




# TOWN OF FAIRFAX

## STAFF REPORT

### October 3, 2018

**TO:** Mayor and Council

**FROM:** Garrett Toy, Town Manager 

**SUBJECT:** Adopt a report describing the measures taken to alleviate the conditions which led to the adoption of Ordinance Nos. 809 and 812 (moratorium on commercial cannabis) and adopt an urgency interim zoning ordinance of the Town of Fairfax adopted pursuant to Government Code section 65858 extending for a period of one year until October 31, 2019 the temporary moratorium in all zoning districts on the establishment, creation or expansion of any and all commercial cannabis uses, with exceptions, pending the completion of studies and the preparation of an update to the Town's municipal and zoning codes; CEQA categorically exempt, §§ 15308, 15060(c)(2), and 15061(b)(3)

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#### **RECOMMENDATION**

1. Adopt a report describing the measures taken to alleviate the conditions which led to the adoption of Ordinance Nos. 809 and 812;
2. Conduct the public hearing; and
3. Introduce by title, waive further reading and adopt:  
AN URGENCY INTERIM ZONING ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858 EXTENDING FOR A PERIOD OF ONE YEAR UNTIL OCTOBER 31, 2019, THE TEMPORARY MORATORIUM IN ALL ZONING DISTRICTS ON THE ESTABLISHMENT, CREATION OR EXPANSION OF ANY AND ALL COMMERCIAL CANNABIS USES, WITH EXCEPTIONS, PENDING THE COMPLETION OF STUDIES AND THE PREPARATION OF AN UPDATE TO THE TOWN'S MUNICIPAL AND ZONING CODES

A 4/5 vote is required by the Town Council in order to adopt the ordinance. If adopted, the ordinance will take effect immediately.

#### **BACKGROUND**

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 commercial cannabis uses, as defined, pending the completion of studies and the preparation of an update to the Town's municipal and zoning codes.

On December 6, 2017, the Town Council adopted Urgency Ordinance No. 812 pursuant to Government Code Section 65858 extending the moratorium on commercial cannabis uses for 10 months and 15 days pending the completion of studies and the preparation of an update to the Town's municipal and zoning codes. The current moratorium provides the Council the ability to determine what types of commercial cannabis regulations are desired for Fairfax.

AGENDA ITEM # 11

## **DISCUSSION**

Fairfax is currently operating under a moratorium for commercial cannabis businesses (except for medical marijuana dispensaries allowed under the Town Code) that is in effect until October 31, 2018. For the past year, the Town has conducted workshop/forums, an on-line survey, and held several meetings to discuss and consider the issue of commercial cannabis (see attached report). The Council held a special meeting on August 15<sup>th</sup> for the sole purpose of discussing commercial cannabis policies. At the conclusion of the meeting, the Council requested staff to provide the Council's policy direction to the Planning Commission (PC) for consideration. On September 20, 2018, the PC held its first meeting to discuss the Council's policy direction and requested additional information from staff.

Given the PC is in the initial stages of its review and the level of public interest in the matter, the Council will not be able to adopt an ordinance addressing commercial cannabis prior to the expiration of the current moratorium term. In addition, recent state legislative activity and proposed new state regulations released by California's three state cannabis licensing authorities in July 2018, continue to change the state regulatory landscape for commercial cannabis uses in California which may affect local ordinances.

Staff had previously reported to the Council that it can extend the moratorium for up to an additional year prior to October 31<sup>st</sup>. In order to extend the moratorium, Government Code Section 65858(d) requires the Town to prepare, ten (10) days prior to the expiration of the interim ordinance, a written report, issued by the Council, describing the measures taken to alleviate the condition which led to the adoption of the ordinance. Attached is the written report detailing the "measures taken" by the Town to adopt permanent regulations.

While the Town has been diligent in its efforts to develop local cannabis regulations, the circumstances and conditions that led to the adoption of Urgency Ordinance Nos. 809 and 812, have not been alleviated as of the date of this Ordinance and continue to create the concerns described in the recitals and findings of Urgency Ordinance Nos. 809 and 812. We are recommending that the Council extend the moratorium for one additional year in order to temporarily prohibit all commercial cannabis uses which are not already permitted by the Town's Zoning Code to provide adequate time to continue studying zoning proposals related to medical and non-medical/adult-use commercial cannabis uses and adopt local regulations as necessary.

This Urgency Ordinance is in effect only until the adoption of appropriate ordinance(s) establishing regulations regarding commercial cannabis uses in the Town.

## **CEQA**

It can be seen with certainty that there is no possibility that the adoption of this Ordinance, and extension of the moratorium on the establishment or creation of commercial cannabis uses within the Town of Fairfax, will have a significant effect on the environment because the Ordinance will maintain current levels of development. It is therefore exempt from any California Environmental Quality Act (CEQA) review pursuant to Sections 15060(c)(2), 15061(b)(3) and 15308 of Title 14 of the California Code of Regulations.

## **FISCAL IMPACT**

None at this time

**ATTACHMENTS:** Report, Ordinance

A REPORT DESCRIBING THE MEASURES TAKEN TO ALLEVIATE THE CONDITION WHICH LED TO THE ADOPTION OF THE TEMPORARY MORATORIUM IN ALL ZONING DISTRICTS ON THE ESTABLISHMENT, CREATION OR EXPANSION OF ANY AND ALL COMMERCIAL CANNABIS USES, WITH EXCEPTIONS

- 1) On November 20, 2017, the Town posted an on-line survey regarding commercial cannabis on the Town website. The deadline to complete the survey was January 2, 2018.
- 2) On December 11, 2017, the Town conducted a panel-led cannabis workshop at the Women's Club. The panel featured five speakers: Danielle O'Leary, San Rafael Economic Development and Innovation Director, Beth Greene, Berkeley Senior Planner and Cannabis Commission Secretary, Gary Federoff, Sunny Hills Services Program Director, Matt Willis, Marin County Public Health Officer, and Aaron Burke, CEO Monk Provisions, who spoke on a wide range of health, governmental, and industry-related topics relating to the post-Proposition 64 environment. The workshop was well attended by about 80 members of the public, and in addition was live webcast.
- 3) On January 16, 2018, the Council received a staff report on the cannabis panel workshop and results of cannabis on-line survey. Staff indicated it would return to the Council in March to seek general direction on the Town's cannabis policies.
- 4) At its March 7<sup>th</sup> meeting, the Council reviewed the context for possible cannabis regulations. At that time, several commercial cannabis regulatory parameters were discussed, preliminarily narrowing the types of commercial cannabis businesses desired in Fairfax. The Council also requested staff to schedule a workshop on the issue.
- 5) On May 30<sup>th</sup> the Council held a special Town workshop for the express purpose of receiving more detailed information on the topics discussed at the March meeting. David McPherson, Cannabis Compliance Director for HdL Companies, a firm specializing in municipal regulation and taxation of medical and non-medical cannabis businesses, conducted the workshop.
- 6) At its July 18<sup>th</sup> meeting, the Council further discussed general policy issues regarding cannabis. For each general policy issue, the Council provided staff with direction or request for additional information.
- 7) At its August 1<sup>st</sup> meeting, the Council confirmed and clarified its previous positions on several issues as well as received more public comment. However, due to the lateness of the hour, the Council continued the discussion to a special Council meeting.
- 8) On August 15<sup>th</sup>, the Council held a special meeting for the express purpose of discussing/considering cannabis policies. The Council provided staff direction on key policy issues and referred the matter to the Planning Commission to develop regulations for Council consideration.
- 9) On September 20<sup>th</sup>, the Planning Commission (PC) held its first meeting to discuss the Council's policy parameters regarding cannabis. The purpose of the meeting was to receive general comments and questions from the PC with the goal of returning to the PC at its October meeting with the requested information. Due to the complexity of the issue, the Council anticipates the PC will be able to recommend an ordinance to the Council for consideration in early 2019.

**ORDINANCE NO. \_\_\_\_\_**

**AN URGENCY INTERIM ZONING ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858 EXTENDING FOR A PERIOD OF ONE YEAR UNTIL OCTOBER 31, 2019 THE TEMPORARY MORATORIUM IN ALL ZONING DISTRICTS ON THE ESTABLISHMENT, CREATION OR EXPANSION OF ANY AND ALL COMMERCIAL CANNABIS USES, WITH EXCEPTIONS, PENDING THE COMPLETION OF STUDIES AND THE PREPARATION OF AN UPDATE TO THE TOWN'S MUNICIPAL AND ZONING CODES**

**WHEREAS**, California Government Code Section 65858 expressly authorizes the Town Council to adopt by four-fifths (4/5) vote, without following the procedures otherwise required for the adoption of a zoning ordinance, an urgency interim zoning ordinance which is necessary for the immediate protection of the public health, safety and welfare; and

**WHEREAS**, after notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year; 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 commercial cannabis uses, as defined, in the Town pending the completion of studies and the preparation of an update to the Town's municipal and zoning codes; and

**WHEREAS**, on December 6, 2017, the Town Council adopted Urgency Ordinance 812 to extend the moratorium for a period of ten (10) months and fifteen (15) days until November 1, 2018 to allow staff and the Town Council the opportunity to continue research and select the best course of action pertaining to commercial cannabis uses for the Town's citizens and the community at large; and

**WHEREAS**, during the period of December 2017 to August 2018, the Town Council has held numerous policy discussions and public study sessions pertaining to commercial cannabis uses within the Town of Fairfax and gained significant community input and factual information; and

**WHEREAS**, at a special meeting on August 15, 2018, the Town Council referred the matter to the Town Planning Commission for additional input and policy consideration, particularly on the issues relating to commercial medical and adult use retail uses; and

**WHEREAS**, Town staff and the Town Planning Commission are continuing to gather data and consider appropriate policies for cannabis uses that reflect the desires and consensus of the community; and

**WHEREAS**, as a result, the Town Council desires to extend the moratorium on certain cannabis uses for an additional one year; and

**WHEREAS**, the Town Council has determined that the circumstances and conditions that led to the adoption of Urgency Ordinance Nos. 809 and 812, have not been alleviated as of the date of this Ordinance and continue to create the concerns described in the recitals and findings of Urgency Ordinance Nos. 809 and 812; and

**WHEREAS**, in addition, recent state legislative activity and proposed new state regulations released by California's three state cannabis licensing authorities in July 2018, continue to change the state regulatory landscape for commercial cannabis uses in California; and

**WHEREAS**, Town Council therefore desires to extend the moratorium for one additional year in order to temporarily prohibit all commercial cannabis uses which are not already permitted by the Town's Zoning Code to provide adequate time to continue studying zoning proposals related to medical and non-medical/adult-use commercial cannabis uses and adopt local regulations as necessary; and

**WHEREAS**, it is the present intention of the Town Council to keep this Urgency Ordinance in effect only until the adoption of appropriate ordinance(s) establishing regulations regarding commercial cannabis uses in the Town.

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

**Section 1. Findings, Declaration of Urgency.**

The Town Council of the Town of Fairfax hereby finds and declares that there is a need to enact an urgency interim zoning ordinance extending the moratorium on the establishment or creation of all commercial cannabis uses in all zoning districts in the Town, subject to the findings and conditions contained in this Ordinance. The Town Council of the Town of Fairfax hereby incorporates the findings set forth in the recitals stated above. The Town makes this declaration of urgency based, in part, on recent inquiries regarding the allowance of cannabis retail businesses in the Town, as well as general inquiries regarding the passage of the State of California's Adult-Use of Marijuana Act (AUMA) and the Medicinal and Adult Use of Cannabis Regulation and Safety Act (MAUCRSA) and the establishment of similar commercial marijuana businesses. Specifically, the Town Council makes the following findings:

- (a) If a moratorium on the establishment or creation of all medical and adult-use commercial cannabis uses in the Town, excluding medical marijuana dispensaries already legally established or as authorized by the Zoning Code, is not adopted and in place as of January 1, 2018, there is a risk that the state cannabis licensing authorities may approve medical or adult-use commercial cannabis uses to operate in the Town.
- (b) If commercial cannabis uses are allowed to proceed without appropriate local review of location and operational criteria and standards, such businesses could have deleterious effects on surrounding neighborhoods and businesses that present a clear and immediate danger to the public health, safety and welfare.
- (c) If cannabis retail uses or other commercial cannabis uses are allowed to proceed prior to revising current zoning standards and regulations, it would conflict with, and defeat the purpose and intent of, current zoning requirements and operational rules that apply to and only permit medical marijuana dispensaries.
- (d) The Town Council finds that if establishment or development of medical or non-medical/adult-use commercial cannabis uses, beyond those already legally established and permitted by the Town's Code, were allowed to proceed while the Town is studying zoning ordinances and

regulations for such uses, it would defeat the purpose of studying and considering zoning proposals to regulate and/or prohibit certain medical and adult-use cannabis uses.

- (e) Failure to extend this moratorium may result in significant irreversible changes to neighborhood and community character, and may conflict with the ordinances that the Town may ultimately impose after it has considered and studied this issue, which will be accomplished in a reasonable time.
- (f) There is a current and immediate threat to the public health, safety and welfare of the Town and its community, thereby necessitating the immediate enactment of this ordinance extending the moratorium in order to ensure that permits for such commercial cannabis uses are established only under adequate regulations.
- (g) There is a current and immediate threat to the public health, safety, or welfare posed by commercial cannabis uses beyond those exempted in Section 3 below, and the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.
- (h) Based on the foregoing, the Town Council does hereby declare this urgency ordinance is necessary to protect the public health, safety, and welfare while the Town is considering revisions to zoning regulations related to commercial cannabis uses.

**Section 2. Moratorium.**

Except as provided in Section 3 of this Ordinance, the Town Council hereby declares and extends for one (1) year until October 31, 2019 the moratorium adopted by Ordinance No. 809, and extended by Ordinance No. 812, on any and all commercial cannabis uses within all zoning districts in the Town. The Town shall not approve or issue land use approvals or permits, including but not limited to zoning amendments, conditional use permits, variances, tentative subdivision or parcel maps, site plan approvals, design review approvals, and building permits or other applicable entitlements for the establishment, creation or operation of commercial cannabis uses, or modification or expansion of existing businesses for commercial cannabis uses, during this moratorium.

**Section 3. Exemptions.**

This moratorium shall not apply to those cannabis uses already expressly permitted or conditionally permitted in the Town. Specifically:

- A. This moratorium does not apply to indoor or outdoor cultivation of medical marijuana/cannabis for personal use permitted and regulated by Fairfax Municipal Code, Chapter 17.138, Article III, as may be amended.
- B. The moratorium does not apply to indoor or outdoor cultivation of up to six cannabis plants per private residence for personal use authorized by State law, Health and Safety Code 11362.1 et seq. Persons engaging in indoor or outdoor cultivation must comply with all existing or future

adopted state and local laws regarding fire safety, water use, electrical wiring, buildings, and indoor or outdoor cultivation and personal use of cannabis.

- C. This moratorium does not apply to the establishment or operation of a medical marijuana dispensary, including cannabis delivery services if any, in full compliance with Chapter 17.110 of the Fairfax Municipal Code, the conditions of the dispensary's conditional use permit, and state law.
- D. This moratorium does not apply to delivery of medical cannabis and cannabis products from medical marijuana dispensaries or medical cannabis retailers, with a premises from which cannabis delivery services are conducted which is physically located outside of the Town of Fairfax, provided that such delivery services otherwise comply with the Fairfax Municipal Code and do not establish, create, or expand to commercial cannabis uses covered by this moratorium.
- E. This moratorium does not apply to the activities of a qualified patient or a primary caregiver that are exempt from state licensure pursuant to Business and Professions Code, Section 26033.

#### **Section 4. Definitions.**

For purposes of this Ordinance, the following definitions shall apply.

- (a) "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" also includes marijuana as defined by Section 11018 of the Health and Safety Code. Cannabis also includes "cannabis" as defined in Business and Professions Code, Section 26001. For purposes of this Ordinance, "cannabis" includes both medical and non-medical/adult-use cannabis.
- (b) "Cannabis cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- (c) "Cannabis delivery" means the commercial transfer of cannabis or cannabis products to a customer. "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.
- (d) "Cannabis distribution" means the procurement, sale, and transport of cannabis and cannabis products and any other activity allowed under the state distributor license(s), including, but not limited to, cannabis storage, quality control and collection of state cannabis taxes.
- (e) "Cannabis manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. Cannabis manufacture 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.

- (f) “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 includes “cannabis products” as defined in Business and Professions Code, Section 26001. For purposes of this Ordinance, “cannabis” includes both medical and non-medical cannabis products.
- (g) “Cannabis retailer” means a facility where cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale or conducts sales exclusively by delivery (non-storefront retailer). For purposes of this Ordinance, cannabis retailer includes microbusinesses as well as nonprofits licensed pursuant to Business and Professions Code, Section 26070.5.
- (h) “Cannabis testing laboratory” means a facility, entity, or site in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:
  - (1) Accredited by an accrediting body that is independent from all other persons involved in the commercial cannabis activity in the state; and
  - (2) Licensed by the Bureau of Cannabis Control.
- (i) “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 use includes “commercial cannabis activity” as defined in Business and Professions Code, Section 26001, and includes any activity that requires 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 from time to time. “Commercial cannabis use” does not include possession or cultivation of cannabis for personal use that is not sold and in strict accordance with Health and Safety Code, Section 11362.1 et seq.
- (j) “Medical marijuana dispensary” shall have the meaning set forth in Fairfax Municipal Code, Section 17.110.020.

**Section 5. CEQA Finding.**

The Town Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and extension of the moratorium on the establishment or creation of commercial cannabis uses within the Town of Fairfax, will have a significant effect on the environment because the Ordinance will maintain current levels of development. It is therefore exempt from any California Environmental Quality Act (CEQA) review pursuant to Sections 15060(c)(2), 15061(b)(3) and 15308 of Title 14 of the California Code of Regulations.

**Section 6. Severability.**

If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this



Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

**Section 7.    Effective Date.**

This Interim Ordinance shall become effective immediately.

**PASSED AND ADOPTED THIS 3RD DAY OF OCTOBER 2018, BY THE FOLLOWING VOTE:**

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

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PETER LACQUES, Mayor

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Michele Gardner, Town Clerk