TOWN OF FAIRFAX
STAFF REPORT

TO:	**Mayor, Members of the Town Council**
FROM:	**Michael Rock, Town Manager** MR **Jim Moore, Director of Planning and Building Services**
DATE:	**May 4, 2011**
SUBJECT:	***Second Reading of Ordinance No. 760:* An Ordinance extending for up to six months Interim Ordinance 753, an Interim Ordinance prohibiting the establishment of new medical marijuana dispensaries in any zoning district within the Town**

RECOMMENDATION

1. Open the public hearing and take testimony.

2. Close the public hearing.

3. Second Reading of Ordinance No. 760: extending for up to an additional six-month period the temporary moratorium on the establishment of marijuana dispensaries within the Town of Fairfax until December 16, 2011.

4. Move to adopt Ordinance No. 760; extending for up to an additional six-month period the temporary moratorium on the establishment of marijuana dispensaries within the Town of Fairfax until December 16, 2011.

DISCUSSION

Attached as **Exhibit A** is Ordinance No. 760 which would extend the six-month moratorium on establishing medical marijuana facilities in the Town of Fairfax for up to an additional 6 months. The moratorium was initially passed by Ordinance 753 for a period of 45 days on October 6, 2010, and then extended on November 17, 2010 for six months by Ordinance 758. Since the current moratorium ends on June 16, 2011 this extension needs to be passed on both first and second reading by May 16 if the Council wishes to keep the existing moratorium in place until final adoption of Ordinance No. 759, amending the Fairfax Municipal Code to add a new chapter 17.110 regulating Medical Marijuana Dispensaries, which is currently under consideration. The moratorium would terminate upon the earlier of December 16, 2011 or the effective date of the new chapter 17.110.

ATTACHMENTS

Exhibit A – Ordinance No. 760

ORDINANCE NO. 760

AN INTERIM ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX EXTENDING THE MORATORIUM ON THE ESTABLISHMENT OF NEW MEDICAL MARIJUANA DISPENSARIES IN ANY ZONING DISTRICT WITHIN THE TOWN FOR UP TO 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. Since June 2010, the Town has received several applications from medical marijuana dispensaries wishing to operate in the Town.

F. 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.

G. On October 6, 2010, the Town Council enacted Ordinance No. 753, an interim moratorium for forty-five days 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. On November 17, 2010, the Town Council extended the moratorium for an additional six months through Ordinance No. 758. The foregoing ordinance extends the moratorium for an additional six months.

H. The Town's Planning staff and Planning Commission have prepared a proposed ordinance regulating medical marijuana dispensaries, which is currently being considered by the Town Council. Consequently, the Town Council wishes to extend the moratorium for up to an additional six (6) months.

I. The Town has held a duly noticed public hearing on the proposed moratorium on additional medical marijuana facilities, in accordance with pursuant to California Government Code Section 65858.

SECTION II. Moratorium Extended. The Town of Fairfax hereby extends the interim moratorium on the establishment of new marijuana dispensaries, stores, and co-ops in all zoning districts in the Town that was initially enacted October 6, 2010 as Ordinance No. 753 and extended for six (6) months November

17, 2010 by Ordinance No. 758 until the earlier of (a) December 16, 2011, or (b) the effective date of an ordinance of the Town of Fairfax regulating medical marijuana dispensaries (as applicable, the "Expiration Date"). This Ordinance shall expire, and the moratorium extended hereby shall terminate, on the Expiration Date unless further extended by the Town Council.

SECTION III. 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 extension 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 IV. 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 V. This Ordinance shall be in full force and effect thirty days from and after its final passage and adoption.

Copies of the foregoing 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; which places are designated for that purpose.

The foregoing Ordinance was introduced at an adjourned regular meeting of the Town Council on the 14th day of April, 2011, and duly adopted at a regular meeting of the Town Council on the 4th day of May, 2011, by the following vote, to wit:

AYES:

NOES:

RECUSED:

LARRY BRAGMAN, MAYOR

Attest:

Town Clerk, Judy Anderson