

ORDINANCE NO. 753

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX PROHIBITING
THE ESTABLISHMENT OF NEW MEDICAL MARIJUANA DISPENSARIES IN ANY
ZONING DISTRICT WITHIN THE TOWN
FOR A PERIOD OF SIX MONTHS**

THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES ORDAIN AS
FOLLOWS:

SECTION I. Statement of Intent:

- A. With the adoption of Ordinance 627 in 1993, the people of the Town of Fairfax expressed their strong support for patient access to legal medical marijuana.
- B. The Town Code does not limit the location of medical marijuana dispensaries, stores, or co-ops, through its zoning code. Historically, dispensaries have been treated as a conditionally permitted use in the Town.
- C. In 1997, the Town approved # 97-UP-2, which allowed the Marin Alliance Medical Marijuana Dispensary to provide medical marijuana to patients subject to the conditions on that Use Permit.
- D. On June 17, 2010, the Town amended the conditions on #97-UP-2 to allow, among other things, Marin Alliance to deliver medical marijuana to patients in the Town of Fairfax.
- E. On November 2, 2010, the people of California will vote on Proposition 19, which proposes to legalize marijuana for recreational, as well as medical, use, resulting in uncertainty regarding the legality and treatment of medical marijuana dispensaries.
- F. Since June 2010, the Town has received several applications from medical marijuana dispensaries wishing to operate in the Town.
- G. While the Town Council is supportive of medical marijuana and has striven to make it available to the people of Fairfax, a proliferation of dispensaries in the Town could be detrimental to the health, safety, and welfare of residents of the Town.
- H. The Town Council wishes to establish a moratorium on additional medical marijuana dispensaries, stores, and co-ops in the Town in order to review the zoning code and propose reasonable limitations on the location and operation of dispensaries in the Town.
- I. The Town has held a duly noticed public hearing on the proposed moratorium on additional medical marijuana facilities, in accordance with the rules and regulations regarding such.

SECTION II. Moratorium Established. The Town of Fairfax hereby establishes an interim moratorium on the establishment of new marijuana dispensaries, stores, and co-ops in all zoning districts in the Town. For purposes of this interim ordinance the term “marijuana dispensary, store, or co-op” shall be broadly and liberally interpreted to mean and include any location, structure, facility, vehicle, residence, or similar entity used, in full or in part, as a place at or in which marijuana is sold, traded, exchanged, bartered for in any way, made available, located, stored, placed, or cultivated, including any of the foregoing if used in connection with the delivery of marijuana.

SECTION III. Moratorium Defined. For six months after the effective date of this Ordinance, no new marijuana dispensary, store, or co-op, intended to provide marijuana for medicinal uses or any other purpose, shall locate, commence, obtain license for or be entitled by the Town, in any zone, or any parcel, or at any place, public or private, within the Town. This interim ordinance shall in no way limit qualified individuals’ right to possess, use or cultivate marijuana for their own medicinal purposes as is presently authorized by the laws of the State of California. Nor shall it limit the operation of existing and permitted marijuana dispensaries, stores, and co-ops in the Town.

SECTION IV. Moratorium Term. This Ordinance shall expire, and the moratorium established hereby shall terminate, six months days after the effective date unless extended by the Town Council, at a regularly noticed public hearing.

SECTION V. CEQA Finding. The Town Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance, and establishment of a moratorium hereby, may have a significant effect on the environment, because the moratorium will maintain the current environmental conditions arising from the current land use regulatory structure. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

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

SECTION VII. Effective Date.

Copies of the foregoing ordinance shall within fifteen (15) days after its final passage and adoption be posted in three public places in the Town of Fairfax, to wit:

- a. Bulletin Board, Fairfax Town Offices, Town Hall;
- b. Bulletin Board, Fairfax Post Office; and

c. Bulletin Board, Fairfax Women's Club Building, which said places are hereby designated for that purpose, and shall be in full force and effect thirty (30) days from after its final passage and adoption.

This ordinance shall remain in effect for six months after the effective date of the ordinance.

The Foregoing Ordinance No. 753, amending the Fairfax Town Code, was duly and regularly introduced at a regular meeting of the Town Council of the Town of Fairfax held in said Town on September 1, 2010 and was duly passed and adopted at a regular meeting held the 6th day of October, 2010 by the following vote, to wit:

AYES:

NOES:

ABSENT:

MAYOR LEW TREMAINE

ATTEST:

Town Clerk