thought and time into proposing their Fairfax cannabis business, one that should be successful economically and in how it fits with our local community.

RECOMMENDATIONS

1. Conduct the public hearing.
2. Move to approve the Formula Business Conditional Use Permit by adopting Resolution No. 2021-20 setting forth the findings and conditions for the project approval.
3. Make recommendation to the Town Council to approve the Design Review

- Permit and the Sign Permit.
4. Have the Chair direct each Commissioner to individually score each of the three scoring categories, and each present their scores to the Chair and staff. Staff will record them and then make the final averaged calculation of the overall business permit score as directed in Town Council Resolution 19-34. The score will be forwarded to the Town Council along with the recommendation on the Design Review Permit application.

ATTACHMENTS

- B – Applicant’s e-mail dated 9/9/21 and letter dated 1/12/21
- C - maps showing allowed locations for cannabis establishments
- D – final Town Council staff report and Cannabis Ordinances Town Code Chapters 17.110 and 5.56
- E – Traffic Engineer’s final memorandum dated 11/18/20 and 7/8/20
- F – Project plan set by SKS Architects, dated 5/22/20 and Roth-Lamotte Landscape Architects dated 5/18/20
- G – Town Council Resolution No. 19-34 including the scoring criteria
- H – letters and e-mails opposing the business location at 1930 Sir Francis Drake Blvd.

RESOLUTION NO. 2021-20

**A Resolution of the Fairfax Planning Commission Conditionally Approving a
Formula Business Conditional Use Permit, Making Recommendations to the
Town Council on a Design Review Permit and Sign Permit and Providing Scoring
for the Cannabis Business Permit for a Medical Cannabis Storefront
Retailer/Adult-Use Retail Delivery-Only Business
located at 1930 Sir Francis Drake Boulevard**

WHEREAS, the Town of Fairfax received an application to convert the structure at 1930 Sir Francis Drake Boulevard into a combination medical retail storefront and adult use delivery cannabis business at 1930 Sir Francis Drake Boulevard from Fairfax Remedy on January 6, 2020; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on September 16, 2021 at which time all interested parties were given a full opportunity to be heard and to present evidence; and

WHEREAS, based on the plans and supplemental information provided by the applicant as well as testimony at the public hearing, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary for the Project's Formula Business Conditional Use Permit as described below; and

WHEREAS, the Commission recommends to the Town Council that the project complies with the Design Review Criteria and the finding to approve the Sign Permit as described below, and that the Planning Commission's final cannabis business score for the Element 7 Fairfax cannabis application is [____ score to be filled in upon determination].

WHEREAS, in accordance with Section 17.040.220 of the Fairfax Municipal Code, the Commission hereby makes the following findings in support of the application for a Formula Business Use Permit:

The proposal complies with Fairfax General Plan Policies as follows:

Town Center Element:

Policy TC-1.1.1: New and/or renewed development in the Town Center Planning Area shall preserve and enhance the village character and pedestrian scale of the downtown area.

Policy TC-2.1.1: New and/or renewed development in the Town Center Planning Area should be compatible with the architectural character of the downtown in terms of height, design treatment, colors, textures, and materials.

The Fairfax Remedy project will provide a new retail business in an existing commercial building along Sir Francis Drake, thereby preserving the village character and scale of development in the area. As detailed in the design review permit discussion, the proposed design treatment and colors will fit in with the other architectural styles found along this portion of Sir Francis Drake Boulevard.

General Use Permit Findings (required by Town Code, Chapter 17.032):

1. The approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment. The approval of the use permit will not constitute a grant of special privilege and will not contravene the doctrines of equity and equal treatment because the Town engaged in an extensive two-year public process over the development of its cannabis regulations and held an open cannabis business permit application period to ensure that all interested parties could apply and compete for the limited number of commercial cannabis business permits available from the Town. However, there was only a single application received during the application period. Therefore approval of a formula business conditional use permit in connection with such commercial cannabis business permit therefore does not constitute a grant of special privilege and will promote competition for the legal cannabis market.

2. The development and use of property, as approved under the use permit, shall not create a public nuisance, cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit. The site provides conforming parking for the proposed use and will not burden adjacent street parking or public parking lots, the Town Traffic Engineer has determined based on a traffic study using real traffic counts from similar cannabis businesses, that the site will not generate enough average daily traffic trips to affect traffic and the business will be the second, and only, cannabis business in the town providing boutique cannabis products as an alternative to the cannabis products to those sold currently at the other existing cannabis business so it will not cause adverse economic effects.

3. Approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in any master plan, development plan or other plan or policy, officially adopted by the town. On September 4, 2019, after conducting numerous meetings, community outreach, an analysis to determine what types of commercial cannabis uses should be allowed to be established and how many should be allowed to operate in Fairfax, the Town Council adopted two ordinances to regulate Cannabis businesses in the Town of Fairfax. Town Code Chapter 17.110, Medicinal Marijuana Dispensaries, and Chapter 5.56, Commercial Cannabis Businesses set forth the regulations for the business proposed at 1930 Sir Francis Drake Boulevard and the submitted application demonstrates that Remedy Fairfax will operate in compliance with the adopted cannabis regulations.

Approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and that the approval is in the public interest and for the protection or enhancement of the community. The proposed business will provide a safe and legal second location for both medicinal and recreational users to obtain cannabis thereby decreasing the number of vehicles trips out of Town to obtain cannabis and the number of delivery trips by illegal cannabis delivery businesses into to Town to deliver illegal product, decreasing the potential interaction of Fairfax residents with illegal purveyors of cannabis.

Section 17.040.220 Formula Business Findings:

- A. The business will provide an alternative to purchasing cannabis from the existing medicinal retail/adult delivery dispensary with different products and a different shopping experience promoting diversity and variety thereby promoting diversity and variety to assure a well balanced mix of commercial cannabis uses available to serve both resident and visitor populations.
- B. The size and scale of the building will remain the same. The proposed formula business together with the replacement of the original front window in a design similar to the original window, its ADA accessible front entry and ramp, refreshed landscaping, electric charging station and rooftop solar panels, will be consistent with the unique and historic village-like character of the town, and preserve the unique visual appearance and shopping experience of the town for its residents and visitors.
- C. The existing cannabis store is approximately 555 ft. away from the proposed Element 7 Fairfax site in a space that does not front on Sir Francis Drake Boulevard, but on School Street. Fairfax and surrounding areas of San Anselmo, west Marin and western San Rafael have populations adequate to sustain two legal and licensed storefront Cannabis establishments. The inventory sold at Fairfax Remedy will have more of a "boutique" design, product variety, and services will be business specific. Therefore, the proposed formula business will provide services and products which complement existing businesses in downtown Fairfax and considers the existence of and proximity to the same or similar businesses in Town and will not have significant adverse financial impacts to same or similar businesses.
- D. The proposed business will not change the footprint or design of the building and the change in use will not modify or impact the pedestrian sidewalk that runs along the property frontage. Staff has included in the conditions of approval that the applicants will create a bicycle parking area at the rear of the parking lot for customers and employees. Therefore, the proposed Formula Business Use will be consistent with the pedestrian orientation of the Town Center Planning Area.
- E. The location of the proposed business is integrated into the Town Center which serves consumer needs of Fairfax residents and helps them avoid having to drive

out of the County to obtain in-store medical marijuana products while creating a more well balanced mix of cannabis medicinal and retail offerings in Town which will contribute to a diverse and healthy local economy for the benefit of the Town.

- F. As described above the proposal complies with General Plan Policy TC-1.1.1: New and/or renewed development in the Town Center Planning Area shall preserve and enhance the village character and pedestrian scale of the downtown area; and Policy TC-2.1.1: New and/or renewed development in the Town Center Planning Area should be compatible with the architectural character of the downtown in terms of height, design treatment, colors, textures, and materials.

WHEREAS, in accordance with Sections 17.110.040(D)(3) and 17.020.040 of the Fairfax Municipal Code, the Planning Commission hereby recommends the following findings in connection with the application for Design Review Permit:

The following criteria have been applied by the Commission in considering the application for design review approval and in making a recommendation to the Town Council to approve the Design Review Permit:

(A) The proposed development shall create a well composed design, harmoniously related to other facilities in the immediate area and to the total setting as seen from hills and other key vantage points in the community. The proposed project's frontage presents a well composed design that harmonizes with the immediate area, by virtue of its storefront fenestration, entry pattern, scale, modulation, signage types, and style.

(B) Only elements of design which have significant relationship to exterior appearance of structures and facilities shall be considered; these elements may include height, arrangement on the site, texture, material, color, signs, landscaping and appurtenances. The proposed project's design is of a quality and character appropriate to, and serves to protect the value of, private and public investments in the immediate area, as it will upgrade the property and is likely to increase foot traffic.

(C) The proposed development shall be of a quality and character appropriate to, and serving to protect the value of, private and public investments in the immediate area. The proposed project conforms in all significant respects with adopted plans for the Town Center area, such as but not limited to its pedestrian-oriented front façade.

(D) The proposed development shall conform with all requirements for landscaping, screening, usable open space and the design of parking and off-street loading areas set forth in this title. The proposed project conforms to the general character of other structures in the vicinity, by virtue of its scale, landscaping, and setback from the street.

(E) Where the proposed development is located in an area where a neighborhood plan or precise plan has been adopted by the town, the design of the development shall conform in all significant respects with the plans. Not applicable. However, the proposed project is located in one of the few locations where commercial cannabis uses are permitted within the Town based on zoning and buffers limiting proximity to sensitive uses.

(F) There shall exist sufficient variety in the design of the structures and grounds to avoid monotony in external appearance. The frontage of the building will be restored to its historic 1939 condition and the new landscaping, ADA compliance entry ramp, deck, and proposed landscaping will add articulation to the building and property to avoid monotony in the exterior appearance of the building and grounds.

(G) The size and design of the structure shall be considered for the purpose of determining that the structure is in proportion to its building site and that it has a balance and unity among its external features so as to present a harmonious appearance. The size and design of the structure are not being changed so the existing roughly 575 square-foot structure will remain in proportion to its 5,003 square-foot building site and the exterior features will remain unified.

(H) The extent to which the structure conforms to the general character of other structures in the vicinity insofar as the character can be ascertained and is found to be architecturally desirable. The original design of the small structure, designed and used as a dentist office for Fairfax dentist Dr. Snead, has been maintained and will continue to conform to the character of other commercial structures in the vicinity along Sir Francis Drake Boulevard.

(I) The extent to which ornamentation is to be used and the extent to which temporary and second-hand materials, or materials which are imitative of other materials, are to be used. No significant changes are being made to this existing structure other than installing improvements to bring the site into compliance with ADA regulations. The structures is maintaining its historic integrity.

(J) The extent to which natural features, including trees, shrubs, creeks and rocks and the natural grade of the site are to be retained. The site has been developed since 1934 and the natural features of the original site are long gone. The current proposal includes relocating the existing canna plants from the front of the building to the rear of the building and will maintain the two existing redwood trees at the rear of the property.

(K) The accessibility of off-street parking areas and the relation of parking areas with respect to traffic on adjacent streets. The site provides five parking spaces behind the building in a configuration including an access driveway to the spaces that have been used successfully without causing traffic problems by a number of businesses since the buildings construction in 1934. The site is one of

the few locations in Town that has on-site parking and does not rely on adjacent public parking for its employees and customers.

(L) The reservation of landscaping areas for the purpose of separating or screening service and storage areas from the street and adjoining building sites, breaking up large expanses of paved areas, separating or screening parking lots from the street and adjoining building sites and separating building areas from paved areas to provide access from buildings to open space areas. The building screens the parking area, garbage enclosure, vehicle charging area and delivery entrance from the view of Sir Francis Drake Boulevard. Additional landscaping on either side of the access driveway including the planting of a Western Rosebud tree on the west side of the driveway will visually separate the rear of the property from the view of the public using the sidewalk and other public areas south of the business.

(M) In the case of any commercial or industrial structure, the Planning Commission shall consider its proximity to any residential district and shall consider the effect of the proposed structure upon the character and value of the adjacent residential district area. Due to the small size of the Town there are no commercial properties that are not located immediately adjacent to residential development. The business is located within one of the areas designated as an allowable medicinal cannabis and recreational cannabis delivery business location in the Town by ordinance, Town Code sections 17.110.040(C)(1) and (2), 600 feet from the nearest school and youth centers for the medicinal storefront use and 250 feet for the recreational delivery use.

WHEREAS, in accordance with Sections 17.110.040(D)(5), 17.064.100, and 17.064.140 of the Fairfax Municipal Code, the Commission hereby recommends the following findings in connection with the application for Sign Permit and Sign Permit Exception

1. The sign must meet the purpose and intent of § 17.064.010 of this chapter. The two proposed signs, totaling seven and a half square-feet, will announce the business location with the same number of signs (two) and only one and a half square-feet over the allowable six square feet allowed for cannabis business signs in Town Code § 17.110.040(D)(5). The total square footage of the two signs is well below the total sign square footage allowed by the Town Sign Ordinance for uses in the Commercial zones which allows one square foot of building signage for each one linear foot of building frontage (the building frontage measures 12 feet). The orientation of the signs with one facing Sir Francis Drake Boulevard on the front of the building and the other facing east, will serve in the same capacity as the two signs, one sign on the building and one projecting sign, allowed by the Town Sign Ordinance, Town Code § 17.064.050(B). Therefore, the proposed sign program meets the intent of the Town Sign Ordinance.

2. The sign may not be garish, excessively brilliant or otherwise inappropriate to the character or plans of the town. The signs display only the business name, "Remedy Fairfax" with a dark blue background and white and blue lettering with no internal or external illumination. Therefore, the signs are not garish, excessively brilliant or otherwise inappropriate to the character or plans of the Town of Fairfax.

3. The sign must be architecturally a part of the design of the building rather than a feature independent of and in conflict with the design of the building. The signs are small in relation to the building façade and do not represent as features independent of the building design.

4. The color and material of any sign shall be compatible with the color and material of any wall on which a sign is painted or to which the sign is attached. The blue and white sign are compatible with the bluish white color proposed for the building stucco.

5. The sign must be designed and installed in such a manner as to ensure adequate security and stabilization to minimize or eliminate risk of injury to persons and property. The signs will be erected in compliance with California Building Code Appendix H, Signs to minimize or eliminate risk of injury to persons and property (CBC sections H101.1 and H101.2).

6. If lighting is installed, it shall not cause glare to passing pedestrians or motorists or cause light pollution. The signs are not proposed to be illuminated.

Further, pursuant to Fairfax Municipal Code, Section 17.064.100(B)(2), the exception is not inconsistent with the purpose and intent of the Sign Ordinance and the strict adherence to the Sign Ordinance may cause unnecessary hardship because the exception is the minimum necessary to serve its intended use. The requested exception to allow two business identification signs on this L-shaped building with a significant setback of nine feet from the public sidewalk and roadway, one facing east and the other facing south and both totaling 7.5 square-feet, is the minimum exception necessary to alert both vehicles passing by on Sir Francis Drake Boulevard and pedestrians approaching from the center of the downtown to the business location.

WHEREAS, pursuant to Fairfax Municipal Code Section 5.56.070 Application Scoring, and consistent with Council Resolution 19-34, finds and approves scoring for a Fairfax Commercial Cannabis Business Permit in connection with the Remedy Fairfax Medical Cannabis Storefront Retail and Adult Use Delivery-Only business application as follows:

Business Qualifications and Business Plan	xxx points
Quality of Operating Plan	xxx points
Public Benefits	xxx points

Said application having achieved a recommended cumulative score of xxx points. Accordingly, consistent with subsection 5.56.070 B. 1., the Planning Commission recommends Remedy Fairfax to the Town Council for approval.

WHEREAS, the Commission has reviewed the project based on the information provided in the applicant's supplemental information containing table of contents sections 1 through 15, including 1) Remedy Fairfax Introduction, 2) Cannabis Application, 3) Planning Application, 4) Live Scans, 5) Business Formation Documents, 6) State License Application, 7) Business Plan, 8) Operating Plan, 9) Public Benefits Plan, 10) Sensitive Use Plans, 11) Site and Floor Plans, 12) Signage and Lighting Plan 13)Traffic Study, 14) Security Plan, and 15) the Architectural Plans by SKS architects dated 5/22/20, pages ESP, EC1, A0, A1 and A2 and the landscaping and irrigation plans by Roth/Lamotte Landscape Architecture, pages L0.0, L1.0 and L1.1 dated 5/18/20 presented to the Commission at the public hearing on 9/16/21.

WHEREAS, pursuant to CEQA Guidelines Section the project is exempt per California Code of Regulations, Chapter 3, Article 19, categorical exemption numbers 15301(a), 15303(c) , 15304(b).

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the Town of Fairfax hereby finds and determines as follows:

1. The Planning Commission hereby conditionally approves the Formula Business Conditional Use Permit on the basis of the above findings and subject to the Conditions of Approval attached hereto and incorporated herein as **Exhibit 1**. Such approval is contingent upon, and shall not be effective until, the Town Council of the Town of Fairfax approves a Commercial Cannabis Business Permit, Design Review Permit and Sign Permit in connection with the Fairfax Remedy (Element 7 Fairfax) application.
2. On the basis of the findings set forth above, the Planning Commission recommends that the Town Council grant the requested Design Review Permit, Sign Permit and approve the Cannabis Business Permit for Remedy Fairfax to open and operate at 1930 Sir Francis Drake Boulevard based on its Cannabis Business Permit criteria score of XXX.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 16th day of September 2021, by the following vote:

AYES:

NOES:

ABSENT:

Chair Mimi Newton

Attest:

Ben Berto, Director of Planning and Building Services

Exhibit 1

CONDITIONS OF APPROVAL FAIRFAX REMEDY - 1930 SIR FRANCIS DRAKE

FORMULA BUSINESS CONDITIONAL USE PERMIT

Approval of Application No. 21-02 for a formula business conditional use permit is subject to the applicant's compliance with the following conditions:

1. The applicants shall maintain the premises in a neat and attractive manner at all times. Such maintenance shall include, but not be limited to, exterior building materials, signage, windows, the planters, the ground, and the pavement surfaces.
2. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32, and the Americans with Disabilities Act.
3. Any changes made to the exterior of the building, including but not limited to new lighting, new signs, planters, etc., shall comply with the design review regulations of the Town Code, Chapter 17.020, and be approved by the Fairfax Planning Commission or staff as required.
1. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach

agreement, the Town may select its own legal counsel and the applicant agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced herein, provided, however, that the applicant's duty in this regard shall be subject to the Town's promptly notifying the applicant of any said claim, action, or proceeding.

The project final inspection and issuance of the occupancy permit shall not occur until all the building, landscaping, and parking lot improvements are complete and approvals have been received from all agencies with jurisdiction over the project.

4. If, after opening, the business determines that a freestanding outdoor light fixture is necessary for security at the rear of the parking lot, the fixture shall be limited to a maximum height of 15 feet, measured from adjacent normal grade to the top of the fixture(s). The fixture shall be the highest portion of the light structure.
5. Outdoor lighting shall utilize energy-efficient (high pressure sodium, low pressure sodium, hard-wired compact fluorescent, LED, or other lighting technology that is of equal or greater energy efficiency) fixtures and lamps.
6. All lighting fixtures shall be properly directed, recessed, and fully shielded (e.g., downward and away from adjoining properties) to avoid light bleed and glare onto adjacent properties or public rights-of-way, by ensuring that the light source (e.g., bulb, etc.) is not visible from off the site and confining glare and reflections within the boundaries of the subject site to the maximum extent feasible.
7. No lighting on the private property shall produce an illumination level greater than two foot-candles on site and one foot-candle on any property within a residential zone except on the site of the light source.
8. All outdoor light fixtures are subject to the backlight, uplight and glare (BUG) rating limits established by the California Energy Code (CALGreen 5.106.8) prior to the issuance of an electrical permit.
9. All the exterior fixtures must be dark sky compliant (fully shielded and emit no light above the horizontal plane with no sag or drop lenses, side light panels or uplight panels) as well as compliance with color temperature to minimize blue rich lighting. The lighting plan shall be submitted with the building permit application and be approved by the Planning Department prior to issuance of the project building permit. The lighting shall not emit direct offsite illumination and shall be the minimum necessary for safety.
10. No permanently installed lighting shall blink, flash, flutter, or be of unusually high intensity or brightness, or change light brightness, color, or intensity.
11. Exterior lights shall be regulated by an automatic timer.

12. If the Town receives 3 or more complaints about the lighting levels or intensity from persons residing in different residences adjacent to the site, the staff shall review the lighting plan with the applicant's security team and the Fairfax Building Official to determine if lower levels or intensity lighting can and should be put in place keeping the safety of the adjacent community and the business as the end goal but maintaining the privacy of the adjacent residential properties on Claus Circle.
13. The landscaping and irrigation must be installed, and the irrigation system tested in front of the planning staff prior to issuance of the final inspection/occupancy permit. If new landscaping and irrigation installation is banned due to the drought before it can be installed and inspected by the Town, the applicant must deposit with the Town an amount to cover the costs of installation, including materials and irrigation costs, which will be held by the Town until such time as the drought restriction is lifted and the landscaping can be installed.
14. A bicycle rack shall be installed at the rear of the parking lot.
15. A "complaints procedures" process be posted in the lobby with clear instructions on how to file any operational complaints with the management of the establishment. This condition will not in any way limit a person's ability to file separate or concurrent complaints with the Town of Fairfax.
16. The business shall cease operations immediately and notify the Town of Fairfax if it fails to maintain an active State of California cannabis license for retail and delivery operations, or has their licensing revoked by the State of California until such time as new license(s) are issued.
17. In the event the business fails to maintain an active Commercial Cannabis Business Permit pursuant to Town Code Chapter 5.56, the business shall cease operations immediately and may not operate pursuant to the Formula Business Conditional Use Permit until such time as new commercial cannabis business permit(s), and all other applicable approvals, permits and entitlements are issued and approved.
18. The applicant/permittee shall operate the business at all times as described in its Application, including supplemental information submittal dated January 6, 2020. All operations and policies described in the Application are incorporated as conditions of project approval.
19. Failure to comply with any conditions of approval shall be grounds for revocation of the Formula Business Use Permit and/or the Commercial Cannabis Business Permit.
20. The Formula Business Conditional Use Permit shall expire in the event of the permittee's non-use for a period of six months. Non-use shall be evidenced by

the permittee ceasing operation of the business for a period of at least six months, except to extent caused by an act of nature or other cause beyond the permittee's reasonable control.

21. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding and fully enforceable