

## TOWN OF FAIRFAX STAFF REPORT

**TO:** Mayor, Members of the Town Council

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

**DATE:** November 3, 2010

**SUBJECT:** Adoption of Ordinance No. 758 of the Town Council of the Town of Fairfax Extending the Moratorium on the Establishment of Marijuana Dispensaries in Any Zoning District within the Town of Fairfax for Six Months.

### RECOMMENDATION

Adopt Ordinance No. 758 extending the interim Moratorium on the Establishment of Marijuana Dispensaries within the Town for an additional six (6) months.

### DISCUSSION

On October 6, 2010 the Town Council passed Interim Ordinance No. 753 establishing a 45 day Moratorium on the establishment of Marijuana Dispensaries within the Town of Fairfax. This action was prompted as a result of planning staff fielding numerous inquiries from persons seeking information on how to apply to operate new dispensaries in Town; and in order for the Town Council to consider codifying standards in the Zoning Code regulations for both siting criteria and the number of dispensaries within the Town. Doing so would provide more detailed guidance to prospective applicants and the public, and facilitate Planning Staff and Planning Commission review of applications and reduce the risk of legal challenges to Planning Commission actions.

In order to comply with the requirements of state law applicable to interim zoning ordinances, the Planning Staff has developed a plan for studying the Town's options for the regulation of dispensaries which includes:

- Review of issues that have arisen with the current dispensary and the consideration of applications for others in the Town;
- Survey of the code provisions that regulate dispensaries in other jurisdictions;
- Analyze of applicable limits of state law; and
- Consultation with the Planning Commission.

Staff expects that this review will take several months to complete, as a result recommends extending the moratorium for an additional six (6) month period. The current moratorium expires on December 20, 2010. If the Town Council wishes to extend the moratorium without there being a gap period, in order to accommodate the two readings and the thirty day lag period before adoption and effectiveness, the introduction of Ordinance No. 756 probably needs to take

place at the November 3 meeting, with the second reading and adoption taking place at the November 17 meeting. (The ordinance could be extended on an urgency basis with a 4/5ths vote. If the Council wishes to extend on that basis, staff will prepare an urgency ordinance for either the November 17 or the December 1 meeting.)

**ORDINANCE NO. 758**

**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 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.
- H.     The Town's Planning staff has developed a workplan for its review of the current code, its consultation with the Planning Commission, and the consideration of reasonable limitations for dispensaries, which will require several months to complete. Consequently, the Town Council wishes to extend the moratorium for 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 for an additional six (6) months, the interim moratorium on the establishment of new marijuana dispensaries, stores, and co-ops in all zoning districts in the Town that was enacted October 6, 2010 as Ordinance No. 753. This Ordinance shall expire, and the moratorium extended hereby shall terminate, six (6) months after the effective date unless 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 a regular meeting of the Town Council on the 3rd day of November, 2010, and duly adopted at an adjourned regular meeting of the Town Council on the 17<sup>th</sup> day of November, 2010, by the following vote, to wit:

AYES:  
NOES:  
RECUSED:  
ABSTENTION:

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LEW TREMAINE, MAYOR

Attest:

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Town Clerk

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