

TOWN OF FAIRFAX STAFF REPORT

TO: Mayor, Members of the Town Council

DATE: March 2, 2011

FROM: Michael Rock, Town Manager 
Jim Moore, Director of Planning & Building Services

SUBJECT: Introduction and First Reading of Ordinance No. 759:
amending the Fairfax Municipal Code to a new chapter 17.110
regulating Medical Marijuana Dispensaries

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Motion to waive further reading and to read the title only of Ordinance No. 759, an Ordinance of the Town of Fairfax regulating the location, number and operation of medical marijuana dispensaries in the Central Commercial, Highway Commercial, Limited Commercial and Commercial Recreation Districts of the Town
4. Motion to introduce Ordinance No. 759, an Ordinance of the Town of Fairfax regulating the location, number and operation of medical marijuana dispensaries in the Central Commercial, Highway Commercial, Limited Commercial and Commercial Recreation Districts of the Town

BACKGROUND

Late last year, the Town Council adopted a moratorium on the establishment of new medical marijuana dispensaries which ends on May 16, 2011. The purpose of the moratorium was to allow the Town's Planning Staff, the Planning Commission and the Town Council to evaluate and consider enacting limitations on the location of medical marijuana dispensaries. Staff and the Planning Commission have completed their reviews and have prepared Ordinance No. 759 for your consideration (Attached as **Exhibit A**).

DISCUSSION

At the January 12, 2011 Town Council meeting, the Mayor and Council members considered possible guidelines developed by staff for the siting and/or number of Medical Marijuana Dispensaries and directed staff to draft an ordinance for Planning Commission review and/or recommendations. The Planning Commission at its February 17, 2011 meeting endorsed the draft Ordinance via Resolution No. 11-02 (**Exhibit B**) as required by Town Code.

At the request of the Town Council on January 12, staff expanded the zoning districts that would allow dispensaries to operate to include Light Commercial (CL) and certain Central Commercial (CC) zoned parcels abutting residentially zoned parcels in order to increase the number of available commercial parcel and/or sites for possible dispensary use - conditionally permitted.

It should be noted that during the public comment period on this matter at the January 12, 2011 Council meeting, a member of the public had concerns as to whether the Town's adoption of siting criteria for commercial dispensaries would interfere with a resident's right to organize a non-profit medical marijuana cooperative in non-commercial areas of town. It is the opinion of staff that nothing in the proposed ordinance, which is a land use regulation, would affect the operation of organizations including cooperatives that comply with applicable law, where such organizations are not seeking land use permits for a dispensary or any other business enterprise.

Finally, the proposed ordinance does not constitute a project subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15061(b)(3).

ATTACHMENTS

Exhibit A –Draft Ordinance No. 759

Exhibit B – Planning Commission Resolution No. 11-02

ORDINANCE NO. 759

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
REGULATING MEDICAL MARIJUANA DISPENSARIES,
TOWN CODE CHAPTER 17.100**

The Town Council of the Town of Fairfax does hereby ordain as follows:

SECTION 1: TOWN CODE AMENDED

The following is added as a new Chapter 17.110 of the Town Code:

17.110.010 Purpose and Intent.

It is the purpose and intent of this chapter to regulate medical marijuana dispensaries in order to promote the health, safety, morals, and general welfare of residents and businesses within the Town.

Interpretation and Applicability.

(A) No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The distribution of medical cannabis in the Town of Fairfax is controlled by the provisions of this chapter of the Fairfax Town Code.

(B) Nothing in this ordinance is intended, nor shall it be construed, to limit the provisions of Chapter 9.6 of the Fairfax Town Code, or to limit the right to use or possess marijuana for medical purposes, or to limit any defense to criminal prosecution otherwise afforded by California law.

(C) Provided compliance is maintained with this ordinance, nothing in this ordinance is intended, nor shall it be construed, to preclude a landlord from limiting cannabis cultivation, smoking or other related activities by tenants otherwise permitted by law.

(D) Nothing in this ordinance is intended, nor shall it be construed, to exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.

(E) Nothing in this ordinance is intended, nor shall it be construed, to make legal any cultivation, transportation, sale, or other use of cannabis that is otherwise prohibited under California law.

(F) All sale and distribution of medical cannabis within Town limits shall be subject to the provisions of this chapter, regardless if the processing or distribution existed or occurred prior to adoption of this chapter.

17.110.020 Definitions.

For the purpose of this chapter, the following words and phrases shall mean:

(A) "Accessory building" shall have the same meaning as set forth in Town Code Section 17.08.020.

(B) "Applicant" means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

(C) "Town" means the Town of Fairfax.

(D) "Town Manager" means the Town Manager of the Town of Fairfax or the authorized representative thereof.

(E) "Identification card" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended.

(F) "Medical cannabis dispensing collective," hereinafter "dispensary," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers, are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, retail distribution of medical cannabis. "Dispensary" means any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A dispensary shall not include dispensing by primary caregivers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq., or a qualified patient's or caregiver's place of residence.

(G) "Medical cannabis patient collective," hereinafter patient collective, shall be defined the same as "dispensary," but does not operate in a "retail" capacity. As such, "patient collectives" are subject to all provisions relating to dispensaries.

(H) "Permittee" means the person (1) to whom a dispensary permit is issued and (2) who is identified in California Health and Safety Code Section 11362.7, subdivision (c) or (d), or (e) or (f).

(I) "Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

(J) "Person with an identification card" shall have the same definition as set forth in California Health and Safety Code Section 11362.5 et seq., and as they may be amended from time to time.

(K) "Physician" shall include licensed medical doctors (M.D.) and doctors of osteopathic medicine (D.O.) as defined in the California Business and Professions Code.

(L) "Primary caregiver" shall have the same definition as set forth in California Health and Safety Code Section 11362.7, and as may be amended.

(M) "Qualified patient" shall have the same definition as set forth California Health and Safety Code Section 11362.7 et seq., and as they may be amended from time to time.

(N) "School" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

17.110.030 Dispensary Permit Required to Operate.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the Town the operation of a dispensary unless the person first obtains and continues to maintain in full force and effect a dispensary Use Permit from the Town as required in this chapter.

17.110.040 Term of Permits and Renewals Required.

(A) Use Permits issued under this chapter shall expire two years following the date of their issuance.

(B) Use Permits may be renewed by the Director of Planning for additional two-year periods upon application by the permittee, unless the permit is suspended or revoked in accordance with the provisions of this chapter.

(C) Applications for renewal shall be made at least 45 days before the expiration date of the permit and shall be accompanied by a nonrefundable application fee set periodically by Resolution of the Fairfax Town Council. Applications for renewal shall be acted on as provided herein for action upon applications for permits.

(D) Applications for renewal made less than 45 days before the expiration date shall not stay the expiration date of the permit.

(E) Permits may be revoked or suspended by the Town, as provided in this chapter and Town Code.

17.110.050 General Tax Liability.

An operator of a dispensary shall also be required to apply for and obtain a Business License as a prerequisite to obtaining a permit pursuant to the terms hereof, as required by the State Board of Equalization. Dispensary sales shall be subject to sales tax consistent with State law.

17.110.060 Imposition of Fees.

Every application for a permit or renewal shall be accompanied by an application fee, as established by resolution of the Town Council from time to time. This application or renewal fee shall not include the cost of fingerprinting, photographing, and background checks, which shall be in addition to any other business license fee or permit fee imposed by this code or other governmental agencies.

17.110.070 Limitations on Number of Dispensaries.

The Planning Commission may not grant or cause to be granted more than two permits for a medical cannabis dispensaries in the Town, in compliance with the provisions of this chapter, and/or prior to adoption of the provisions of this chapter.

17.110.080 Limitation on Location of Dispensary.

(A) A dispensary or non-retail patient collective shall be located only within a Central Commercial CC, Highway Commercial CH, and Light Commercial CL area, as designated in the General Plan and Zoning map.

(B) A dispensary shall be in a location that provides views of the dispensary entrance, windows and premises from the public street.

(C) A dispensary shall not be allowed in the following areas at the time of its permitted establishment:

(1) Within 600 feet of a school; or

(2) Within any residentially zoned parcel or within any parcel with a primarily residential land use.

(3) On a parcel directly abutting a residentially-zoned property, unless there are intervening natural landforms between the commercial property and the residential property such as a creek or significant undeveloped parcel of land (See "E" below for further exceptions).

(D) The distance between a dispensary and above listed uses shall be made in a straight line from the boundary line of the property on which the dispensary is located to the boundary of the property on which the facility, building or structure, or portion of the building or structure, in which the above listed use occurs or is located.

(E) A waiver of the provisions in subsection (C)(2) or (C)(3) of this section may be granted if the applicant demonstrates on plans and materials presented for review and the Planning Commission determines that a physical barrier or similar condition exists which achieves the same purpose and intent as the distance separation requirements established herein.

17.110.090 Operating Requirements.

Dispensary operations shall be established and managed only in compliance with the following standards:

(A) Criminal History. Any applicant, his or her agent or employees, volunteer workers, or any person exercising managerial authority of a dispensary on behalf of the

applicant shall not have been convicted of a felony, or of a misdemeanor involving moral turpitude, or is on probation for a drug offense, or engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of no contest.

(B) Minors.

(1) It is unlawful for any permittee, operator, or other person in charge of any dispensary to employ any person who is not at least 18 years of age.

(2) Persons under the age of 18 shall not be allowed on the premises of a dispensary unless they are a qualified patient, and they are in the presence of their parent or guardian.

(3) The entrance to a dispensary shall be clearly and legibly posted with a notice indicating that person under the age of 18 are precluded from entering the premises unless they are a qualified patient, and they are in the presence of their parent or guardian.

(C) Operating Hours. Unless the reviewing authority imposes more restrictive hours due to specific considerations for a particular application, a dispensary shall only be operated within the following days and hours:

(1) 9:00 a.m. to 9:00 p.m.

(2) Christmas Day, Thanksgiving Day, New Years Day, Memorial Day, Labor Day, 3rd and 4th of July: closed.

(D) Dispensary Size and Access.

(1) The dispensary size shall not exceed 1,500 square feet exclusive of restroom facilities, unless specifically authorized by the approving authority. Dispensary size shall be limited, as deemed appropriate and necessary, to best serve patient needs within the intent of this chapter and reduce potential adverse impacts that might otherwise occur on surrounding neighborhoods, businesses and demands on Town services.

(2) A dispensary shall not be increased in size (i.e., floor area or number of patients) without a prior approval amending the existing dispensary permit.

(3) Dispensary personnel shall monitor site activity, control loitering and site access.

(4) Only dispensary staff, primary caregivers, qualified patients and persons with bona fide purposes for visiting the site shall be permitted at a dispensary.

(5) Potential patients or caregivers shall not visit a dispensary without first having obtained a valid written recommendation from their physician recommending use of medical cannabis.

(6) Only a primary caregiver and qualified patient shall be permitted in the designated dispensing area with dispensary personnel. All other authorized visitors shall remain outside, or in a designated waiting area in the front entrance/lobby.

(E) That adequate parking will be provided in accordance with Town Code section 17.052.030(F) for retail and personal service stores at a rate of three (3) spaces for the first 500 square of gross floor area and one (1) space for each additional 500 square feet thereafter.

(F) Dispensary Supply. A dispensary may possess no more than one ounce of dried cannabis per qualified patient or primary caregiver. However, if a qualified patient or primary caregiver has a physician's recommendation that this quantity does not meet the qualified patient's medical needs, the dispensary may possess an amount of cannabis consistent with the patient's needs.

(G) Dispensing Operations.

(1) A dispensary shall only dispense to qualified patients or caregivers with:

(a) a currently valid California Medical Marijuana Identification Card or a Patient ID Center Identification Card; or

(b) Prior to obtaining an ID card, patients may be given a 30-day trial membership. A current, written physician's recommendation that is confirmed by telephone shall be required for a 30-day trial membership. During this trial membership, patients should carry permittee-issued ID cards. The permittee shall maintain a written record of the telephone verification, including the name of the employee who made the telephone call and the name and contact information of the person who verified the physician's recommendation, for the 30-day period. At the conclusion of the 30-day trial period, the permittee shall verify that the patient has obtained a State ID card.

(2) A dispensary shall not have a physician on-site to evaluate patients and provide a recommendation for medical cannabis.

(H) Record Keeping.

(1) Patient Records. Patient records shall be maintained and verified as needed, and at least annually verified with the qualifying patient's medical doctor or doctor of osteopathy unless the patient has provided a California Medical Marijuana Identification Card or a Patient ID Center Identification Card.

(2) Employee Records. Each owner or operator of a dispensary shall maintain a current register of the names of all volunteers and employees currently working at or employed by the dispensary, and shall disclose such registration for inspection by any Town officer or official for purposes of determining compliance with the requirements of this section.

(3) Stock. The permittee will record the total gross weight of all marijuana possessed at the dispensary which is no longer affixed to any living marijuana plant at the close of each business day. In addition, the permittee shall record the total numbers of cloned live marijuana plants being stored or offered for sale.

(4) Receipts. The permittee or his or her employee, shall record upon an individual receipt the membership number of the person obtaining the marijuana, the amount of marijuana purchased, the amount paid for the marijuana, and the time and date the marijuana was dispensed.

(5) Financial Records.

(a) Permittee shall maintain financial records identifying information for all savings accounts, checking accounts, investment accounts and trusts associated with the operation of the dispensary. Permittee shall maintain ledgers documenting all credits and debits affecting said accounts. Permittee shall maintain records documenting all parties involved in, amounts of and purposes, for all cash transactions.

(b) Permittee shall maintain records of all transactions related to the operation of the dispensary, including but not limited to rent, utilities, inventory, insurance and payroll.

(6) Cultivation sites. Permittee shall maintain the records regarding the actual address, including Assessor's Parcel Number, of each site that medicinal marijuana is cultivated, grown and/or harvested on behalf of the dispensary. The cultivation site(s) identified pursuant to this section shall not be in areas zoned as residential.

(7) Storage of Records. Permittee shall maintain all of the required records at the dispensary site or in secured, accessible storage at all times. All required records shall be subject to inspection by the Chief of Police, or his designee, during the time the dispensary is open for business.

(8) Audit. As an alternative to police inspection, the Town may request that an audit of receipts be conducted by a Certified Public Accountant (CPA) chosen by the Town and paid for by the permittee. The permittee shall provide a summary of the report to the Town.

(I) Consumption Restrictions. Cannabis shall not be consumed by patients on the premises of the dispensary. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other surroundings within 200 feet of the dispensary's entrance.

(J) Retail Sales

(1) Only immature, non-flowering cloned live marijuana plants measuring less than 12 inches in height may be stored and sold on site.

(2) Except for the immature nursery stock cannabis plants described above, the dispensary shall not cultivate, store, or sell live cannabis plants.

(3) With the approval of the Planning Commission a dispensary may conduct or engage in the commercial sale of specific products, goods or services ancillary to the provision of medical cannabis and other items permitted by these regulations on terms and conditions consistent with this chapter and applicable law.

(4) If food products are sold the site must be inspected and approved for food sales by the Marin County Health Department.

(5) Display and sales of devices necessary for administering medical cannabis, shall be limited to including but not limited to rolling papers and related materials and devices, pipes, water pipes, and vaporizers. Such devices may only be provided to qualified patients or primary caregivers and only in accordance with California Health and Safety Code Section 11364.5.

(6) A dispensary shall not distribute or sell medical cannabis for a profit.

(7) A dispensary shall not pay any supplier(s) of medical cannabis more than the costs incurred for cultivation and preparation.

(8) A dispensary shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.5 et seq.

(K) Operating Plans.

(1) Floor Plan. A dispensary shall have a lobby waiting area at the entrance to receive clients, and a separate and secure designated area for dispensing medical cannabis to qualified patients or designated caregivers. The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

(2) Storage. A dispensary shall have suitable locked storage on premises, identified and approved as a part of the security plan, for after-hours storage of medical cannabis.

(3) Minimum Staffing Levels. The premises shall be staffed with at least one person during hours of operation that shall not be responsible for dispensing medical cannabis.

(4) Odors Control. A dispensary shall have an air treatment system that ensures off-site odors shall not result.

(5) Security Plans. A dispensary shall provide adequate security on the premises, and be reviewed by the Planning Commission, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.

(6) Any dispensary shall be equipped with an operable alarm system that at a minimum will protect the perimeter of the dispensary and the location within the structure where medicinal marijuana is stored, packaged or dispensed.

(7) Alarm System. Professionally monitored robbery alarm and burglary alarm systems shall be installed and maintained in good working condition.

(8) Emergency Contact. A dispensary shall provide the Chief of Police, Town Manager and the Director of Planning and Building Services with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the dispensary. The dispensary shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the Town.

(L) Signage and Notices.

- (1) A notice shall be clearly and legibly posted in the dispensary indicating that smoking, ingesting or consuming cannabis on the premises or in the vicinity of the dispensary is prohibited.
 - (2) Signs on the premises shall not obstruct the entrance or windows.
 - (3) Address identification shall comply with Fire Department illuminated address signs requirements.
 - (4) Business identification signage shall contain the business name only, be limited to that needed for identification only and shall consist of a single window sign or wall sign that shall not exceed six square feet in area. Signs shall comply with all ordinances and not contain any logos or information that identifies, advertises or lists the services or products offered.
- (M) Staff Training. Dispensary staff shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with state and local law, and security personnel shall be properly trained.
- (N) Compliance with Other Requirements. The operator shall comply with all provisions of all local, state or federal laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.
- (O) Alcoholic Beverages. No dispensary shall hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the premises that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

17.110.100 Criteria for review.

The Planning Commission shall consider the following criteria in determining whether to grant or deny a dispensary permit, and renewals:

- (A) That the dispensary permit is consistent with the intent of Proposition 215 and related State law, the provisions of this chapter and the Town Code, including the application submittal and operating requirements herein.
- (B) That the dispensary location is not identified as having significant crime issues (e.g., based upon crime reporting district/statistics as maintained by the Police Department).
- (C) That there have not been significant numbers of calls for police service, crimes or arrests in the area or to an existing dispensary location.
- (D) That an applicant or employee is not under 18 years of age.
- (E) That all required application materials have been provided and/or the dispensary has operated successfully in a manner that shows it would comply with the operating requirements and standards specified in this chapter.
- (F) That all required application or annual renewal fees have been paid and reporting requirements have been satisfied in a timely manner.

(G) That an appropriate limit on size of the dispensary has been established and the requested permit would not exceed limitations on number of patients and/or permits allowed by this chapter.

(H) That issuance of a dispensary permit for the size requested is justified to meet needs of residents.

(I) That issuance of the dispensary permit would serve needs of residents at this location.

(J) That the location is not prohibited by the provisions of this chapter or any local or state law, statute, rule or regulation and no significant nuisance issues or problems are anticipated or resulted.

(K) That the site plan, floor plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems and as specified in the operating requirements section. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises; the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

(L) That no dispensary use, owner, permittee, agent, or employee has violated any provision of this chapter including grounds for suspension, modification or revocation of a permit.

(M) That all reasonable measures have been incorporated into the plan and/or consistently taken to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, cannabis use in public, or creation of a public or private nuisance, or interference of the operation of another business.

(N) That the dispensary would not adversely affect the health, peace or safety of persons living or working in the surrounding area, overly burden a specific neighborhood with special needs or high impact uses, or contribute to a public nuisance; or that the dispensary has resulted in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct, or police detentions or arrests.

(O) That any provision of the Town Code or condition imposed by a Town issued permit, or any provision of any other local, or State law, regulation, or order, or any condition imposed by permits issued in compliance with those laws has not been violated.

(P) That the applicant has not violated any local or State law, statute, rule or regulation respecting the distribution, possession, or consumption of cannabis.

(Q) That the applicant has not knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.

(R) That the applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant has not been convicted of a

felony, or of a misdemeanor involving moral turpitude, or has engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(S) That the applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

17.110.110 Investigation and Action on Application.

After the making and filing of a complete application for the dispensary permit and the payment of the fees, the Police Department shall conduct a background check of the applicant and all employees and conduct an investigation of the application, and take action as follows:

(A) The Planning Department shall refer the application to any other Town departments as necessary to complete the review of the application.

(B) Following provision of complete application materials and inter-departmental review, the Planning Department shall schedule the Use Permit for Planning Commission review. The Commission shall either grant or deny the application in accordance with the provisions of this chapter.

(C) In approving a dispensary permit, the Planning Commission may impose conditions, restrictions or require revisions to the proposal to comply with the purpose and intent of this chapter.

(D) The Planning Department shall cause a written notice of the Commission decision to issue or deny a permit to be mailed to the applicant by U.S. mail.

17.110.120 Appeal from Planning Commission Determination.

(A) An applicant may appeal any determination of staff to the Planning Commission.

(B) An applicant aggrieved by the Planning Commission's decision to issue or deny a permit may appeal such decision to the Town Council by filing an appeal pursuant to Chapter 17.320 of the Town Code.

17.110.130 Effect of denial.

When the Planning Commission shall have denied or revoked any permit provided for in this chapter and the time for appeal to the Council shall have elapsed, or, if after appeal to the Council, the decision of the Planning Commission has been affirmed by the Council, no new application for a permit shall be accepted from the applicant and no such permit shall be issued to such person or to any corporation in which he shall have any beneficial interest for a period of three years after the action denying or revoking the permit.

17.110.140 Suspension and Revocation.

(A) Consistent with Chapter 17.250, any permit issued under the terms of this chapter may be suspended or revoked by the Planning Commission when it shall appear to the Commission that the permittee has violated any of the requirements of this chapter or the dispensary is operated in a manner that violates the provisions of this chapter, including the criteria for review and operating requirements sections, or conflicts with State law.

(B) Except as otherwise provided in this chapter, no permit shall be revoked or suspended by virtue of this section until written notice of the intent to consider revocation or suspension of the permit has been served upon the person to whom the permit was granted at least five days prior to the date set for such review. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Notice may be given either by personal delivery to the person to be notified, or by depositing it in the U.S. mail in a sealed envelope, postage prepaid, return receipt requested, addressed to the person to be notified at his/her address as it appears in his/her application for a permit.

(C) If any person holding a permit or acting under the authority of such permit under this chapter is convicted of a public offense in any court for the violation of any law which relates to his or her permit, the Town Manager may revoke such permit forthwith without any further action thereof, other than giving notice of revocation to the permittee.

17.110.150 Transfer of Permits.

(A) A permittee shall not operate a dispensary under the authority of a dispensary permit at any place other than the address of the dispensary stated in the application for the permit.

(B) A permittee shall not transfer ownership or control of a dispensary or transfer a dispensary permit to another person unless and until the transferee obtains a Use Permit.

(C) No permit may be transferred when the Planning Director has notified the permittee that the permit has been or may be suspended or revoked.

(D) Any attempt to transfer a permit either directly or indirectly in violation of this section is declared void, and the permit shall be deemed revoked.

17.110.160 Violations.

(A) It is unlawful for any person, individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character to violate any provision or fail to comply with any of the requirements of this chapter.

(B) A violation of this chapter shall be subject to the criminal, civil, or administrative penalties specified in Town Code Chapter 1.10.

17.110.170 Remedies cumulative.

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.

17.110.180 Separate offense for each day.

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.

17.110.190 Hold harmless.

As a condition of approval of any permit for medical Cannabis cultivation, processing, or distribution, the permittee shall indemnify, defend and hold harmless the Town of Fairfax and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to permitted uses or operations, and in the case of dispensaries, for any claims brought by any of the permittee's clients or employees for problems, injuries, damages, or liabilities of any kind that may arise out of the permitted activities.

17.110.200 Public nuisance.

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.

17.110.210 Severability.

The provisions of this chapter are declared to be severable. If any provision, clause, word, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter.

17.110.220 Judicial review.

Judicial review of a decision made under this chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the California Code of Civil Procedure Section 1094.5. Any such petition shall be filed within 90 days after the day the decision becomes final as provided in California Code of Civil Procedure Section 1994.6 which shall be applicable for such actions.

SECTION II. 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.

SECTION III: VOTE

The Foregoing Ordinance No. 759, 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 on March 2, 2011, and was duly passed and adopted at a regular meeting held on April 6, 2011, by the following vote to wit:

AYES:

NOES:

ABSENT:

MAYOR BRAGMAN

ATTEST:

Town Clerk, Judy Anderson

RESOLUTION NO. 11-02

A RESOLUTION OF THE FAIRFAX PLANNING COMMISSION RECOMMENDING THAT THE TOWN COUNCIL ADOPT AN ORDINANCE ADDING TOWN CODE CHAPTER 17.110, REGULATING THE LOCATION AND OPERATION OF MEDICINAL MARIJUANA DISPENSARIES

WHEREAS, The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et seq.) entitled “The Compassionate Use Act of 1996” (Act).

WHEREAS, The intent of Proposition 215 was to enable persons residing in the State of California who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances.

WHEREAS, The State enacted SB 420 in 2004, being Sections 11362.7 et seq., of the Health and Safety Code, being identified as the Medical Cannabis Program, (Program), to clarify the scope of the Compassionate Use Act of 1996 and to allow Towns and other governing bodies to adopt and enforce rules and regulations consistent with the Program.

WHEREAS, To protect the public health, safety, and welfare, it is the desire of the Planning Commission to modify the Town Code consistent with the Program, regarding the location and operation of medical cannabis dispensaries.

WHEREAS, It is the Planning Commission’s intention that nothing in this chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, to otherwise permit any activity that is lawfully and constitutionally prohibited under that Act.

WHEREAS, It is the Planning Commission’s intention that nothing in this chapter shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use of cannabis for non-medical purposes; or (3) allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal.

WHEREAS, This chapter is found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b) (3) in that the Commission finds and determines that there is nothing in this chapter or its implementation that could foreseeable have any significant effect on the environment.

WHEREAS, This chapter is compatible with the general objectives of the Zoning Ordinance in that a medical cannabis dispensary use would be conditionally permitted in certain commercial districts, being similar to other permitted and conditionally permitted uses, such as pharmacies and medical clinics, and in that the use will be subject to public review and conditions.

Exhibit "B"

WHEREAS, This chapter is compatible with the public convenience, general welfare and good land use practice, in that medical marijuana dispensaries address a medical need in the community, and in that the uses will be subject to review and conditions.

WHEREAS, This chapter will not be detrimental to the public health, safety and general welfare, in that uses will be subject to careful review, that because of the small area and population of the Town of Fairfax and potential for adverse effects, dispensaries would be limited in number and such uses would be subject to strict operating requirements, limiting potential negative effects.

WHEREAS, This chapter will not adversely affect the orderly development of property, in that there would be appropriate controls on medical marijuana dispensaries, there would be absolute limits on the number of dispensaries, dispensaries would be subject to a careful review process, and strict operating requirements would be imposed.

WHEREAS, the Planning Commission held a duly noticed public hearing on this matter on February 17, 2011;

NOW, THEREFORE BE IT RESOLVED that the Planning Commission recommends that the Fairfax Town Council adopt the proposed revisions to the Fairfax Municipal Code, Chapter 17.110 regulating Medical Marijuana Dispensary locations and operations.

AYES:
NOES:
ABSTAIN:

ATTEST:

Brannon Ketcham, Chairperson

Jim Moore
Director of Planning and Building Services