

Linda Neal

From: Josh Black <josh@e7ca.com>
Sent: Thursday, September 9, 2021 2:18 PM
To: Linda Neal
Subject: Re: and this

Hi Linda,

Thanks – received. We’re an ambitious small private company focused on building a company. I thought America was founded on hard-work, ambition, and a desire to succeed... Element 7 was founded in 2018, has a single private owner (Robert) and we have 3 stores operational today.

The first store was opened in Fort Bragg (population 7,302 people). The second store was opened in Rio Dell (population 3,373 people) and the 3rd store opened 3 weeks ago in Marina (population 21,981 people). If this is what “corporate cannabis” looks like today, we have a very long way to go to be even 1% the size of the businesses that Fairfax is trying to avoid. We are not a corporate chain.

We did merge part of our company with Glass House Farms 3 months back, but Fairfax is not part of this, and won’t be. A large part of the partial merger was survival and making it through COVID which isn’t even close to being over – the funding they provide keeps us afloat right now and without it, we’d probably have to shut down the business and lay off 30+ staff. Again, if this is what “corporate cannabis” looks like in 2021, we have a very long way to go.

We are not a national chain and we don’t use locals as a front. Nicolas Pommier will own up to 15% of the business and will work closely with Robert and the small team to manage it. He is not putting in any funds and his ownership will secure his family’s financial future.

We will attempt to address all feedback at the Planning Commission and give people the actual facts.

Thanks,

Josh Black
Element 7

From: Linda Neal <lneal@townoffairfax.org>
Date: Thursday, 9 September 2021 at 1:24 pm
To: Josh Black <josh@e7ca.com>
Subject: and this

See below -

Keep Corporate Chain Store Cannabis out of Fairfax!
The future of Fairfax’s unique vibe is being threatened by a national corporate cannabis chain, Element 7

A national “formula” cannabis company (Element 7) is trying to take over 1930 Sir Francis Drake, the Mana Bowls building. Within the next 6 months Element 7 will have 15 retail storefronts in California, 2 additional approved licenses and an unknown number of pending applications.

As quoted from Element 7’s website their Mission statement is:

“With a mission of becoming the largest cannabis retailer in the State of California, we are well on our way to achieving our mission and disrupting the industry and have projects under development in 12 cities across the State”.

With the recent acquisition by Glass House Group, California’s largest marijuana grower, Element 7 is huge.

This will drive Mana Bowls out. The family run business is one of the few places for youth to hang out in town. Fairfax has always been focused on supporting individual businesses. If this becomes a lost priority our towns storefronts are going to change into what we have all seen happen in the communities around us.

You can show your opposition by

1. Writing to the Planning Commission and Town Council by September 9, 2021 in opposition to Element 7’s proposal. (Emails below). Written communication received after that will be considered for the final, deciding October 6, 2021 Town Council meeting (Written submissions deadline for Town Council is September 29).

2. Attend the Planning Commission meeting on September 16, 2021 at 7:00pm (via Zoom) where you will have an opportunity to make a public comment about why it is more important than ever to support local business owners.

Element 7 has a practice of using locals as a “front”. Don’t be fooled. The local representatives are used by this national retail operation to try to sweet talk locals into believing that this is a “local company”. It is not. Element 7 is thrusting forward, putting applications out all over the state, seeing which communities will allow this chain to move in.

Things to consider:

Why should Fairfax be considering a national chain store cannabis business?

Why add a storefront that will attract substantial traffic on Sir Francis Drake with a blind parking entrance?

Why displace an established business that attracts youth?

Why is there a need for a large scale corporate cannabis storefront dispensary in town with a population of 7,000?

Speak up before it is too late.

Send email to the Planning Commission at Ineal@townoffairfax.org Email Town

Council Members:

rgoddard@townoffairfax.org

bcoler@townoffairfax.org

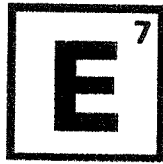
backerman@townoffairfax.org shellman@townoffairfax.org

ccutrano@townoffairfax.org

Email Town Clerk:

mgardner@townoffairfax.org

Linda Neal
Principal Planner
(415) 453-1584



JANUARY 12, 2021

Ms. Linda Neal
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

RE: ELEMENT 7 CANNABIS APPLICATION: TOWN OF FAIRFAX

Dear Linda,

I am writing regarding your letter dated November 20, 2020 and the request for final information from Element 7 prior to a potential Planning Commission Hearing in February next year.

1. Formula Business. One of the largest challenges facing the cannabis industry in California is consistent compliance and adherence to rules and regulations set by the various bodies governing cannabis in the State – in this regard, these regulatory bodies would include the Town of Fairfax, Bureau of Cannabis Control (BCC), METRC, California Department of Fee and Tax Administration (CDFTA), California Department of Food and Agriculture (CDFA), and California Department of Public Health (CDPH).

The disconnect and challenge is that 78% of cannabis dispensaries in California are owned and operated by single-store operators and sole proprietors, and many of these businesses struggle to operate compliantly across all aspects of the business given the demands imposed by these regulatory bodies and METRC. While this would present less challenges in other businesses and industries operating in the Town, cannabis is still viewed by the Federal Government as a Schedule 1 Drug alongside heroin, LSD and methamphetamines which presents no room for error in the management and operations of the business.

Proof of this is an article recently published by the LA Times and MJBizDaily, a leading industry publication. Both publishers reported on or around December 21, 2020 that nearly 60 cannabis retail businesses in California (just under 1 in every 10 licensed retailers) were set to lose their Licenses on December 31, 2020 as they had failed to file required paperwork with the BCC and LA DCR on November 2, 2020. The businesses had each failed to file a simple 2-page form to remain in compliance with licensing regulations – this isn't an isolated situation. Companies across the industry are struggling to maintain adherence to basic compliance measures largely because they lack the staff, finances, and knowledge of the procedures, and as regulation increases, this is set to increase.

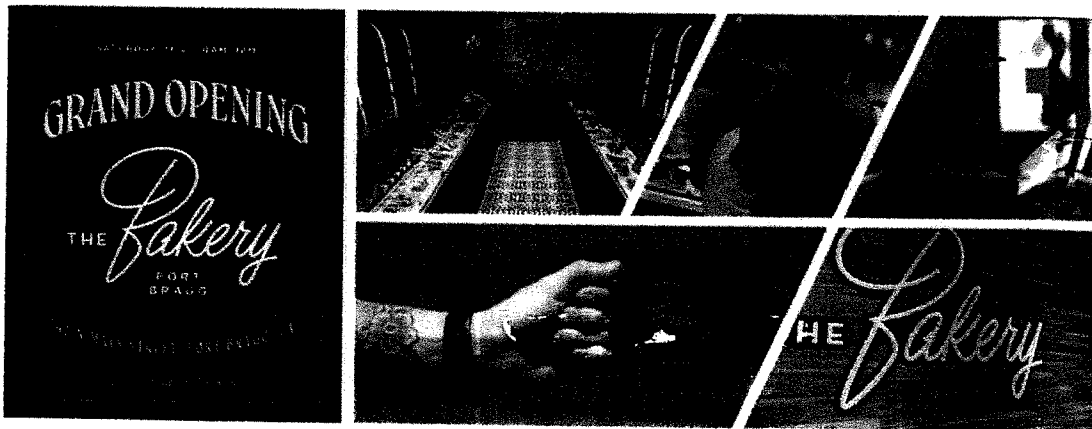
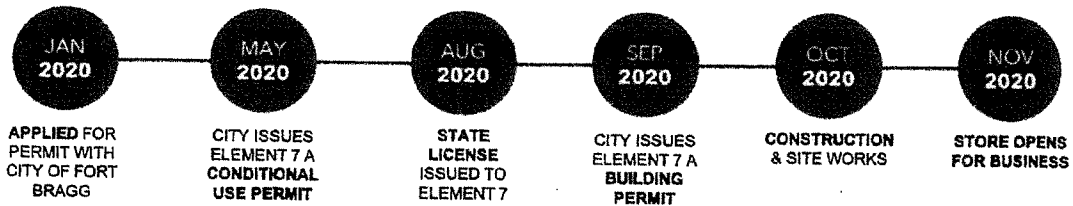
In our opinion, for the safety and welfare of local patients and customers, and the compliance requirements that the business demands, certain elements that a 'Formula Business' would bring to the Town of Fairfax should be highly desirable by both local regulators and local customers. These elements include full-time head office compliance staff, regulatory advisors, inventory control specialists, centralized buying and store planning staff, and heads

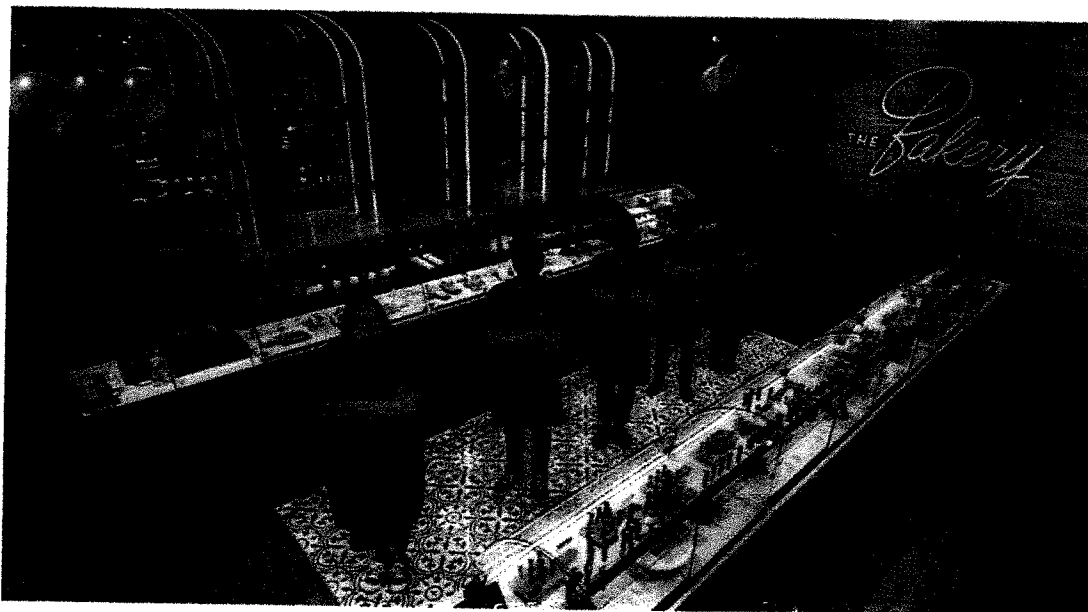


of human resources, finance, tax, control, technology, security, and marketing communications. Single-store operators struggle to pay for these specialist resources which we view as being essential to operating a compliant and controlled business.

That said, as demonstrated by our recent store opening in Fort Bragg, Mendocino, we are able to deliver a highly compliant store and operation while delivering a retail concept that feels very local in terms of its tone, voice, and local footprint. **The Bakery by Element 7** opened for business on November 21, 2020, less than 40 weeks after we submitted an application in the City, demonstrating our ability to focus and move quickly where we have local approvals in place. We would be more than happy to 'tour' any City Officials and Staff at any time so that the scope of operations are fully understood.

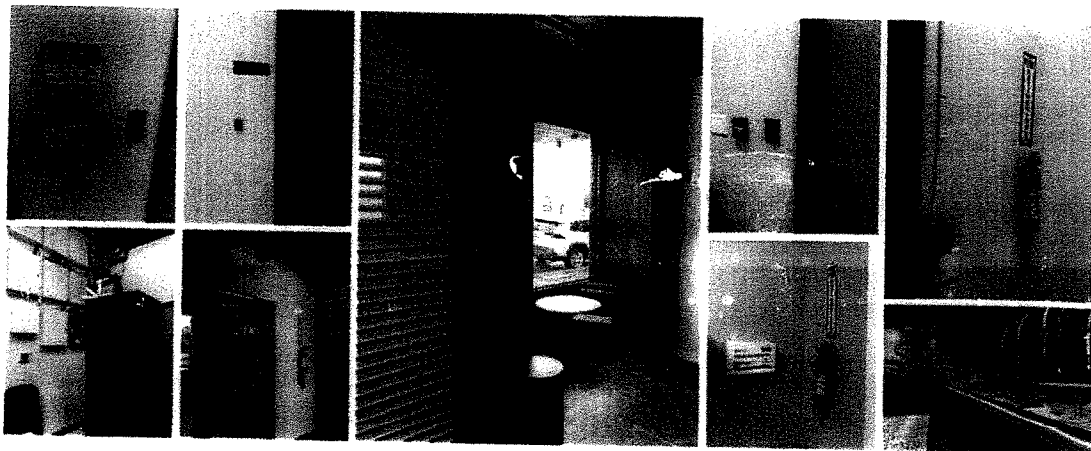
THE *Bakery*
BY ELEMENT 7
FORT BRAGG





Beyond the design which seamlessly blends into the Main Street of Fort Bragg, the security, safety, and cash management processes that we have worked tirelessly to implement are what really start to separate us from many of the local operators in Northern California. This attention to detail really impressed the local Building Staff and the City Manager.

Steve Orsi, the local Fire Chief, remarked, "...some of the best work I have seen in my 22 year career as a building and fire safety inspector..." Other City Officials that similarly toured the facility have had nothing but praise for the quality of the operation. Similarly, patients and customers consistently give us great feedback on the store, experience, quality of customer service, product selection, and great pricing. Our staff have been trained with both class-room and on-the-job experience at our partner's facility in Santa Ana – BudTender's working in California's retail industry receive an average of 16-hours of training before serving customers, something we feel is inadequate. Lastly, 100% of our staff are locally hired and live in the local community which is a fact we are immensely proud of.





Element 7 believes it will enhance the vitality and character of the Town's economy, village character, and pedestrian usage through operations at **1930 Sir Francis Drake Blvd, Fairfax**. We do not believe that we are a 'Formula Business' as the Town Code S17.040.210 specifically states that a Formula Business 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. There is nothing within our company that requires any of these items to be standardized across locations.

That said, to address and resolve any Formula Business concerns the Town might have, Element 7 has renamed its application **REMEDY FAIRFAX**, a new name, brand, and design we have specifically created for Fairfax. We have proposed that **REMEDY FAIRFAX** will operate as a stand-alone store to avoid any views that this is a Formula Business. We have no issues submitting a Formula Business CUP Application in the Town of Fairfax along with the \$916.00 fee if still required to do so.

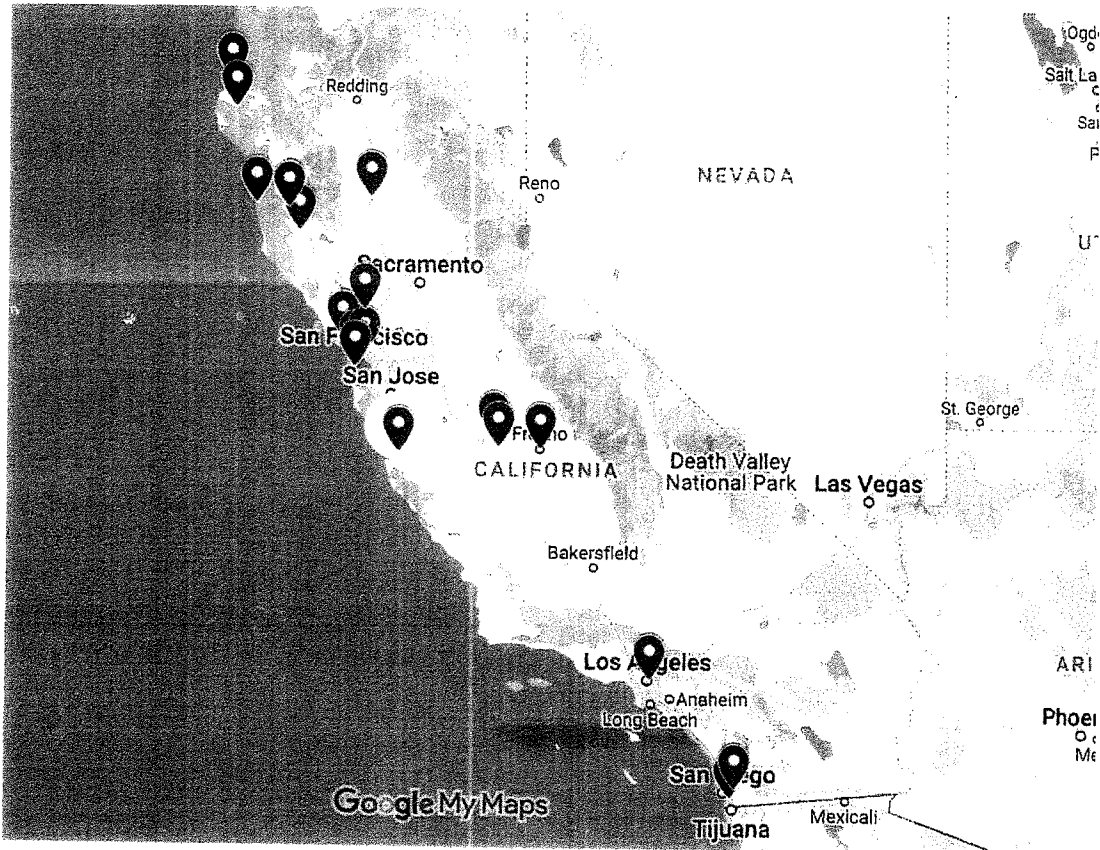
REMEDY

FAIRFAX

We have no other businesses in California operating under this name, nor are we affiliated with any other business that operates in any way under this name. In addition, this business has no uniform.

E⁷

2. Existing and Proposed Cannabis Businesses in California. I have attached a map that shows all locations of existing (Fort Bragg) and pending permit and license applications in California.



Locations approved with State Licensing include Fort Bragg, Rio Dell and South San Francisco (delivery). Locations pending include Eureka, Willows, Willits, Ukiah, Napa City, San Francisco, Oakland, Marina, Mendota, Firebaugh, Fresno, Los Angeles, Lemon Grove and Chula Vista. All locations apart from Fort Bragg (**The Bakery**) and Fairfax (**Remedy Fairfax**) would be branded as Element 7, if approved.

3. Site Plan. The current site plans attached to this application show the positions of all external security cameras, as requested (refer to Tab 11 or Pages 319-323). In addition, we have indicated the location of the charging station for the delivery vehicle (hybrid vehicle that runs on both electricity and gas), and the HVAC unit for the dispensary within this same Tab (11) and Pages (319-323).

4. Security Plan. Exterior camera's will be installed in both the interior and exterior of the premises and Site and Security Plans have been upgraded to reflect this (refer to Tab 11 Pages 319-323 for the plans showing the cameras and Tab 14 Pages 355-358). Systems and Cameras are monitored 24 hours a day by security guards on-site at the facility during all hours of operation, and a security monitoring company off-site. Element 7 has an enterprise



relationship with Bosch and the Integrated Video Surveillance Solution platform we deploy has a number of intuitive features that reduce error with regards to detection, false alarms, and monitoring. Cameras will be monitored from the dedicated Check-In Counter room which also doubles as the security office. Plans have been labelled to reflect this as mentioned earlier.

With regards to how information will be relayed to Element 7 staff, if there is a major security breach at the facility (e.g., robbery or armed hold-up), a panic button will be activated either by the receptionist, or BudTender, depending on the point of entry and who is able to access the Panic Button without risk – panic buttons will alert **Bay Alarm**, an external security monitoring company who will then quickly view camera records to quickly assess the situation and coordinate with local law enforcement (please refer to Tab 14 Page 355). Bay Alarm are one of the leading security and fire alarm monitoring companies in California and have extensive experience in Marin County working with various local law enforcement agencies. Minor security incidents will either be handled by the on-site security guard or the General Manager, depending on the incident. Ongoing security issues (e.g., loitering in the car-park, vandalism, or attempted entry by a minor) will be dealt with as needed, with staff informed of all necessary matters both verbally (e.g., weekly staff meetings) and through email. Our security plan is extremely comprehensive and covers all known risks and situations.

5. Product Odor. Potential sources of odor at Element 7 Fairfax will come from cannabinoids, flavonoids, and terpenes present in the cannabis products. There will be no cultivation, nursery, manufacturing, packaging, processing, handling, or distribution operations at the site which are the main causes of cannabis odor as cannabis products are exposed to the external air. At Element 7's facility in Fairfax, all products will be received packaged and sealed and will be sold the same way – in this instance, the only chance that odors may be created is if products are damaged or broken, however, in both instance these products will be disposed of immediately and securely. As basic practice, Element 7 will install various odor control devices and employ various techniques to mitigate and remediate any odor emissions – this includes the use of carbon scrubbers within the HVAC system, MERV 13 Grade Filters, odor enhancing plants within the facility, and electrostatic air filtration systems that systematically clean the air which is important for both odor management, and hygiene. All filters and parts will be maintained as per the manufacturer's directions.

6. Age Limits. Persons aged 18-21 with a Valid ID Card and Physician's Recommendation will be allowed into the facility. No persons under the age of 21 will be allowed to work at the facility. Please refer to pages 203, 208, 212, 217, and Page 218 for corrections and clarifications in this regard.

7. Employee Training Programs. We are currently working with the Cannabis Training Institute (CTI) for all external class-room based training needs as Clover Leaf University is not currently operational in California for class-room based training (<https://cannabistraininginstitute.com/>). Once employed, staff are provided with an annual budget to pursue additional online and class-room based training services and Clover Leaf University (<https://www.cloverleafuniversity.com/>) is one of the approved external training



providers these staff have access to. Any local General Manager and Shift Managers hired by Element 7 Fairfax will receive on-the-job training at our Fort Bragg facility where they will live and work for 2 weeks prior to opening and operating Remedy Fairfax. Please refer to Tab 8 and page 220 for the website for the Cannabis Training Institute.

8. Odor Control Systems. Odor control will be managed by installing a small HVAC system at the rear of the property, as indicated on the revised site and floor plan. As mentioned above, Element 7 will install various odor control devices and employ various techniques to mitigate and remediate any odor emissions – this includes the use of carbon scrubbers within the HVAC system, MERV 13 Grade Filters, odor enhancing plants within the facility, and electrostatic air filtration systems that systematically clean the air which is important for both odor management, and hygiene. The storage room is used specifically for cannabis and cannabis-infused products that require a climate-controlled environment such as tinctures, balms, edibles, concentrates, flower, and pre-rolls. These products are stored at 65 degrees Fahrenheit for optimal product quality and low-wattage lights are used to remove excess artificial light which can degrade products and break down plant materials exposed to the light (lights within the room are motion activated so that when the room is not in use, lights automatically switch off to preserve quality). In addition, humidity of the ambient storage room will be kept to 61% to maintain product quality. Humidity mismanagement creates an environment for mildew, mold, and bacterial growth. Products are stored on a shelf-racking system with shelf height restricted to 12 inches to reduce load factors on products. Suppliers are encouraged to use natural products such as glass as plastic does not provide a robust barrier for oxygen transfer and has been proven to degrade trichomes. In addition, concentrate / extract suppliers are encouraged to use an outer box package (and primary glass packaging) for storage as this creates a dark environment which reduces degradation from light. No electronic devices will be used within the Ambient Storage Room as these devices create heat and an unstable environment within the Room. All products are received, stored, and sold as sealed packaged goods which eliminates odors.

9. Traffic Plan. The Traffic Plan has been included at Tab 13, Pages 338-341.

10. Interview Process. Element 7 manages all HR matters internally – Taylor Munoz was recently hired to control all hiring, training, retention, and employee policy matters. Our experience in Fort Bragg recently was that the most effective way to manage recruitment and on-boarding was to centralize our HR functions with Taylor and then work with local platforms and providers to target appropriate talent. 100% of our staff in Fort Bragg were hired locally. Please refer to Tab 9, Page 258 for this correction.

11. Career Website. Element 7 has a page on his website specifically dedicated to careers and local job opportunities - <https://www.e7ca.com/careers/>. Please refer to Tab 9, Page 259 for this clarification.

12. Job Descriptions. Local staff will not be required to hold a valid Dispensing Agent Permit. Please refer to Tab 9, Pages 289-310 for all Job Descriptions.

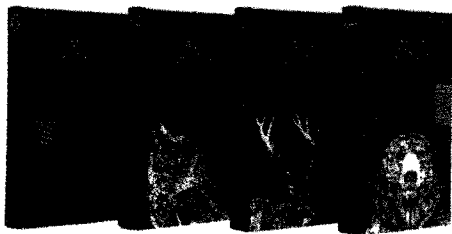


13. Insurance and Bond. I have attached copies of our Insurance Policies for South San Francisco – please refer to Tab 8, Pages 234 – 240 for copies of various policies including the Surety Bond.

14. General Inconsistencies. We have been through the entire application and addressed the inconsistencies you highlighted in your letter of November 20, 2020. Specifically, to address the specific issues you raised in the letter, I have the following:

- (1) Non-Profits are listed by name on Tab 9, Page 280.
- (2) Font sizes have been resolved I believe.
- (3) BDC (Business Development Bank of Canada) studies have been clarified on Page 161.
- (4) The glass roof reference has been removed from pages 152 and 153.
- (5) The reference to unmet needs has been removed from page 159.
- (6) As noted earlier, the Job Descriptions have been added back in pages 289-310.
- (7) The reference to snow has been removed and we apologize for its inclusion originally.
- (8) Refreshments have been removed.
- (9) Plant walls have been included in the plans on pages 319-323.
- (10) The opioid study referred to has been removed.
- (11) An electric charging station has been added as noted in pages 319-323.

15. Locally Sourced Products. As much as we would like to showcase a range of Marin County cultivators and manufacturers on our shelves, the current ordinance prohibits almost all commercial cannabis activity in the County. As and when that ordinance changes, we would be delighted to support local cultivators and manufacturers as we very successfully do in Fort Bragg today where 25% of our products are from licensed local manufacturers and producers. There are partners in Sonoma and Napa County that we do have relationships with and would be looking to include them in our plans for Fairfax. Companies include AYA, ALL Cali Farms, Castle Rock Ridge, Foxworthy Farms, Glen Tucky Family Farm, and Hands in the Earth.





With regards to product quality, we do have a 100-point **Preferred Vendor Program** in place to audit suppliers in their local communities for compliance. This is covered on page 170.

We do believe that Element 7 is the optimal partner for the Town of Fairfax. Our highly compliant and controlled operations in Fort Bragg are a demonstration, we believe, of our ability to create a business in a very local community.

As evidenced by the \$50,000+ in funding we have already spent on our application, and the lease payments we have continued to make each month to the property owner through the year, Element 7 is fully committed to Fairfax and building a sustainable business that the Town respects and feels connected to.

Please do not hesitate to contact me at robert@e7ca.com at any time if the materials we have provided need any clarification or additional materials to be deemed complete.

Kind Regards,

Robert DiVito
Co-Founder and CEO
Remedy Fairfax / Element 7 Fairfax



TOWN OF FAIRFAX

STAFF REPORT

September 4, 2019

TO: Mayor and Town Council

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

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

RECOMMENDATION

- 1) Read by title only and adopt an ordinance entitled "AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING AND RESTATING FAIRFAX MUNICIPAL CODE, TITLE 17 ("ZONING"), CHAPTER 17.110 ("MEDICAL MARIJUANA DISPENSARIES") AND REPEALING ARTICLE III ("MEDICAL MARIJUANA CULTIVATION") OF CHAPTER 17.138, TO ADOPT ZONING STANDARDS AND RESTRICTIONS FOR COMMERCIAL CANNABIS USES AND CANNABIS CULTIVATION FOR PERSONAL USE"
- 2) Read by title only and adopt an ordinance entitled "AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING FAIRFAX MUNICIPAL CODE, DIVISION II, CHAPTER 5.56, ENTITLED "CANNABIS BUSINESSES," TO REGULATE COMMERCIAL CANNABIS BUSINESSES WITHIN THE TOWN OF FAIRFAX"

BACKGROUND

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

On May 1, 2019 the Town Council again took up cannabis regulations, discussing policy issues regarding commercial cannabis uses and draft regulations which the PC reviewed. The Council requested certain changes to the draft ordinance.

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

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

DISCUSSION

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

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

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

The ordinances reflect the following key provisions governing cannabis uses:

Prohibited Cannabis Uses

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

Non-Commercial, Personal Cultivation

- A limit of up to 6 cannabis plants, whether for medical or non-medical, that may be grown indoors and/or outdoors, so long as it doesn't exceed 6 plants per property for outdoor cultivation.
- An exception process for personal medical cannabis cultivation based on a physician's recommendation documenting the need, with a maximum 10 plant limit on the number of plants.

Permitted Cannabis Uses

- A maximum of two (2) cannabis business locations for any combination of medical storefront/delivery and/or adult-use delivery.
- The existing Medical Marijuana Dispensary and its immediately adjacent Adult-Use Delivery-only Business would count as one of the two total cannabis business locations, as long as the business(es) remain in operation. If the business(es) at the current location cease operation, a maximum of two (2) cannabis business locations would still be allowed in Fairfax.

Medical Storefront Retailer Buffer Setback

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

Delivery Only Retailer Buffer Setback

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

FISCAL IMPACT

None at this time

ATTACHMENTS

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

ORDINANCE NO. ____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING AND RESTATING FAIRFAX MUNICIPAL CODE, TITLE 17 (“ZONING”), CHAPTER
17.110 (“MEDICAL MARIJUANA DISPENSARIES”) AND REPEALING ARTICLE III (“MEDICAL
MARIJUANA CULTIVATION”) OF CHAPTER 17.138, TO ADOPT ZONING STANDARDS AND
RESTRICTIONS FOR COMMERCIAL CANNABIS USES AND CANNABIS CULTIVATION FOR
PERSONAL USE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. CEQA. The Town Council hereby determines that this Ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") (California Public Resources Code §21000 et seq.) pursuant to State CEQA Guidelines Section 15061(b)(3) and Business and Professions Code Section 26055(h), each as separate and independent bases. This Ordinance is exempt under the general rule that CEQA only applies to projects, which have the potential for causing a significant effect on the environment. Pursuant to State CEQA Guidelines, Section 15061(b)(3) it can be seen with certainty that the Ordinance will not have a significant effect on the environment because it would permit limited numbers of certain cannabis retailers in zones where medical marijuana dispensaries and other similar uses are currently permitted, and because it would impose reasonable regulations on personal cultivation of cannabis that was legalized under State law. With respect to personal cannabis cultivation, this Ordinance also qualifies for the Class 3 and Class 4 exemptions because the amendments authorize indoor cultivation in existing structures and, for outdoor cultivation, only minor private alterations in the condition of land, water, and/or vegetation akin to new gardening on private residential property. Additionally, Business & Professions Code Section 26055(h) provides that CEQA does not apply to the adoption of an ordinance by a local jurisdiction that requires discretionary review and approval of permits to engage in commercial cannabis activity that includes applicable environmental review. The Town Council hereby directs the Town Manager or his/her designee to prepare and file a Notice of Exemption within five business days following adoption of this Ordinance.

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

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

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

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Barbara Coler, Mayor

Attest:

Hannah Politzer, Deputy Town Clerk _____
Date

EXHIBIT "A"

CHAPTER 17.110: CANNABIS USES

§ 17.110.010 PURPOSE.

The purpose of this Chapter is to impose zoning restrictions on various commercial cannabis businesses authorized and/or licensed by the State of California and personal cultivation of cannabis activities authorized pursuant to state law. This section is not intended to give any person or entity independent legal authority to operate a cannabis business, it is intended simply to impose zoning restrictions regarding cannabis businesses that may operate in the Town and personal cannabis cultivation activities pursuant to this Code and state law. This Chapter is in addition to any other business license and regulatory requirements imposed on cannabis businesses by this Code or other applicable state law.

§ 17.110.020 DEFINITIONS.

For purposes of this Chapter, the following definitions apply:

- A. "Adult-use cannabis" or "adult-use" means cannabis or cannabis products intended to be used for non-medical purposes by persons twenty-one years of age or older in conformance with the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10) and the provisions of State law regarding cannabis use and sale (Health and Safety Code, §11362.1 et seq.), as each may be amended from time to time.
- B. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" includes "cannabis" as defined in Business and Professions Code, Section 26001 and in Section 11018 of the Health and Safety Code. "Cannabis" shall not include industrial hemp as defined by Section 11018.5 of the Health and Safety Code.
- C. "Cannabis cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. For purposes of commercial cannabis cultivation, the term "cannabis cultivation" also includes processing, rolling, storing, packaging, and labeling of non-manufactured cannabis products.
- D. "Cannabis delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Cannabis delivery" also includes the use by a cannabis retailer of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
- E. "Cannabis distribution facility" means any facility engaged in the procurement, temporary storage, non-retail sales, and transport of cannabis and cannabis products between State-licensed cannabis businesses and any other activity allowed under the State distributor license(s), including, but not limited to, quality control and collection of State cannabis taxes.

- F. "Cannabis manufacturing" means the compounding, blending, extracting, infusing, or otherwise making, preparing or packaging a cannabis product. Cannabis manufacturing includes the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.
- G. "Cannabis microbusiness" means a commercial cannabis business that must engage in at least three of the following commercial cannabis activities: cultivation, manufacturing using nonvolatile solvents, distribution, and/or retail.
- H. "Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis products include "cannabis products" as defined in Business and Professions Code, Section 26001.
- I. "Cannabis retailer" means a facility or premises where cannabis or cannabis products are offered, either individually or in any combination, for retail sale or other sales or transfer to consumers, including an establishment that delivers cannabis and cannabis products as part of a retail sale. For purposes of this Section, "cannabis retailer" also includes medical cannabis dispensaries, patient collectives and cooperatives operating, or proposing to operate, pursuant to the Compassionate Use Act (Health and Safety Code, § 11362.5) and/or the Medical Marijuana Program (Health and Safety Code, § 11362.7 et seq.), as may be amended. Unless otherwise specified, "cannabis retailer" means both a retailer selling medicinal cannabis and medicinal cannabis products to patients with valid physicians' recommendations, and a retailer selling adult-use cannabis and cannabis products for adults twenty-one (21) years of age and older. The term "cannabis retailer" includes both storefront retailers and delivery-only retailers unless otherwise specified.
- J. "Cannabis testing laboratory" means a laboratory, facility, entity, or site that offers or performs tests or testing of cannabis or cannabis products.
- K. "Commercial cannabis use" includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis uses includes "commercial cannabis activity" as defined in Business and Professions Code, §26001, and includes any activity that requires, or may require in the future, a license from a State licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10), as may be amended. Commercial cannabis use does not include the activities of a qualified patient or a primary caregiver that are exempt from State licensure pursuant to Business and Professions Code, § 26033.
- L. "Day care center" means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and schoolage child care centers, as defined

Sections 1596.76 and 1596.750 of the Health and Safety Code.

- M. "Delivery-only retailer" means a cannabis retailer that conducts cannabis sales exclusively through cannabis delivery from a fixed, physical location that is closed to the public. Also known as a "non-storefront retailer."
- N. "Fully enclosed and secure structure" means a space within a dwelling unit that complies with the California Building Code, as adopted in the town ("CBC"); or, if exempt from the permit requirements of the CBC, an accessory structure, on a lot containing a dwelling unit, having a complete roof and enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. In order to qualify as a fully enclosed and secure structure, the walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two-inch by four-inch or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials.
- O. "Indoor" means within a fully enclosed and secure structure.
- P. "Medicinal cannabis" or "medical use" means cannabis or cannabis products intended to be used for medical purposes in accordance with the Compassionate Use Act of 1996 (California Health and Safety Code §11362.5) and the Medicinal Marijuana Program Act (California Health and Safety Code §11362.7 *et seq.*), as each may be amended from time to time.
- Q. "Outdoor" means any location not within a fully enclosed and secure structure, such as a location exposed to the open air or within a greenhouse.
- R. "Personal cultivation" means cultivation of cannabis for a natural person's own personal use and possession in accordance with this Code and state law, including but not limited to Health and Safety Code Sections 11362.1 and 11362.2, as may be amended, and such person does not sell or distribute cannabis to any other person. "Personal use" also means and includes cultivation of medical cannabis conducted by a qualified patient exclusively for his or her personal medical use, and cultivation conducted by a primary caregiver for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, in accordance with state law, including Health and Safety Code Sections 11362.7 and 11362.765, as may be amended. Except as herein defined, personal cultivation does not include, and shall not authorize, any cultivation conducted as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of cannabis, or by a cannabis cooperative association or any of its members.
- S. "Primary caregiver" shall have the same meaning as the term "primary caregiver" defined in Cal. Health and Safety Code § 11362.7, as may be amended from time to time.
- T. "Private residence" means house, an apartment unit, accessory dwelling unit, a mobile home, or other similar dwelling occupied for residential purposes, or as defined in Cal. Health and Safety Code § 11362.2, as may be amended from time to time.

- U. "Qualified patient" means and includes both a "qualified patient" and a "person with an identification card" as each term is defined in Cal. Health and Safety Code § 11362.7, as amended from time to time.
- V. "School" means a place of instruction at the primary, secondary or high school level for at least four grades within a range from transitional kindergarten or kindergarten through 12 (whether public, private, or charter), but does not include any place where instruction is conducted primarily in a private home.
- W. "State commercial cannabis license" means a state license issued under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10), as may be amended, and includes both an A-license and an M-license, as well as a testing laboratory license.
- X. "Storefront retailer" means a cannabis retailer that conducts cannabis sales at a business premises that is open to the public, and may also conduct cannabis delivery as part of a retail sale.
- Y. "Sell," "sale," and "to sell" include any transaction, whereby, for any consideration title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from who the cannabis or cannabis product was purchased.
- Z. "Tutoring center" means a place that provides instruction supplemental to that provided by a school, requires compensation, and offers such instruction to at least ten clients who do not reside on the premises, for at least 37 weeks a year. A tutoring center may be located in a residence as long as the residence is in a commercial zone.
- AA. "Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades where 10 or more video games or game machines or devices are operated, and where minors are legally permitted to conduct business, or similar amusement park facilities. This definition shall not include any private martial arts, yoga, ballet, music, art studio or similar studio of this nature nor shall it include any private gym, athletic training facility, pizza parlor, dentist office, doctor's office primarily serving children, or a location which is primarily utilized as an administrative office for youth programs or organizations.

§ 17.110.030 COMMERCIAL CANNABIS ACTIVITIES PROHIBITED UNLESS SPECIFICALLY AUTHORIZED BY THIS CHAPTER

- A. All commercial cannabis uses as defined herein (other than as provided under Business and Professions Code Sections 26054(c) and (d), 26080(b), and 26090(e)) are prohibited from establishing or operating in all zoning districts within the Town of Fairfax except and unless expressly permitted by and in conformance with the provisions of this Chapter and/or Chapter 5.56.

- B. All commercial cannabis uses permitted by this Chapter must, prior to establishing and operating any such commercial cannabis use, obtain and maintain at all times (1) a valid state commercial cannabis license, (2) a commercial cannabis business permit pursuant to Title V, Chapter 5.56 of this Code and (3) any other local or regulatory licenses or permits required by this Code or state law.

17.110.040 CANNABIS RETAIL USES.

- A. Cannabis retailers may be permitted subject to the approval of a commercial cannabis business permit pursuant to Chapter 5.56 of this Code, and provided there shall be no more than two (2) cannabis retailer locations at any one time in the following use categories, or in any combination thereof:

1. Medical-use cannabis storefront retailer(s); and/or
2. Delivery-only retailer(s), which may be medical-use, adult-use or both.

This limit shall include any medical marijuana dispensary that was legally operating as of April 3, 2018, and continues to operate, and which may be permitted to conduct adult-use cannabis deliveries pursuant to Section 17.110.050 (“Adult-Use Cannabis Deliveries By Certain Existing Medical Marijuana Dispensaries”), below. In the event that the existing medical marijuana dispensary ceases to operate in accordance with a legally-issued permit, another a permit may be issued for another operator or location such that at all times, two (2), but not more than two (2), retail locations may hold permits to legally operate. One retail location may consist of side-by-side licensed premises as defined in 16 California Code of Regulations, Section 5025, in order to permit the licensing and operation of both a medical use storefront retailer and adult-use delivery-only retailer by a single operator.

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

1. Medical-Use Cannabis Storefront Retailers: Highway Commercial (CH) and Central Commercial (CC).
2. Cannabis Delivery-Only Retailers: Highway Commercial (CH), Central Commercial (CC) and Limited Commercial (CL).

- C. Cannabis retailers shall not be allowed within the specified distances to the following uses that are in existence at the time the cannabis use is established. Specifically, a cannabis retailer shall not locate or establish:

1. Medical-Use Cannabis Storefront Retailers: Within a 600-foot radius of a school, or youth center. (See Business and Professions Code, § 26054.) Within a 300 foot radius of a daycare center or tutoring center.
2. Cannabis Delivery-Only Retailers: Within a 250-foot radius of a school. or youth center. Pursuant to California Business and Professions Code Section 26054(b), as may be amended, the Town finds that no setback or radius is necessary for cannabis delivery-only

retailers near day care centers or other potentially sensitive uses, beyond the radii contained herein.

The distances specified in this Section shall be the horizontal distance measured in a straight line from the property line of the specified use to the closest property line of the lot on which retailer is to be located without regard to intervening structures. (See Business and Professions Code, § 26054(b); Health and Safety Code, § 11362.768(c).)

- D. Cannabis retailers shall meet all standards for development in the underlying zoning district, in the Town's General Plan, and in any applicable specific plans or master plans, and in addition:
1. Parking shall be provided in accordance with the following:
 - i. Medical-Use Cannabis Storefront Retailers: Town Code § 17.052.030(F) for retail and personal service stores at a rate of three spaces for the first 500 square of gross floor area and one space for each additional 500 square feet thereafter, plus one space per delivery vehicle unless an employee vehicle is used to conduct deliveries.
 - ii. Cannabis Delivery-Only Retailers: Town Code § 17.052.030(K) for industrial uses, including wholesale and storage: one space per two employees of the maximum shift, plus one space per delivery vehicle unless an employee vehicle is used to conduct deliveries.
 2. Size of facility. The size of the facility shall not exceed 1,500 square feet exclusive of restroom facilities and common areas.
 3. If an application for a proposed cannabis retailer requires compliance with Chapter 17.020 ("Design Review Regulations"), then notwithstanding any provision of Chapter 17.020 to the contrary, the Planning Commission shall provide a recommendation on such design review application and final approval authority shall vested in the Town Council. The Town Council's review and decision shall in all respects comply with the criteria set forth in Chapter 17.020.
 4. If an application for a proposed cannabis retailer requires a traffic impact permit pursuant to Chapter 17.056 ("Traffic Impact Permit"), then notwithstanding any provision of Chapter 17.056 to the contrary, the Town Council shall not be required to approve the methodology used in the traffic study pursuant to Section 17.056.070.
 5. If an application for a proposed cannabis retailer requires a sign permit pursuant to Chapter 17.064 ("Signs"), then notwithstanding any provision of Chapter 17.064 to the contrary, the Planning Commission shall make a recommendation on such sign permit, and final approval authority shall vested in the Town Council. The Town Council's review and decision shall in all respects comply with the criteria set forth in Chapter 17.064, except signage shall be limited to a single window or wall sign and in no circumstances shall any signage for a cannabis retailer exceed six square feet in area.

§ 17.110.050 ADULT-USE CANNABIS DELIVERIES BY CERTAIN EXISTING MEDICAL MARIJUANA DISPENSARIES.

- A. A medical marijuana dispensary that was legally operating as of April 3, 2018 and is permitted by the Town to operate a medical marijuana delivery service, may operate as a permitted use in any commercial district, an adult-use cannabis delivery-only service from its then existing premises, subject to each of the following conditions:
1. The dispensary shall, prior to conducting any adult-use cannabis deliveries, obtain and maintain at all times:
 - (a) A valid state cannabis license authorizing adult-use cannabis deliveries issued by the appropriate state licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (California Business and Professions Code, Division 10);
 - (b) A commercial cannabis business permit pursuant to Title 5, Division II, Chapter 5.56 of this Code; and
 - (c) Any other state and local licenses or permits required by this Code or state law.
 2. All cannabis deliveries must conform to State laws and regulations adopted pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act except as set forth herein regarding the State buffer zone.
 3. No adult-use customers shall be permitted to access or remain in the business premises of a medical marijuana dispensary.
 4. No adult-use cannabis retail sales shall be permitted to occur at the premises of a medical marijuana dispensary.
- B. Pursuant to California Business and Professions Code Section 26054(b), as may be amended, the Town finds that no setback or radius is necessary for the conduct of adult-use cannabis deliveries by an eligible, existing medical marijuana dispensary pursuant to this Section, beyond the zoning regulations contained herein.
- C. This Section is not intended to give any person or entity independent legal authority to operate an adult-use cannabis non-storefront retail delivery service, it is intended only to clarify the zoning restrictions regarding certain existing medical marijuana dispensaries that may conduct adult-use cannabis deliveries in the Town pursuant to this Code and state law. This Section is in addition to any other business license and regulatory requirements imposed on medical marijuana dispensaries and non-storefront retail cannabis delivery services by this Code or other applicable state law.

§ 17.110.060 - § 17.110.090 RESERVED.

§ 17.110.100 PERSONAL CULTIVATION OF CANNABIS.

Personal cultivation of cannabis shall comply with the following:

- A. No more than six cannabis plants per private residence are allowed to be cultivated, whether indoors or outdoors upon the grounds of a private residence, regardless of the number of individuals residing at the residence. However, outdoor cultivation shall not exceed 6 plants per lot, regardless of the number of private residences located upon the lot.
- B. *Outdoor Cultivation.* Outdoor personal cultivation of cannabis shall comply with the following standards:
 1. Outdoor cannabis plants shall be located a minimum of five feet from property lines.
 2. Outdoor cannabis plants shall be located only in the rear and side yards of a lot, and are not permitted to be located in front yards of any lot.
 3. No cannabis plants cultivated shall be visible from a public right-of-way or any other public place by normal unaided vision.
 4. No cannabis plants cultivated shall exceed seven feet in height.
 5. The area used for cannabis cultivation shall be contained within a locked space (e.g. enclosed within a locked gate).
 6. Any lot upon which cannabis plants are cultivated shall have fencing of no more than six feet in height surrounding the lot or that portion of the lot upon which the plants are cultivated. In no event shall netting or plastic screening be used in conjunction with cannabis cultivation.
 7. Outdoor cultivation is prohibited on parcels within 200 feet of any school or day care center.
- C. *Indoor Cultivation.* Indoor personal cultivation of cannabis shall comply with the following standards:
 1. Plants shall be contained within a locked space of a fully enclosed and secure structure, as defined, either within the primary residence or within an accessory structure on the same lot as the primary residence.
 2. Indoor grow lights shall not exceed 1,200 watts and comply with the California Building, Electrical, Plumbing and Fire Codes as adopted by the town. Gas products (CO₂, butane, propane, natural gas, kerosene, etc.) or generators may not be used indoors or outdoors.
 3. All electrical equipment used in the cultivation or processing of cannabis (e.g. lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation or processing of cannabis is prohibited.

4. All cannabis cultivation areas shall be in compliance with the current, adopted edition of the California Building Code as regards mechanical ventilation.
 5. Shall not be conducted in a manner that results in the creation of mold or mildew inside the residence or the accessory structure.
- D. *General.* All personal cultivation of cannabis, whether indoors or outdoors, shall comply with the following generally applicable standards:
1. A copy of documentation of qualified patient status must be maintained at any location at which medical cannabis cultivation occurs. If cultivation is to be conducted by a primary caregiver, documentation of the legally-required relationship shall be maintained at the location where medical cannabis cultivation occurs.
 2. The residence shall maintain fully functional and usable kitchen, bathrooms, and bedrooms for their intended use, and the premises shall not be used primarily or exclusively for cannabis cultivation.
 3. No cannabis cultivation area shall be maintained or operated in such a way as to adversely affect the health or safety of the nearby residents in any manner, including but not limited to by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes. A public nuisance may be deemed to exist, if such cultivation activity produces: (a) odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public, (b) repeated responses to the residence from law enforcement officers, (c) repeated disruption to the free passage of persons or vehicles in the neighborhood, (d) excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public, or (e) any other impacts on the neighborhood which are disruptive of normal activity in the area.
 4. Any cannabis cultivation that would require a license or permit from the State of California per the Medical and Adult-Use Regulation and Safety Act (Cal. Business and Professions Code, Division 10) is prohibited within the Town of Fairfax.

§ 17.110.110 MEDICAL CANNABIS ADMINISTRATIVE EXCEPTION.

- A. Any qualified patient or primary caregiver may seek a medical cannabis administrative exception to Section 17.110.100, subdivisions (A) or (B)(7).
- B. Any request for a medical cannabis administrative exception shall be submitted to the Town Manager, along with documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, demonstrating why the standard required by Section 17.110.100, subdivisions (A) or (B)(7), is not feasible.
- C. The Town Manager may grant a medical cannabis administrative exception only if the following findings can be made:

1. The individual requesting the exception can demonstrate a medical need for the exception, as evidenced by the written recommendation of a treating physician;
 2. The requested exception shall not constitute a public nuisance, as set forth in § 17.110.100(D).
 3. For indoor cultivation, the Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers, code-compliant electrical systems or one-hour firewall assembly.
 4. The cultivation of no more than ten (10) cannabis plants shall be authorized through a medical cannabis administrative exception.
- D. The Town Manager, or his or her designee, shall prepare a written approval or denial of any request for an exception within ten business days of its submission to the Town. Approval of the requested exception may be made subject to conditions designed to lessen the impact of the exception on neighboring uses and the community generally.
- E. Any exception granted under this section shall be personal to the party to whom such exception was granted and shall not run with the land or otherwise be transferable.
- F. Notwithstanding any other provision of the Town Code, any person aggrieved by the decision of the Town Manager, or his or her designee, with respect to an exception requested under this § 17.110.110 may appeal said decision within ten days of the date of the decision to the Planning Commission. Upon review, the Planning Commission shall issue the requested exception if it meets the requirements of subdivision (C) above, and subject to any conditions imposed per subdivision (D) above.

§ 17.110.120 ENFORCEMENT.

- A. *Public nuisance.* The violation of this Chapter is hereby declared to be a public nuisance and may be enforced pursuant to the provisions of Chapter 1.12 of the Fairfax Town Code.
- B. *Seizure and destruction of cannabis.* To the extent authorized by state law, all cannabis seized by the Town Police in the enforcement of this Chapter shall be seized, retained and destroyed in the same manner and subject to the same procedures as are provided in California Health and Safety Code §§ 11472 through 11479, for cannabis possessed in violation of Division 10 of the Health and Safety Code.
- C. *Right of entry.* The Code Enforcement Officer, Building Official, Planning Director, Chief of Police, Fire Inspector, or a designee is authorized to enter upon and inspect private properties to ensure compliance with the provisions of this Chapter. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other person in lawful possession of the property. If consent cannot for any reason be obtained, an inspection warrant shall be obtained from a court of law prior to any such entry and

inspection. In those cases where consent is denied, the Town may seek to recover the costs it incurs in obtaining a warrant from the property owner and/or person in lawful possession of the property.

- D. *Abatement.* The Town Attorney, in the name of and on behalf of the town and/or the people of the town, may bring a civil action in a court of competent jurisdiction to enforce any provision of this Chapter, or to restrain or abate any violation of the provisions of this Chapter as a public nuisance.
- E. *Penalties not exclusive.* The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the town from using any other remedy at law or in equity which may be available to enforce this Chapter or to abate a public nuisance.

§ 17.110.130 LIABILITY.

The provisions of this Chapter shall not be construed to protect the property owner(s) of record, or their lessees, tenants or other participants engaged in the personal cultivation of cannabis or commercial cannabis uses from prosecution pursuant to any state or federal laws regulating or prohibiting such activities. The property owner(s) of record, or their lessees, tenants and other participants, assumes any and all risk and all liability that may arise or result under state and federal laws from the cultivation of cannabis or commercial cannabis activities conducted on such property.

ORDINANCE NO. __

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING FAIRFAX MUNICIPAL CODE, DIVISION II, CHAPTER 5.56, ENTITLED
“CANNABIS BUSINESSES,” TO REGULATE COMMERCIAL CANNABIS BUSINESSES
WITHIN THE TOWN OF FAIRFAX**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. **CEQA.** The Town Council hereby determines that this Ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") (California Public Resources Code §21000 et seq.) pursuant to State CEQA Guidelines Section 15061(b)(3) and Business and Professions Code Section 26055(h), each as separate and independent bases. Pursuant to State CEQA Guidelines, Section 15061(b)(3) it can be seen with certainty that the Ordinance will not have a significant effect on the environment because it would require a regulatory permit and impose operating criteria on cannabis retailers where medical marijuana dispensaries and other similar uses are currently permitted. Additionally, Business & Professions Code Section 26055(h) provides that CEQA does not apply to the adoption of an ordinance by a local jurisdiction that requires discretionary review and approval of permits to engage in commercial cannabis activity that includes applicable environmental review. The Town Council hereby directs the Town Manager or his/her designee to prepare and file a Notice of Exemption within five business days following adoption of this Ordinance.

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

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

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

AYES:
NOES:
ABSENT:
ABSTAIN

Barbara Coler, Mayor

Attest:

Hannah Politzer, Deputy Town Clerk

Date

EXHIBIT "A"

Fairfax Municipal Code

CHAPTER 5.56: CANNABIS BUSINESSES

ARTICLE I: COMMERCIAL CANNABIS BUSINESS PERMITS

5.56.010 Purpose and intent.

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

5.56.020 Definitions.

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

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

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

5.56.030 Prohibited commercial cannabis activities.

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

5.56.040 Permit requirements.

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

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

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

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

5.56.060 Permit application.

- A. All applications for a commercial cannabis business permit shall be filed with the Town Manager or designee, using forms provided by the Town, within the application period that is established by the Town Manager, and which period may be extended from time to time. It is the responsibility of the applicant to provide a complete application and all information required for approval of the permit. The application shall be made under penalty of perjury. At a minimum, each application shall contain:

1. A complete identification of the applicant including name, address and phone number to which notice of action on the application and correspondence is to be mailed;

2. A description of the statutory entity or business form that will serve as the legal structure for the applicant and a copy of its formation and organizing documents, including, but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement;

3. Names, residence and business addresses of each and every owner. If one or more owners is a statutory entity or other business form, the name of the entity shall be set forth exactly as shown in its formation and organizing documents together with the names, residence and business addresses of each of the owners and other persons with a financial interest in the entity;

4. The names, residence and business addresses of each and every manager;

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

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

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

5.56.070 Review and action on applications.

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

A. Phase 1 – Prescreening and Criminal History:

1. Upon close of the application period, Town staff shall review each complete application for general compliance with the Town’s municipal code, and shall reject any application which does not meet such requirements or is incomplete. Rejected applications shall not be scored. The Town shall also disqualify any application that contains any false or misleading information.
2. All exterior building improvements, including façade improvements and proposed signage, shall be reviewed for conformance with the Town’s zoning and land use standards. If required, the applicant shall apply for any design review approval, traffic impact permit and/or sign permit necessary under Chapters 17.020, 17.056 and/or 17.064 concurrently with the application for the commercial cannabis business permit. The prescreening approval may be conditioned upon the applicant submitting complete application materials for design review, traffic impact and/or sign permits. All applications will be required to comply with environmental review pursuant to the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21000 et seq.).
3. Each applicant shall submit to the Chief of Police a recent photograph of the applicant (if an individual), each owner and current or prospective manager. The applicant, owner(s) and manager(s) shall also submit fingerprints pursuant to “Livescan” procedures and pay all costs associated with such submittal. Upon receipt of the Livescan results, the Chief of Police shall review and report if the criminal history of the applicant, owner(s) and manager(s) satisfies the minimum criteria pursuant to Section 5.56.080.
4. The applicant prescreening decisions will be made by the Town Manager within 60 days of the close of the application period or receipt of Livescan results, whichever is later. Only applicants who receive approval of the prescreening review may proceed to the next phase of the selection process.

B. Phase 2 – Application Scoring:

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

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

3. The specific scoring criteria, weighting (points per criteria), minimum qualifying scores and any additional application procedures will be determined by resolution of the Town Council prior to the commencement of the application period and posted publicly 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 of 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.

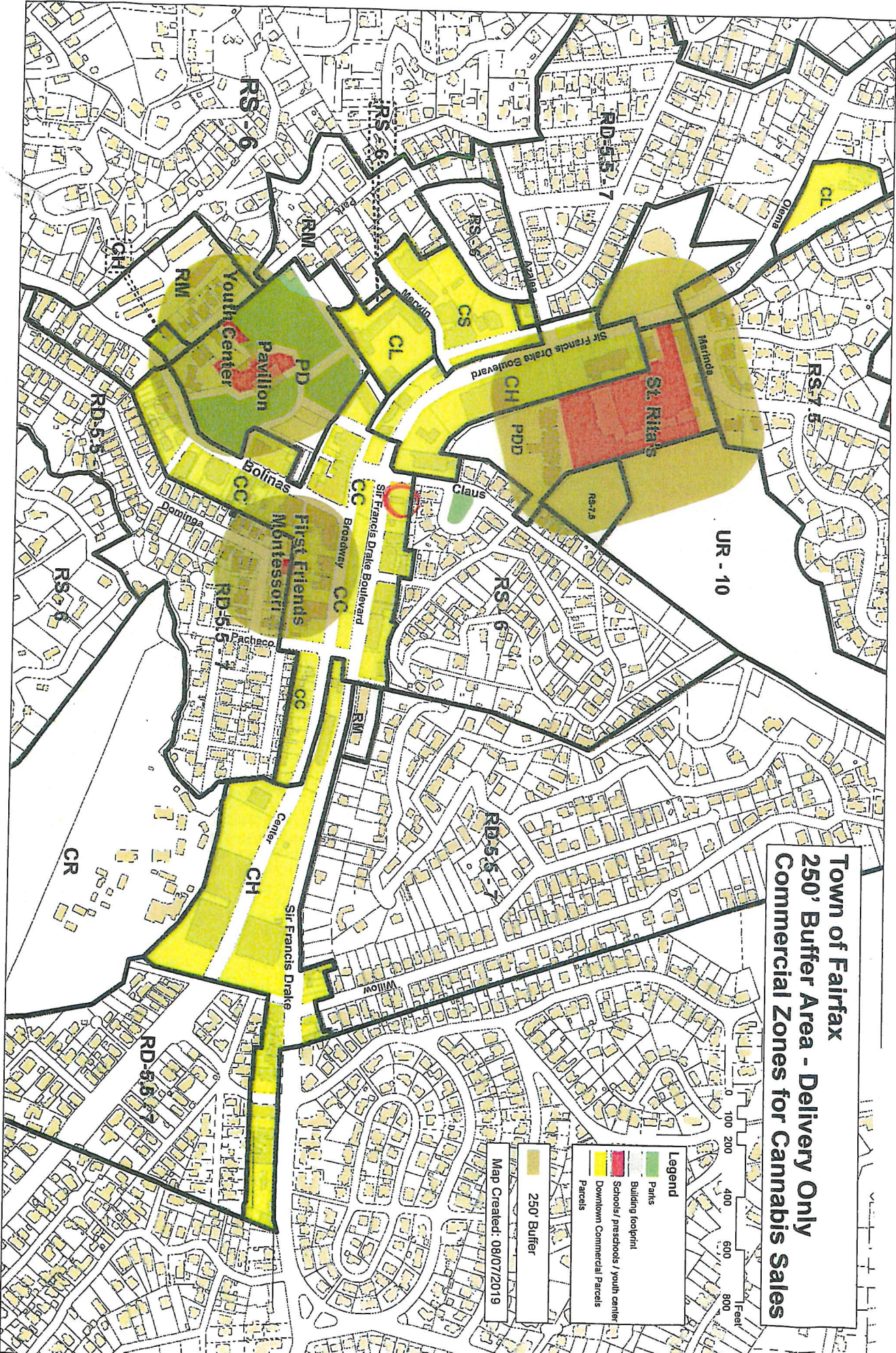
ARTICLE II. RESERVED

ARTICLE III. CANNABIS DELIVERIES

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

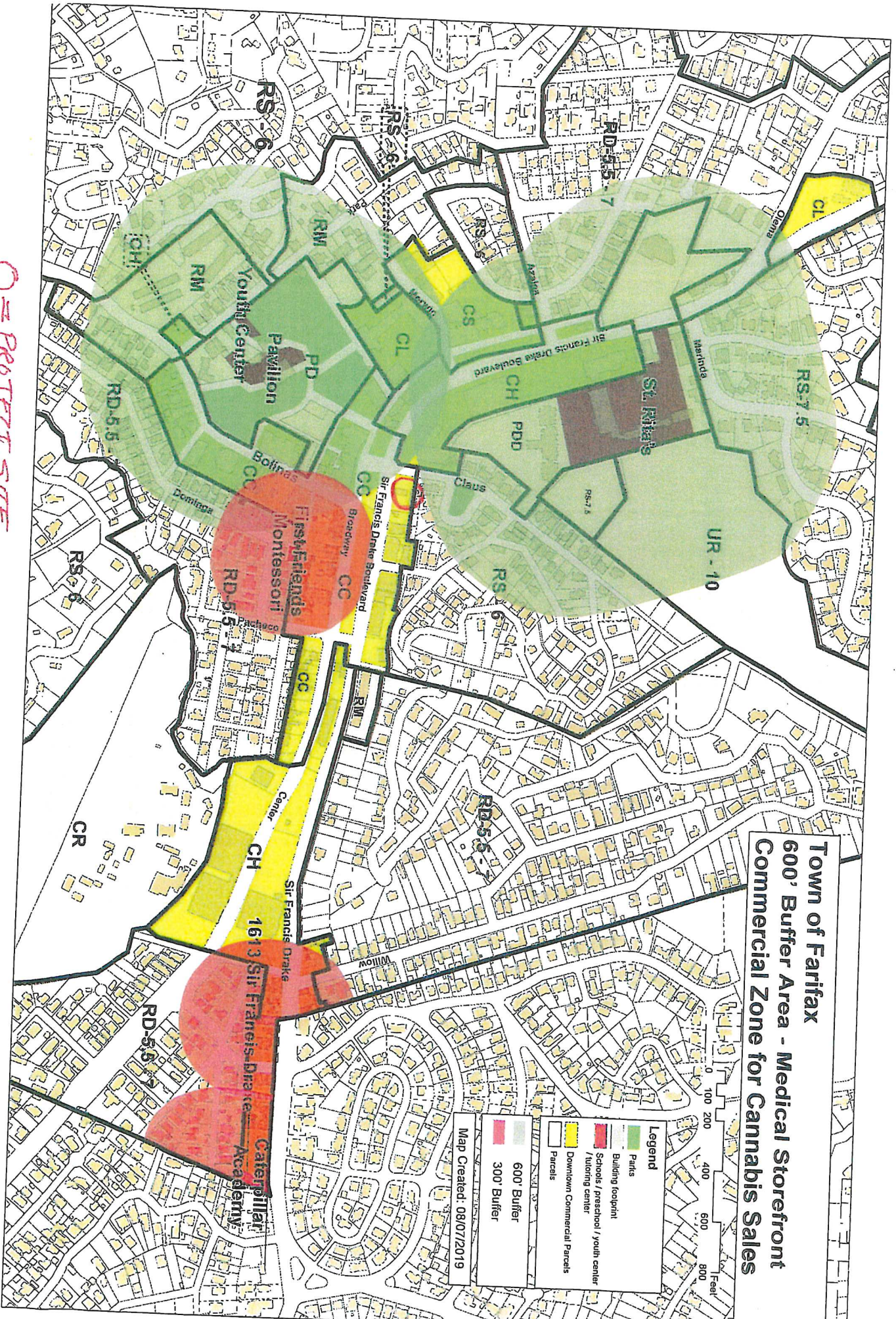
A medical marijuana dispensary that was legally operating as of April 3, 2018 and is permitted to operate a medical marijuana delivery service, may operate an adult-use cannabis delivery service from the location of its existing premises upon obtaining a cannabis business permit pursuant to this section 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.

**Town of Fairfax
250' Buffer Area - Delivery Only
Commercial Zones for Cannabis Sales**



O = PROJECT SITE

O = PROTEST SITE



Town of Farifax
600' Buffer Area - Medical Storefront
Commercial Zone for Cannabis Sales

- Legend**
- Parks
 - Building footprint
 - Schools / preschool / youth center / tutoring center
 - Downtown Commercial Parcels
 - Parcels

- 600' Buffer
- 300' Buffer

Map Created: 08/07/2019



Laura Ackley, Historian
Cultural Resources Management

248 Laurel Pl.
San Rafael, CA 94901
415-456-2327
crm@sf1915.com

Linda Neal, Principal Planner
Town of Fairfax
142 Bolinas Rd., Fairfax, CA 94930

Dear Linda,

This letter assesses whether the proposed alterations to the structure located at 1930 Sir Francis Drake Boulevard, Marin County APN# 001-223-10, are consistent with its character-defining. (See Assessor-Recorder's map, Fig. 1)

Executive Summary:

The proposed changes to the structure located at 1930 Sir Francis Drake Boulevard are consistent with the character-defining features of the building.

Description of the Basic Structure:

1930 Sir Francis Drake Blvd. was built by Dr. Thomas I. J. Snead in 1939 as a home for his dental practice. The 1924 Sanborn Fire Insurance Map of Fairfax shows a small, unidentified square structure on the site, which was then addressed as 60 Olema County Road (Fig. 2). When mapped again in 1943, the Sanborn Map shows the Snead office's distinctive L-shaped footprint and is labeled "DRS OFF.," an abbreviation of "doctor's office." Its address had been renumbered to 1960 Olema County Road. (Fig. 3)

It is a modest, approximately 775-square-foot, purpose-built vernacular structure. The building could be described as nominally Mediterranean Revival in style, with pale, stuccoed façades and a line of terra-cotta tiles overhanging the edge of the flat roof, suggestive of a fully tiled roof. These elements suggest a Spanish or Mexican influence. However, these features constitute the limits of this implied style.¹

The "wings" of the unpretentious, utilitarian structure parallel Sir Francis Drake Blvd. The west "leg" of the building runs approximately north/south, and terminates near the sidewalk. In its original 1939 form, a small, double-hung window flanked by ornamental shutters was centered on the façade facing the street. This housed the waiting room for patients. Another window, also with shutters, pierced the east face of the original room, near the entry.

A vertical drain pipe runs near the westernmost corner of the front face of the building. Three small pipes centered over the front window and arranged in a triangular pattern protrude an inch or two from the façade.

The east-west "leg" of the building is set back from the street about 10 feet north, and connects at a right angle to the eastern "leg" of the L. Another set of the three pipe openings

¹ Sagar, William and Brian. *Images of America: Fairfax*, 74. Arcadia, 2005.

adorns the otherwise blank wall of the eastern portion of the building which also faces the street. In its original form, a walkway led from the sidewalk to the entrance doors, which are located at the 90-degree angle interior intersection of the wings.

The doors are positioned unusually, at right angles to one another within a small inset niche that serves as a porch. Through Dr. Snead's tenure, from 1939 until his retirement in 1989, the porch was accessed by a flight of three concrete steps. The odd door layout likely was purely functional. The door on the west leg of the L led to the waiting room, and it seems likely that the eastern door led to the "private" section of the building so that people could enter it without passing through the waiting room.

The most notable architectural feature of the original building is a flat, quarter-round, stuccoed "awning" overhanging the two, perpendicularly-arranged entry doors. This awning features two parallel, horizontal depressed bands around its circumference.

This stucco awning detail is much more reminiscent of Streamline Moderne than of Mediterranean Revival. The Streamline Modern style evolved in the 1930s as a later extension of the Art Deco style. Streamline Modern emphasized aerodynamic and industrial forms while still recalling its more detailed and historicizing Art Deco roots. The small entry overhang on 1930 Sir Francis Drake Blvd. is its sole referent to contemporary architecture to its time of construction.

The east, west and rear façades of the building, which do not parallel the street, feature industrial style vents near the roofline. There are no windows on the entire west face of the building, and a single window on the south (street) side of the east face. There are no known photos of the original north (back) façade of 1930 Sir Francis Drake, so its complement of fenestrations is not known. It is likely that there was at least one window.

Thus, the building, while not unattractive, demonstrates no intrinsic architectural merit. In fact, the two nods to the architectural styles of Mediterranean Revival and Streamline Moderne compete with one another. However, since these stylistic gestures are minimal and simple; the building does not present a "hodgepodge" appearance.

Subsequent Alterations

1930 Sir Francis Drake Blvd. has undergone notable changes over its lifespan.

Several elements changed during Dr. Snead's tenure. Originally the width of the office was spanned by a white picket fence that extended from the sidewalk to the corners of the building. A gate provided access to the entry.

A video created in 2012 by the Fairfax Historical Society and posted on YouTube² shows a composite panorama of downtown Fairfax as it appeared in 1968. By then hedges had grown up between the office, its address again renumbered to 1930 Sir Francis Drake Blvd., and the picket fence, and the skinny cypresses planted when the office opened were large and obscured the corners of the structure. The front window still sported its ornamental shutters.

² ccbtube. "Fairfax CA 1968." YouTube. YouTube, June 3, 2012. <https://www.youtube.com/watch?v=cOPQVFEiyRU>.

An automated “ice house” was stationed on the east side of the opening between Dr. Snead’s office and the next building.

When Dr. Snead closed his practice and sold the office building in 1989, the fence had been removed, along with the ornamental shutters on all the windows. Hedges still grew between the building and the sidewalk. The cypresses had been removed, but other trees, already as tall as the building, stood in front of the east corner. The ice house was gone, and the space between the office and the neighboring building to the east was now planted with roses.

The building changed further in the 1990s. A rectangular deck was added at the level of the doors, filling in the open section between the two legs of the structure. A flight of four stairs on the easternmost corner of the deck enabled visitors to reach the entry. A solid “pony wall,” which appears in photos to be about four feet tall, extended from the front of the original waiting room to the steps, acting as a railing. A short curb was added at the edge of the sidewalk, with modest plantings between it and the building. A trellis provided a visual divider from the gas station west of the office, and the rose garden east of the office was now a paved drive.

Photos from 2008 show that the planter beds next to the sidewalk had been raised, and a ramp installed along the front of the original “waiting room.” The ramp sloped up from west to east and connected to a landing at the top of the 1990s stairs, then turned left to ascend to the smaller deck and entry doors. (The deck had been reduced in size from the original version to accommodate the width of the ramp). The original window was replaced with a wider, horizontal, sliding window. A fabric awning now shaded the front window and was emblazoned with the name of the tenant, an insurance company, and a signpost extended from the southwest roofline. An extension, possibly an unconnected shed with a sloping roofline was grafted to the northwest (rear) corner at an unknown date prior to 2008.

Since 2008, little has altered beyond plantings and usage. Somewhat incomplete data shows that the office was modified for use as a probable optical practice (indicated by signage in photos), a medical equipment store, a gift shop, and in its current incarnation, a café serving “açai bowls,” snacks served over a base of berry sorbet. At some point between 2011-2015, the ornamental “shutters” returned, but in the form of plain boards attached to the walls on either side of the windows. These clearly are not character-defining. The interior has been opened into a single room with attached bathroom, a tiled floor and a counter-service café.

The proposed design will change the façade slightly, but not the fundamental underlying form of the building.

Planned Changes

Several proposed architectural modifications are required to meet Americans with Disabilities Act (ADA) requirements. These include replacing the impractical entry doors (one of which is currently unused) with windows. These windows would draw focus to the small Streamline Moderne overhang. The proposed new, accessible main door will be moved to the south side of the east leg of the “L.”

A new, ADA-compliant ramp will slope from north to south along the east side of the building, curving around the front, and the non-original stairs replaced with a set parallel to the sidewalk on the west side of the building. While of modern design, the new ramp's railing of parallel, horizontal divisions is more reminiscent of Streamline Moderne style than the current picket railings.

The building at 1930 Sir Francis Drake Blvd. in Fairfax has always been of 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. Further, none of the changes would prevent the building from being returned to its original configuration if ever desired, as they are non-structural.

It is my conclusion that the proposed changes are consistent with the character-defining features of the building.

Regards,



Laura A. Ackley

Author *San Francisco's Jewel City: The Panama-Pacific International Exposition of 1915*
Registered California Historical Resources Information System Consultant
Harvard Graduate School of Design M.Des.S, Architectural History & Digital Production Environments
University of California, Berkeley M.S. Architectural History & Theory

cc: Ben Berto, Director of Planning and Building Services, Town of Fairfax

Figures:

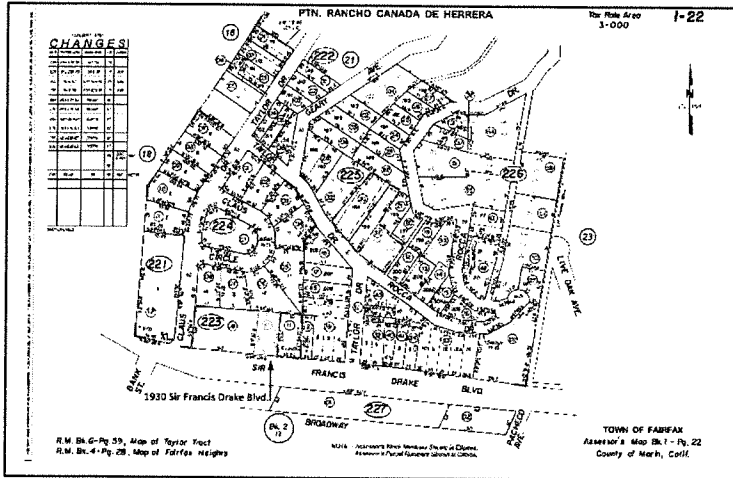


Figure 1: Marin County Assessor-Recorder's Map Book Plot Map, 1930 Sir Francis Drake Blvd.

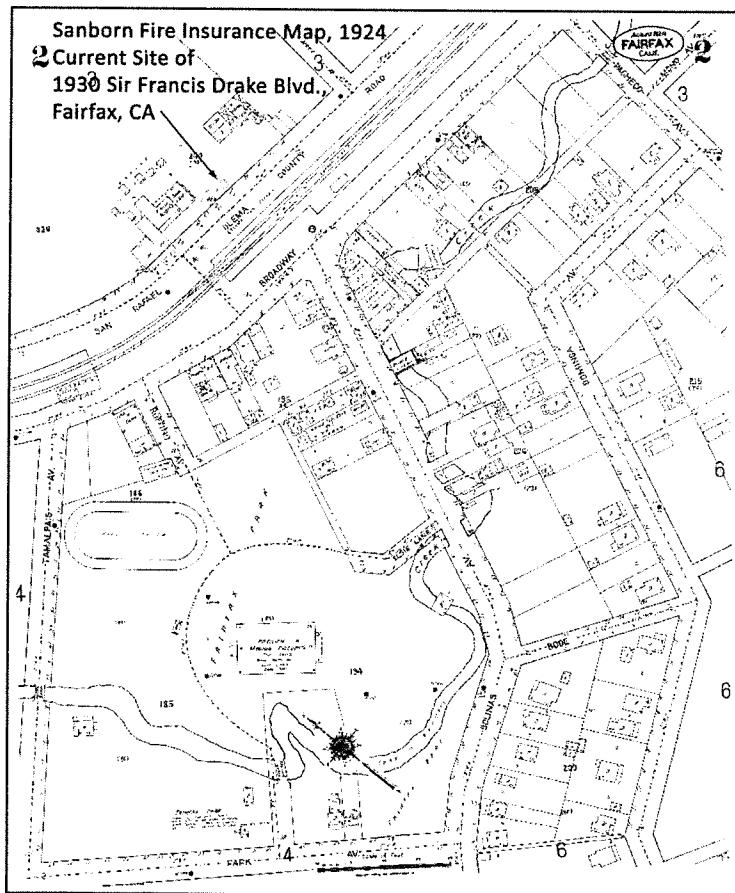


Figure 2: 1924 Sanborn Fire Insurance Map, Sheet 2. Site of current 1930 Sir Francis Drake Blvd. Courtesy of the Anne T. Kent California Room, Marin County Free Library

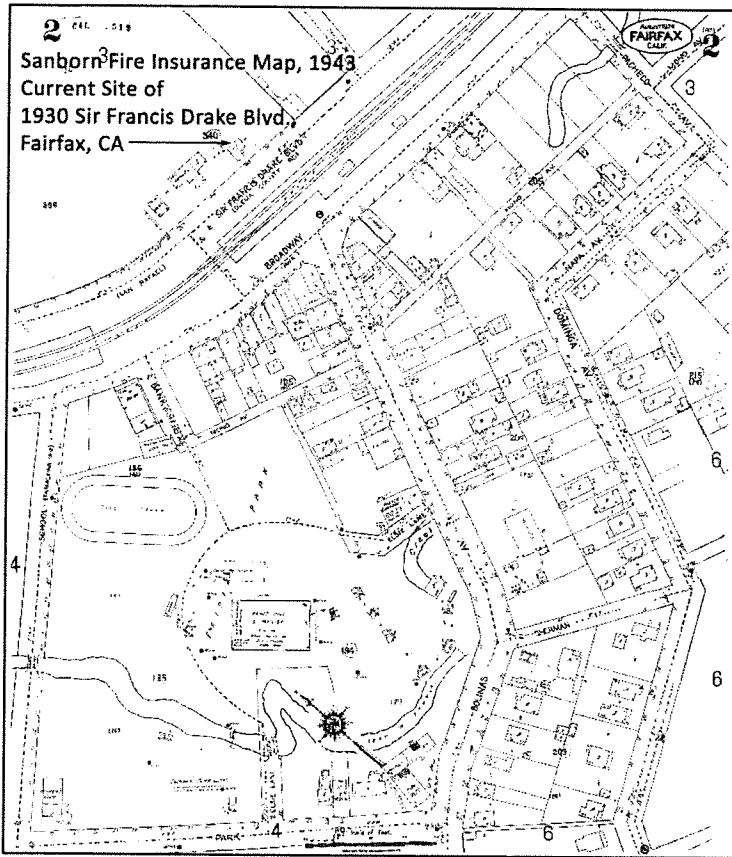


Figure 2: 1943 Sanborn Fire Insurance Map, Sheet 2. Site of current 1930 Sir Francis Drake Blvd. Courtesy of the Anne T. Kent California Room, Marin County Free Library

November 18, 2020

Linda Neal, Principal Planner
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

Subject: Review of Focused Traffic Analysis for 1930 Sir Francis Drake Boulevard Project

Dear Ms. Neal:

Pursuant to your request, Parisi Transportation Consulting (Parisi) reviewed the *Focused Traffic Analysis for the 1930 Sir Francis Drake Boulevard Project* prepared by W-Trans on June 19, 2020.

We prepared a letter, dated July 8, 2020, requesting additional analysis that considered the following:

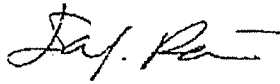
- Discount walking, bicycling and linked vehicle trips from the trip generation estimates for the existing Mana Bows use; it is possible that the existing use generates fewer vehicle trips than a "fast casual restaurant" per the ITE manual.
- Use actual vehicle trip rates from two or more local marijuana dispensaries that offer similar services to those proposed by the Element 7 use. Consider counting traffic from an existing dispensary in Marin as well as one or more in that are in similar environments, i.e., along major arterials in or near downtown settings.
- It is important that the sample marijuana dispensaries offer similar services to those proposed by the Element 7 project, e.g., walk-up services for customers and on-demand delivery by vehicle.
- If there is a specific weekday peak time that marijuana dispensaries have a high level of vehicle demand (e.g., Fridays), please provide an estimate of peak vehicle traffic generated during that time frame.

W-Trans prepared a revised report, dated October 28, 2020, that addressed the above items. Parisi has reviewed the revised report and is satisfied with the report's conclusions regarding the proposed project's potential vehicle trip generation. Based on the conclusions from the report, we believe that the proposed project is exempt from the Town of Fairfax's TIP permit process.

November 18, 2020

Feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Parisi". The signature is fluid and cursive, with a horizontal line extending from the end.

David Parisi, PE, TE
Principal

July 8, 2020

Linda Neal, Principal Planner
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

Subject: Review of Focused Traffic Analysis for 1930 Sir Francis Drake Boulevard Project

Dear Ms. Neal:

Pursuant to your request, Parisi Transportation Consulting (Parisi) has reviewed the *Focused Traffic Analysis for the 1930 Sir Francis Drake Boulevard Project* prepared by W-Trans on June 19, 2020.

The traffic analysis compares the estimated total vehicle trips a proposed Element 7 marijuana dispensary could generate compared to the existing Mana Bowls Acai Café, on a weekday daily, a.m. peak hour and p.m. peak hour basis. All estimates were made using data from the Institute of Transportation Engineers (ITE) *Trip Generation Manual, 10th Edition*, which uses average trip rates from throughout the nation.

Because the analysis bases its estimates on the ITE manual rather than on local data, and since the analysis does not take into account linked vehicle trips or walking and bicycling trips, it appears probable that the net difference in vehicle trips could be substantially different than estimated in analysis. Therefore, it is requested that additional analysis be conducted that considers the following:

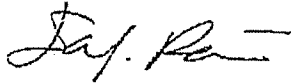
- Discount walking, bicycling and linked vehicle trips from the trip generation estimates for the existing Mana Bowls use; it is possible that the existing use generates fewer vehicle trips than a "fast casual restaurant" per the ITE manual.
- Use actual vehicle trip rates from two or more local marijuana dispensaries that offer similar services to those proposed by the Element 7 use. Consider counting traffic from an existing dispensary in Marin as well as one or more in Berkeley, Benecia or Vallejo that are in similar environments, i.e., along major arterials in or near downtown settings.
- It is important that the sample marijuana dispensaries offer similar services to those proposed by the Element 7 project, e.g., walk-up services for customers and on-demand delivery by vehicle.

July 8, 2020

- If there is a specific weekday peak time that marijuana dispensaries have a high level of vehicle demand (e.g., Fridays), please provide an estimate of peak vehicle traffic generated during that time frame.

Feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "David Parisi". The signature is written in a cursive, flowing style with a horizontal line extending from the end.

David Parisi, PE, TE
Principal



November 18, 2020

Mr. Josh Black
 Element 7
 8033 Sunset Boulevard #987
 Los Angeles, CA 90046

Focused Traffic Analysis for the 1930 Sir Francis Drake Boulevard Project

Dear Mr. Black;

As requested, W-Trans has prepared a focused traffic analysis that addresses the potential trip generation associated with the proposed redevelopment of an existing 577 square foot retail space 1930 Sir Francis Drake Boulevard in the Town of Fairfax. The proposed project would repurpose the space from its existing use as a granola bowl, which is essentially an ice cream restaurant.

Traffic Impact Permit Requirements

Section 17.056 of the Town of Fairfax’s Zoning Ordinance indicates that a “Traffic Impact Permit” is required for any project that either generates 100 or more new trips daily or has a floor area of 5,000 square feet or more. Since the building area to be converted is 577 square feet in size, the need for a Traffic Impact Permit was considered based on the project’s potential trip generation.

Trip Generation

The anticipated daily and peak hour trip generations for the previous fast casual restaurant use and the proposed dispensary were estimated using standard rates published by the Institute of Transportation Engineers (ITE) in *Trip Generation Manual*, 10th Edition, 2017. The “Fast Casual” Restaurant land use (LU #930) was applied to the granola bowl use and rates for a “Marijuana Dispensary” (LU #882) were applied to the proposed use. Based on application of these rates, the proposed project would be expected to generate 36 fewer daily trips than the existing land use. Although not relevant to the Town’s policy, it is noted that the project would generate five additional trips during both the a.m. and p.m. peak hours based on application of standard trip generation rates. These results are summarized in Table 1.

Table 1 – Trip Generation Summary

Land Use	Units	Daily		AM Peak Hour				PM Peak Hour			
		Rate	Trips	Rate	Trips	In	Out	Rate	Trips	In	Out
Previous Use											
Fast Casual Restaurant	0.577 ksf	315.17	182	2.07	1	1	0	14.13	8	4	4
Proposed											
Marijuana Dispensary	0.577 ksf	252.70	146	10.44	6	3	3	21.83	13	6	7
Net Increase			-36		5	2	3		5	2	3

It is noted that due to the location near other downtown shopping and dining opportunities many of the patrons of the existing Mana Bowl may arrive via a diverted trip or walk to the site from nearby stores or restaurants. The potential for such trips, as well as for trips by bicyclists, is likely higher than might be expected for this type of land use. However, even if it were assumed that half the estimated trips were made via an alternative mode and the trip generation reduced accordingly, the project would still generate only 55 new daily trips (146 less 91, or half the 182 shown in the table), which is considerably less than the 100 trips allowed under the Town’s policy. The Mana Bowl would need to generate only about 25 percent of the standard trip generation to reach a level where the change in use would result in more than 100 net new trips, and given that most employees, suppliers and some customers are likely to arrive via private vehicle, a reduction of this magnitude does not appear reasonable.

In response to comments from the Town’s Consulting Traffic Engineer, trips into and out of two existing dispensaries in the North Bay were counted to achieve daily and peak hour rates indicative of local conditions. Because such counts are only accurate if a site is served by driveways used exclusively by that development it was not possible to obtain counts for the existing dispensary in Fairfax because it is located in a suite and shares driveways and a parking lot with multiple other uses. Two location were identified where counts could be obtained: the 365 Recreational Dispensary in Santa Rosa and the Herbivore dispensary in Napa. Both sites are dispensaries only located on or near major arterials and they do not share driveways with other land uses. Counts were collected for a period of 72 hours including a Wednesday through Friday. The building size for Herbivore was obtained from on-line records and the building size for 365 Recreational Dispensary was provided by the City of Santa Rosa. From this information, the daily and peak hour trip generation rates were estimated for application to the proposed project. These results are summarized in Table 2 and the details are indicated on the enclosed spreadsheet.

Table 2 – Trip Generation Summary			
Site/Land Use	Daily Rate	AM Peak Hour Rate	PM Peak Hour Rate
Recreational Dispensary	85.12	2.66	12.96
Herbivore	21.07	0.00	3.33
ITE Rates			
Marijuana Dispensary	252.70	10.44	21.83

As can be seen in Table 2, the standard ITE rates applied to the proposed project are substantially higher than the actual rates derived through counts at two existing North Bay dispensaries. In fact, the ITE rates are higher than the maximum rate derived on any single day at either existing site. Further, the ITE rates have consistently been higher than the rates derived through data collected at various dispensaries in Sonoma County, though daily volumes were not previously obtained so this data could not be used for this analysis. It does, however, point to the conservative nature of the ITE rates and the reasonableness of their use.

Conclusions and Recommendations

Based on application of standard trip generation rates, the proposed project would be expected to result in a reduction of 36 trips per day to the project site on average compared to its most recent previous use. Even considering the potential for fewer vehicle trips associated with the previous use due to its location near other shopping and dining opportunities, it would still be anticipated that the project would generate fewer than 100 new daily trips. As a result, under the Town’s policies an operational analysis is not required.

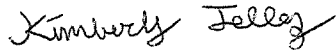
Thank you for giving W-Trans the opportunity to provide these services. Please call if you have any questions.

Mr. Josh Black

Page 3

November 18, 2020

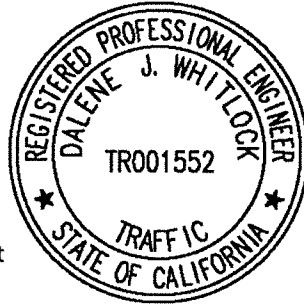
Sincerely,



Kimberly Tellez
Assistant Engineer



Dalene J. Whitlock, PE, PTOE
Senior Principal



DJW/kt/FAI022.L1

Enclosure: Trip Generation Spreadsheet

Trip Generation Analysis for the 1930 Sir Francis Drake Boulevard Project

Land Use No./Type	DATE	Trip Rate per Unit	Total Trips	AM PEAK HOUR (8-9)						PM PEAK HOUR (4-6)									
				Trip Rate per Unit	Number of Trips	In (%)	In (Rate)	In (Trips)	Out (%)	Out (Rate)	Out (Trips)	Trip Rate per Unit	Number of Trips	In (%)	In (Rate)	In (Trips)	Out (%)	Out (Rate)	Out (Trips)
365 Recreational Dispen	9/30/2020	75.85	262	0.87	3	67%	0.58	2	33%	0.29	1	6.95	24	58%	4.05	14	42%	2.90	10
365 Recreational Dispen	10/1/2020	87.43	302	0.58	2	50%	0.29	1	50%	0.29	1	7.53	26	54%	4.05	14	46%	3.47	12
365 Recreational Dispen	10/2/2020	92.07	318	3.18	11	55%	1.74	6	45%	1.45	5	6.66	23	48%	3.18	11	52%	3.47	12
Herbivore	9/30/2020	21.60	54	0.00	0	0%	0.00	0	100%	0.00	0	2.80	7	71%	2.00	5	29%	0.80	2
Herbivore	10/1/2020	22.40	56	0.00	0	0%	0.00	0	100%	0.00	0	2.00	5	60%	1.20	3	40%	0.80	2
Herbivore	10/2/2020	19.20	48	0.00	0	0%	0.00	0	100%	0.00	0	5.20	13	46%	2.40	6	54%	2.80	7
Recreational Dispensary Average		85.12	294	1.54	5	57%	0.87	3	43%	0.68	2	7.04	24	53%	3.76	13	47%	3.28	11
Herbivore Average		21.07	53	0.00	0	0%	0.00	0	0%	0.00	0	3.33	8	59%	1.87	5	41%	1.47	4

Applied to the Project (0.577 ksf)

Recreational Dispensary Average	85.12	49	1.54	1	0.57	0.87	1	0.43	0.68	0	7.04	4	0.53	3.76	2	0.47	3.28	2
Herbivore Average	21.07	12	0.00	0	0.00	0.00	0	0.00	0.00	0	3.33	2	0.59	1.87	1	0.41	1.47	1
ITE RATES (LU#882)	252.70	146	10.44	6	56%	5.85	3	44%	4.59	3	21.83	13	50%	10.92	6	50%	10.92	7
Applied Rates	252.70	0	10.44	6	56%	5.85	3	44%	4.59	3	21.83	13	50%	10.92	6	50%	10.92	7

RESOLUTION 19-34

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
APPROVING THE SCORING CRITERIA, WEIGHTING (POINTS PER CRITERIA),
MINIMUM QUALIFYING SCORES, AND APPLICATION PROCEDURES FOR
COMMERCIAL CANNABIS BUSINESS PERMITS IN FAIRFAX**

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

WHEREAS, the MAUCRSA recognizes, preserves and does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that regulate state licensed cannabis businesses, including, but not limited to, local zoning and land use requirements, business license requirements; and

WHEREAS, on the September 4, 2019 the Town Council meeting of the Town of Fairfax adopted by ordinance regulations in Town Code Chapter 5.56 "Commercial Cannabis Business Permits", and Chapter 17.110 "Cannabis Uses" governing all commercial cannabis businesses in the Town; and

WHEREAS, Section 5.56.070 B. 3. Chapter 5.56 directs the Town Council to adopt by resolution the scoring criteria, weighting (points per criteria), minimum qualifying scores, and any additional application procedures prior to the commencement of the application period and posted publicly on the Town's website; and

WHEREAS, on August 7, 2019 the Town Council approved by minute action the scoring criteria, weighting (points per criteria), and minimum qualifying scores for commercial cannabis business permit applications.

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

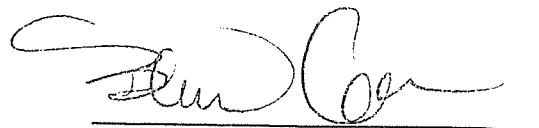
Section 1. The commercial cannabis business permit application period shall commence on November 1, 2019 and close on January 6, 2020. Applications may be submitted Monday through Thursday to the Planning and Building Services Department at Town Hall during normal business hours from 9:00am to noon and 1:00pm to 4:00pm.


Section 2. Approves Exhibit A- "Commercial Cannabis Business Scoring Criteria" and Exhibit B - "Commercial Cannabis Business Permit Procedures" attached to this Resolution.

Section 3. The Town Manager is authorized to make minor modifications to Exhibit A- "Commercial Cannabis Business Scoring Criteria" and Exhibit B - "Commercial Cannabis Business Permit Procedures" of this resolution for clarification purposes.

The foregoing Resolution was approved at a regular meeting of the Town Council on the 2nd day of October 2019, by the following vote, to wit:

AYES: ACKERMAN, COLER, GODDARD, LACQUES, REED
NOES: None
ABSENT: None
ABSTAIN: None


Barbara Coler, Mayor

Attest: 
Hannah Politzer, Deputy Town Clerk 10-3-19 Date

ATTACHMENT G

SCORING CRITERIA
FAIRFAX COMMERCIAL CANNABIS BUSINESS PERMITS

Review Criteria Rating System

- i. 35 points: **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, without limitation, local residency of principals (3+ years), connection to Fairfax, ability to serve Fairfax, familiarity with the Town
- ii. 35 points: **Quality of operating plan** as demonstrated by:
- Demonstrated 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
- iii. 30 points: **Public benefits**, including, but not limited to the following:
- All employees paid living wage and benefits
 - Social equity: One or 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
 - Locally-sourced, organic/pesticide-free products
 - Green business rating: Is certified or qualifies for certification
 - Participation and support of local youth-serving prevention and education programs, and/or adult addiction programs

Minimum qualifying score = 80 points

Scoring:

- (a) The Planning Commission will review each application at a public hearing based on the written materials and an applicant presentation.
- (b) Planning Commissioners decide scores based on the scoring criteria above. All Planning Commissioners' scores shall be totaled and averaged for each application for a preliminary score. This preliminary score would be referred to the Town Council.

SCORING CRITERIA
FAIRFAX COMMERCIAL CANNABIS BUSINESS PERMITS

- (c) The Town Council would hold a second hearing and review the Planning Commission's preliminary scoring. The Town Council would have the opportunity to issue an additional **10 points** based on the quality of the applicant's presentation.



TOWN OF FAIRFAX

142 Bolinas Road, Fairfax, California 94930
(415) 453-1584 / Fax (415) 453-1618

COMMERCIAL CANNABIS BUSINESS PERMIT PROCEDURES

PHASE 1: The commercial cannabis business permit application period shall commence on November 1, 2020 and close on January 6, 2020. During the application period, a Commercial Cannabis Business Licensing Permit Application and fee must be submitted to the Planning Department, and a Live Scan application form and fee must be filed with the Police Department. If the proposal includes exterior changes to the commercial building in which the business is proposed to be located, a Design Review application and fees shall also be submitted. If proposed signage involves an exception to the sign ordinance regulations, a Sign Permit applications and fees shall also be submitted.

Applications may be submitted Monday through Thursday to the Planning and Building Services Department at Town Hall during normal business hours from 9:00am to noon and 1:00pm to 4:00pm. Please note Town Hall will be closed for holidays and Town furlough.

A written determination will be made on the completion status of each Phase 1 application by February 5, 2020. If an application is deemed to be incomplete, the determination will list the requirements to complete the application. Each cannabis business applicant will then have until February 20, 2020 to provide the needed information to complete the application. Applications not completed within the 2-week period will be disqualified from further processing.

A final decision regarding applicants being accepted for further processing will be made by the Town Manager by March 26, 2020, or after receipt of Live-scan results, whichever is later.

PHASE 2: Application Review Period. Within 2 months of the completion of the Phase 1 process, applications that have been accepted for further processing will be reviewed by the Fairfax Planning Commission. The applications shall be scored against the scoring criteria adopted by the Town (attached).

PHASE 3: Applications achieving a score of 80 points or higher from the Planning Commission will be forwarded, with any accompanying Design Review or Sign Permit application(s), to the Fairfax Town Council. The Town Council will hold a public hearing to review the applications within 2 months of the Planning Commission reaching a decision on application(s) preliminary scores. The Council review the Planning Commission's scoring recommendations and make final scoring decisions, including an additional 10 points.

Based on the available number of cannabis business permits, the application(s) that are awarded the highest score(s) will be issued Cannabis Business Permit and be licensed to operate a commercial cannabis business.

Qualified applicants who are not selected will be placed on a qualified applicant list and will be notified when future applications are accepted. A qualified applicant will remain eligible for 3 years.

Issuance of a Cannabis Business Permit does not create a land use entitlement.

No business issued a Cannabis Business Permit may begin operations until they have obtained a permit to operate from the State of California, and until the business has complied with all of State and local laws and regulations, including but not limited to the requirements of Town Code Titles 5.56 and 17.138.

