



# TOWN OF FAIRFAX

## STAFF REPORT

### March 2, 2016

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager *GT*

**SUBJECT:** Discussion/consideration of schedule to consider ordinances regarding medical marijuana cultivation and delivery standards and community outreach plan regarding such ordinances

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#### RECOMMENDATION

Accept schedule to consider ordinances regarding medical marijuana cultivation and delivery standards and direct staff to implement community outreach plan regarding such ordinances.

#### BACKGROUND

At its February 3, 2016 meeting, the Council deferred its adoption of Ordinance No. 797 to ban marijuana cultivation with exemptions for personal cultivation for qualified patients and primary caregivers. The State had eliminated the March 1<sup>st</sup> deadline (AB 21) prior to the Council meeting which allowed the Council to defer the adoption. Ordinance No. 797 was developed in response to the passage of AB 243, which requires the State to develop a Medical Cannabis Cultivation Program and sets a deadline of March 1 for towns to adopt regulations regarding the cultivation of medical marijuana or the State will become the sole licensing authority.

The decision to defer adoption was based on the Council's desire to solicit more community input on the issues. However, the Council also wanted to have a timeline for consideration of ordinances regarding medical marijuana cultivation and delivery standards for medical marijuana. This report separates the schedule into two distinct phases for Council consideration.

#### Medical Marijuana Cultivation

The Council indicated it wanted to solicit more input on the matter, but did not want to conduct more community workshops/forums as the Council has been discussing the matter at every Council meeting since November 2015. Staff would suggest the usage of the Town's on-line forum (run by "Peak Democracy") to solicit more community input. We would inform the community of the on-line forum and schedule for Council consideration of Ordinance No. 797 via the Town newsletter, website, and Nextdoor.

We would have the on-line topic available for comment from March 4<sup>th</sup> to March 26<sup>th</sup>. Staff would compile the responses and report the results to the Council at its April 6<sup>th</sup> meeting in conjunction with consideration of Ordinance No. 797. Staff would also provide Council with options based on the on-line forum results.

While the on-line forum format is somewhat limited compared to an actual survey, we believe we can craft the forum topic in a manner to provide the Council with useful information regarding the community's position on the matter.

The following table summarizes proposed schedule for Medical Marijuana Cultivation:

Date	Action
March 4-26	On-Line Forum
April 6	Council consideration of on-line forum results and consideration of second reading of Ord. No. 797

### Medical Marijuana Delivery Standards

In October 2015, the Governor also signed into law AB 266 which established a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana. The Council has expressed interest in developing local standards for delivery in addition to whatever standards are developed by the State agencies. The Council also expressed the need for community input.

It should be noted that the Planning Commission did approve in 2010 delivery standards for the previous medical marijuana dispensary in Town. The standards were a part of the conditions of approval for the use permit for the dispensary. Staff believes these standards would be a good framework by which to begin discussions for general delivery standards (see attached conditions).

Similar to Medical Marijuana Cultivation, staff would use the Town's on-line forum to solicit community input. We would inform the community of the on-line forum and the schedule for consideration by PC and the Council via the Town newsletter, website, and Nextdoor.

We would plan to have the on-line topic available on March 4<sup>th</sup> the same time as medical marijuana cultivation. However, the deadline to participate would be April 8<sup>th</sup>. Staff would compile the responses and report the results to the Planning Commission (PC) at its April 21<sup>st</sup> meeting to be discussed in conjunction with a general discussion regarding delivery standards. Staff would return to the PC in May with a proposed ordinance for consideration. The Council could presumably receive an ordinance for consideration at your July meeting.

Since the PC previously adopted delivery standards for a medical marijuana dispensary in Town, it would seem reasonable for the PC to recommend an ordinance pertaining to standards for delivery for Council consideration.

The following table summarizes the proposed schedule for Medical Marijuana Delivery standards:

Date	Action
March 4 – April 8	On-Line Forum
April 21	Planning Commission (PC) consideration of standards
May 19	Planning Commission public hearing to consider Ordinance establishing standards
July 13	Town Council Public Hearing to consider PC recommendation of ordinance pertaining to delivery standards (Note: not able to publish notice in time for June Council meeting)

### **FISCAL IMPACT:**

None at this time.

### **ATTACHMENTS:**

Use permit- conditions of approval



# TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930  
(415) 453-1584 / FAX (415) 453-1618

July 13, 2010

Ms. Lynette Shaw  
Marin Alliance for Medicinal Marijuana  
6 School Street Plaza, Suite 210  
Fairfax, CA. 94930

## NOTICE OF PLANNING COMMISSION ACTION

RE: **6 School Street Plaza, Suite 210; Application 97-UP-2**

Continued consideration of a request for a modification of a previously approved Use Permit for a medicinal marijuana dispensary to allow for the (1) operation of a delivery service, (2) the propagation and sale of clones, (3) an amendment to the conditions allowing for location of a grow site run by the dispensary within the Town limits, and (4) the elimination of a series of specific conditions in the existing conditional use permit.

Dear Ms. Shaw,

It is a pleasure to inform you that the Fairfax Planning Commission at its meeting on June 17, 2010, approved the above referenced application subject to the enclosed Conditions of Approval in Exhibit A, and Exhibit B, Resolution No. 10-05.

For the record, any changes, modifications, additions or alterations to the newly approved Use Permit No 97-UP-2 will require another modification of the Use Permit from the Planning Commission.

If you have any questions regarding the Planning Commission action, or if you would like to purchase a copy of the meeting recording, please do not hesitate to contact the Fairfax Department of Planning and Building Services.

Best Regards,

James M. Moore  
Director of Planning and Building Services

Enclosures: Exhibit A, Use Permit 97-UP-2 Modified Conditions of approval  
Exhibit B, Resolution No. 10-05, A Resolution of the Fairfax Planning  
Commission Granting in Part and Denying in Part an application for Modification  
of Use Permit # 97-UP-2 for a Medicinal Marijuana Dispensary at 6 School Street  
Plaza, Suite 210, Assessor's Parcel No. 002-112-13

**ATTACHMENT** 1

**“EXHIBIT A”**

**USE PERMIT 97-UP-2 MODIFIED CONDITIONS OF APPROVAL**

1. The dispensary is to be operated in an area zoned as Limited Commercial (CL). A dispensary will not be located in a residential area.
2. No dispensary shall be operated within 500ft of any public or private school.
3. No dispensary shall be operated after 10:00 PM at night or before 8:00 AM in the morning. The dispensary shall not be open to the public between 8:00 AM and 9:00 AM, but this time may be used for setup and other administrative functions. Similarly, the dispensary shall not be open to the public between 9:00 PM and 10:00 PM, but this time may be used for closedown, cleaning, inventory and other administrative functions.
4. Neither live marijuana plants nor cultivation of marijuana is permitted in the dispensary, except that immature, non-flowering cloned live marijuana plants measuring less than 12 inches in height may be stored and sold.
5. There shall be no transportation of medicinal marijuana except the lawful transportation by patients, caregivers, and deliveries conducted pursuant to Conditions 29-36.
6. No amount of medicinal marijuana which is unduly disproportionate to the average number of patients served by the dispensary may be stored in the dispensary.
7. All clients of the Marin Alliance for Medical Marijuana are required to possess valid and current Marijuana for Medical Purposes identification card from the County of Marin Department of Health Services, the City and County of San Francisco Department of Public Health, or the City of Oakland Department of Public Health.

Prior to obtaining a State ID card, patients may given a 30-day trial membership. A current, written physician's recommendations 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.

The permittee will contract a licensed physician to conduct an audit of client records prior to the close of any six month use permit compliance period, and report the findings of the audit to the Town of Fairfax to ensure compliance with this condition.

8. Should the patient be a minor, the record shall include the signed consent of the parent or legal guardian of the minor.

9. Patients may have a designated caregiver on record that shall be entitled to obtain marijuana on behalf of the patient.
10. Any designated caregiver of a patient of the Permittee shall comply with any and all requirements as set forth by the health department grantee (either the Marin Department of Health and Human Services, the San Francisco Department of Public Health, or the City of Oakland Department of Public Health) from which the patient has valid current identification card for the use of marijuana for medical purposes. Prior to obtaining a State ID card, patients may be given a 30-day trial membership pursuant to Condition 7, above, and may designate a caregiver to obtain marijuana on their behalf during that time.
11. Prior to commencing business each day, 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. In addition, the permittee shall record the total numbers of cloned live marijuana plants being stored or offered for sale pursuant to Condition 4.
12. At the close the business each day, permittee will record the total gross weight of marijuana dispensed on that date and the total gross weight of all marijuana possessed at the dispensary which is no longer affixed to any living marijuana plant.
13. 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. Receipts shall be retained pursuant to Condition 22.
14. Permittee shall maintain financial records identifying information for all savings accounts, checking accounts, investment accounts and trusts associated with the operation of the dispensary.
15. Permittee shall maintain ledgers documenting all credits and debits affecting said accounts.
16. Permittee shall maintain records documenting all parties involved in, amounts of and purposes, for all cash transactions.
17. 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.
18. 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.
19. Permittee shall maintain the records regarding the estimated yield that the growth will provide during each harvest of each site that medical marijuana is cultivated pursuant to Condition 17.

20. The dispensary shall not obtain marijuana from any other source other than those identified pursuant to Condition 18.
21. The cultivation site(s) identified pursuant to Condition 18 shall not be in areas zoned as residential.
22. Permittee shall maintain all of the required records at the dispensary site or in secured, accessible storage at all times.
23. All required records shall be subject to inspection by the Chief of Police, or his designee, without warrant and without notice, during the time the dispensary is open for business.
24. Nothing in this section shall prohibit the discovery of seizure of records pursuant to court process.
25. Permittee may use alternatives for inspection of designated records. Records not specifically exempted herein shall be available to police inspection pursuant to Condition 23.
26. As an alternative to police inspection and with the consent of the Marin County Department of Health and Human Services, the Marin County Department of Health and Human Services shall conduct the patient and care giver records inspection. With this alternative the permittee will maintain, for police inspection, the letter of consent and a letter verifying that an inspection has been conducted within 6 months. The letter of verification shall also contain the number of patients, and the estimated total marijuana by weight that is necessary to support patient requirements.
27. As an alternative to police inspection, the Town of Fairfax 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.
28. As an alternative to police inspection and with the consent of the Marin County Department of Agriculture, the Marin County Department of Agriculture shall inspect grower records and inspect the actual agricultural site. With this alternative the permittee will maintain, for police inspection, the letter of consent and a letter verifying that an inspection of the records and the growing site has been conducted within four months. The letter of verification shall contain the number of growing sites and the estimated yield, by weight, of medicinal marijuana.
29. The permittee may operate a delivery service and deliver medical marijuana to patients pursuant to the conditions of this permit.
30. The hours of the delivery service are limited to Monday through Saturday, between the hours of 9:00 AM and 5:00 PM. Permittee may utilize up to two vehicles for deliveries at any one time.

31. Permittee must maintain current automobile insurance in the amount of \$1 million per incident, and shall agree to indemnify, defend, and hold harmless the Town of Fairfax, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description arising from or connected with the delivery service. Permittee shall name the Town of Fairfax as an additional insured on its automobile insurance policy. Permittee's insurance records shall be maintained and subject to inspection pursuant to Conditions 22 and 23.
32. Delivery vehicles shall be unmarked. Delivery vehicles shall carry no more than sixteen ounces of medical marijuana, no more than \$2,500 worth of other medical marijuana products, and no more than \$2,500 in cash at any time. In no event shall the quantity of medical marijuana carried exceed the reasonable amount required by the patients being delivered to
33. Each delivery vehicle shall be staffed by at least two persons: a licensed driver and permittee or another employee designated as a caregiver pursuant to state law, during all deliveries. All drivers and caregivers shall submit to a criminal background check with the Town Police Department. Persons convicted of a felony shall not be allowed to operate or accompany delivery vehicles.
34. Deliveries shall be made to residential properties only.
35. Permittee shall note the member number and address of the patient by telephone when taking orders for delivery, and the permittee or their employee shall verify the patient's identity by checking the patient's State or permittee-issued ID card at the point of delivery. Permittee shall maintain records and receipts of all deliveries pursuant to Conditions 13 and 23.
36. Permittee shall provide its delivery schedule and delivery vehicle information to the Fairfax Police Department on request during dispensary business hours.
37. No amount of medicinal marijuana which is unduly disproportionate to the average number of patients served by the dispensary may be brought to the dispensary location.
38. When a patient or care-giver is in possession of medicinal marijuana, the person shall also be in possession of a State or permittee-issued identification card as specified in Condition 7.
39. No medicinal marijuana will be used or consumed at the dispensary site.
40. Permittee shall not distribute medicinal marijuana to any person without confirming the patient's lawful ability to obtain marijuana in compliance with Health and Safety Code Section 11362.5.

41. Permittee shall not provide medicinal marijuana to any person without confirming the patient's or care giver's identity by means of valid government issued identification which bears a photograph of the patient or care giver obtaining the marijuana.
42. Permittee shall not distribute any amount of medicinal marijuana which exceeds one ounce to, or on behalf of, any one person during any consecutive seven day period without a physician's written recommendation.
43. Any marijuana that is dispensed shall be in sealed containers. Commercially manufactured child-resistant containers shall be available.
44. The medicinal marijuana dispensary shall be equipped with an operable alarm system. This alarm system, at a minimum, will protect the perimeter of the dispensary and the location within the structure where medicinal marijuana is stored, packaged or dispensed.
45. The alarm is to be monitored by a professional alarm company at all times when the dispensary is closed for business.
46. All doors and windows of the premises shall be equipped with adequate security devices.
47. All medicinal marijuana and cash shall be stored in a locked safe at all times which the dispensary is closed for business.
48. This safe will be retained at the dispensary at all times.
49. All medicinal marijuana and cash shall be stored in a locked safe at all times when the dispensary is closed for business.
50. This safe will be retained at the dispensary at all times.
51. Permittee shall notify the Fairfax Police Department of all criminal activity which is occurs at, or adjacent to, the dispensary.
52. This activity shall be reported as it is occurring, or when first discovered by the permittee, and shall include all activity that can reasonably be determined to be criminal in nature.
53. For the purpose of these requirements the term: a) "Permittee" is defined to include, but not be limited to, the permittee, and all owners, directors, advisors, consultants, contractors, employees and volunteers engaged in, or assisting in the operation of a medicinal marijuana dispensary, whether operated for profit or not.
54. "Premises" is defined to include, but not be limited to, all offices, rooms, storage facilities, lockers, stationary conveyances, outbuildings, parking lots and ground, whether open to the public or not.
55. Any violation of these conditions shall be cause for revocation of the use permit.

56. The use must be conducted in compliance with the provisions of Proposition 215.
57. No persons under the age of 18 shall be permitted in the dispensary at any time, except for underage members accompanied by a parent, legal guardian, or the member's personal medical professional.
58. No retail sales of any products other than medical marijuana will be permitted at the dispensary located at 6 School Street Place, Suite 210.
59. The dispensary is required to have a display on the front door and within the waiting room advising its clientele that no person under the age of 18 is permitted onto the premises except underage members accompanied by a parent, legal guardian, or the member's personal medical professional.
60. The use shall be subject to all State adopted guidelines immediately upon adoption of such guidelines.
61. The use permit shall be revoked if any final judicial decision is made rendering the use illegal.
62. The applicant shall make a good faith effort to obtain any and all required permits and/or licenses from the State or County agencies having jurisdiction over this type of use (i.e. Marin County Health Department, State Board of Equalization, etc.).
63. There shall be no alcohol used on the premises of the dispensary.

**EXHIBIT "B"**

**RESOLUTION NO. 10-05**

**A RESOLUTION OF THE FAIRFAX PLANNING COMMISSION GRANTING IN PART AND DENYING IN PART AN APPLICATION FOR MODIFICATION OF USE PERMIT # 97-UP-2 FOR A MEDICAL MARIJUANA DISPENSARY AT 6 SCHOOL STREET PLAZA, SUITE 210, ASSESSOR'S PARCEL NO. 002-112-13**

**WHEREAS**, the Town of Fairfax received an application ("Application") for modification of Use Permit # 97-UP-2 ("Use Permit") from Ms. Lynette Shaw ("Applicant"), who operates the Marin Alliance for Medicinal Marijuana Collective at 6 School Street Plaza, Suite 210, Fairfax, California (Assessor's Parcel No. 002-112-13);

**WHEREAS**, the Town of Fairfax approved the Use Permit in 1997 subject to 84 conditions; and

**WHEREAS**, in 2001, the Planning Commission amended the Use Permit, eliminating 12 conditions and modifying others; and

**WHEREAS**, the Application requests the elimination or modification of 40 of the remaining 72 conditions, relating to a variety of aspects of the use; and

**WHEREAS**, on March 18, 2010, the Planning Commission held a duly noticed Public Hearing on the Application, and continued the hearing to April 15, 2010, May 20, 2010, and June 17, 2010, at which times all interested parties were given a full opportunity to be heard and to present evidence;

**WHEREAS**, the Application is Categorically Exempt from the Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Class 1, exempting modifications to the permitting of existing uses; and

**NOW, THEREFORE**, the Planning Commission does hereby find and determine as follows:

1. In light of the Applicant's successful and largely problem-free operation over the past 15 years, Applicant's request to extend her allowed hours of operation by two hours to allow for additional set-up and close-down time is reasonable.
2. The Applicant's request to permit the sale of immature, non-flowering cloned plants less than twelve inches in height is reasonable. The Planning Commission finds that allowing the sale of clones will benefit patients by allowing patients to cultivate a small number of medical marijuana plants on their private property pursuant the Compassionate Use Act. Limiting the sale to immature, non-

flowering cloned plants of a small size will prevent the cultivation of medical marijuana at the dispensary. Additional record-keeping requirements will ensure that proper records are kept of the sale of cloned plants.

3. The Applicant's request to allow new patients to obtain emergency trial access for 30 days with a verified written doctor's recommendation while they obtain a State ID card is reasonable and will benefit patients who are in the process of obtaining the State ID card and need medical marijuana in the meantime. Additional record-keeping requirements will ensure that the 30-day trial period is appropriately monitored and proper records are kept of verified written doctor's recommendations.
4. The Applicant's request to allow her records to be maintained either onsite or offsite in a secured, accessible storage location is reasonable. The Applicant's request to remove the condition allowing the Chief of Police to inspect her records at any time without a warrant is reasonable in light of current law. The Applicant will continue to offer access to records during her business hours. Similarly, the Applicant's request that, as an alternative to police review, she opt to have the Town appoint a certified public accountant to review her receipts, at her expense, and prepare a report, is reasonable and will not be detrimental or injurious to the neighborhood, the general welfare of the Town or to the health, safety, peace, morals, comfort, or general welfare of residents of and visitors to the Town.
5. The Applicant's request to eliminate the conditions requiring that patients not use medical marijuana on public property and on private property without the permission of the property owner, and other conditions where enforcement is outside of the her direct control, will not be detrimental or injurious to the neighborhood, the general welfare of the Town or to the health, safety, peace, morals, comfort, or general welfare of residents of and visitors to the Town.
6. The operation of a delivery service will benefit disabled, elderly, and homebound patients who have difficulty going to the Marin Alliance for medication. The Planning Commission finds that if such a service is operated pursuant to Conditions 29-36 of the Use Permit 97-UP-2 Modified Conditions of Approval, attached hereto as "Exhibit A" and incorporated into this Resolution, it will benefit patients while avoiding any detriment or injury to the neighborhood, the general welfare of the Town or to the health, safety, peace, morals, comfort, or general welfare of residents of and visitors to the Town.
7. The Planning Commission does not have the jurisdiction to grant the Applicant's request to permit a grow site for medical marijuana without designating a location for a grow site. An application for a grow site on a specific parcel would be subject to public review and Planning Commission deliberation pursuant to the Town Code. Therefore, Applicant's request for permission to operate an unspecified grow site within Town limits is denied.

8. The operation of Applicant's business does not conflict with or create any problems for any organized youth activities that occur in the nearby area. On the other hand, the Use Permit's limitations on operation of Marin Alliance during youth activities have had a detrimental impact on patients who need to obtain medical marijuana during those times. Eliminating these limitations is unlikely to harm youth and will benefit patients who need to obtain medical marijuana on weekends and afternoons when youth activities are occurring.
9. The Use Permit's age limitation for patients adversely impacts underage patients, forcing patients under age 18 to remain outside while their caregivers obtain medical marijuana for them. Allowing patient members under the age of 18 to enter Marin Alliance in the company of a parent, legal guardian, or personal medical professional will allow legitimate underage patients to personally obtain medical marijuana while still prohibiting non-patient minors from entering Marin Alliance premises.
10. Other clerical changes to the conditions were made, with the agreement of the Applicant, to streamline and clarify the condition requirements and remove redundant language.

**NOW, THEREFORE**, the Planning Commission of the Town of Fairfax does hereby grant the Application for Modification of Use Permit #97-UP-2 in part and deny the Application in part, as described in the Use Permit 97-UP-2 Modified Conditions of Approval, attached hereto as "Exhibit A" and incorporated into this Resolution.

The foregoing Resolution was duly passed and adopted at a Regular Meeting of the Planning Commission of the Town of Fairfax held in said Town on the 17th day of June, 2010 by the following vote, to wit:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
Chair

Attest:

\_\_\_\_\_  
Judy Anderson, Town Clerk