

**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: May 20, 2010
FROM: Jim Moore, Director of Planning and Building Services
LOCATION 6 School Street Plaza, Suite 210;
Assessor's Parcel No. 002-112-131
PROJECT: Modification of existing Use Permit to include (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
ACTION: Use Permit Modification; Use Permit # 97-UP-2
APPLICANT: Lynette Shaw
OWNER: Fred Ezazi
CEQA STATUS: Categorically exempt, § 15301(a)

BACKGROUND

At the last Planning Commission meeting on April 15th of this year, the Commissioner's had their second hearing on the applicants request for forty (40) modifications to the Use Permit (# 97-UP-2) that allows for the operation of a Dispensary in the Town of Fairfax.

Please note: the staff reports from the previous two meetings on March 18th and the April 15th are attached as Exhibit "B" and "C" and should continue to be referenced for your consideration on this matter.

At the last meeting on April 15th, the Planning Commissioners requested that staff return to the next regularly scheduled meeting with the requested modifications presented in such a way that facilitates the Commission in its decisions on these matters.

DISCUSSION

We respectfully submit below the list of forty (40) requested modifications and/or eliminations grouped by "issue" categories; and a summary "Tally Sheet" attached to assist the Commission in its actions on this matter - as Exhibit "A."

Please Note: It is hoped that the Commissioners will use the Tally Sheet (Exhibit "A") in advance of the May 20, 2010 meeting to assist them with their decisions on the below – and for when the Chair calls upon them to assess each Commissioner's position on

each of the forty (40) individual requested revisions.

The requested modifications and/or eliminations grouped by “issue” categories - starting with staff supported requests are as follows:

<i>Yes: Staff Supported Changes</i>
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(3) No dispensary shall be operated after 9:00 PM at night or before 9:00AM in the morning.

Modify hours to between 8:00 AM and 10:00 PM for setup and closedown/inventory time.

Yes: Staff recommends approval of proposed change for the operation of the dispensary only.

(5) Neither live marijuana plants nor cultivation of marijuana is permitted in the dispensary.

Applicant requests removal.

Yes: Staff recommends condition be revised to allow the storage and sale of clones from the dispensary.

(8) All clients of the Marin Alliance for Medical Marijuana are required to possess a 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. 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.

State ID cards/Patient ID Center cards will be required after 30 days trial membership. Patients with current doctor’s recommendations that are confirmed by telephone or website shall be allowed emergency access for 30 days. Enrollment into the Marin Alliance for Medical Marijuana Collective will include full privileges and extra services.

Yes: Staff has reviewed conditions 8 & 11, and upon further consideration, especially in light of how well the Dispensary has been operated since receiving a Use Permit, feels that both requests can be supported provided that the Dispensary a) verifies patients’ written authorization by phone before issuing medical marijuana, and b) confirms that patients receive a valid identification card by the end of the 30 day trial period.

(11) Any designated care giver of a client of the Marin Alliance 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 client has a valid current identification card for the use of marijuana for medical purposes.

Caregivers may sign up for 30 day trial membership along with their patient who holds a verified recommendation. Full enrollment into the Marin Alliance for Medical Marijuana Collective requires a State ID Patient ID Center Card for caregivers. Membership for caregivers includes full privileges and extra services.

Yes: Staff has reviewed conditions 8 & 11, and upon further consideration, especially in light of how well the Dispensary has been operated since receiving a Use Permit, feels that both requests can be supported provided that the Dispensary a) verifies patients' written authorization by phone before issuing medical marijuana, and b) confirms that patients receive a valid identification card by the end of the 30 day trial period.

(15) Receipts will show the name of the person obtaining the marijuana.

Exchange "membership number" for name of person.

Yes: Staff recommends the requested change be made.

(26) Proprietor(s) shall maintain all of the required records at the dispensary site at all times.

Proprietors shall maintain all of the required records either on site or at a secured, accessible storage.

Yes: Staff recommends the condition be amended.

(28) These records shall be subject to inspection by the Chief of Police, or his designees, without warrant and with reasonable notice at all other times.

Applicant requests removal.

Yes: Staff recommends the condition be removed.

(32) As an alternative to police inspection, receipts and financial records will be audited on a semiannual basis by a Certified Public Accountant (CPA). With this alternative the proprietor(s) as primary care givers will maintain, for police inspection, a financial summary of the report.

The Town of Fairfax may request that an audit of receipts and financial records be conducted by a Certified Public Accountant.

Yes: The Town of Fairfax may request that an audit of receipts and finance records be conducted by a Certified Public Accountant to be chosen by the Town and paid for by the Alliance.

(40) When a patient or care-giver is in possession of medicinal marijuana, the person shall also be in possession of the identification card as specified in condition 8.

Add "or verified doctor's recommendation"

Yes: For thirty (30) day trial period; after which the Dispensary will confirm the possession of the identification card as specified in condition 8.

(42) No person shall use or consume medical marijuana in any public place or place open to the public.

Remove. Not under our control. We can and do, discourage members from using their medicine in public places.

Yes: Staff recommends the condition be removed.

(43) No person shall use or consume medical marijuana in any private place without the consent of the property owners or agent in charge.

Remove. Not under our control. ADA privacy laws may be violated by this condition.

Yes: Staff recommends the condition be removed.

(65) The hours of the dispensary will be limited to 9:00AM to 9:00PM.

Removal already covered in condition # 3.

Yes: Staff recommends removal.

(72) The use permit is subject to a 6 month review by the Fairfax Planning Commission.

Applicant requests removal.

Yes: Remove. The use permit can always be revisited if the above conditions are not complied with so there is no reason to review the use permit every 6 months.

No: Grow Related

(22) Proprietor(s) 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.

A permit shall be developed and issued for a reasonable fee to the Marin Alliance for appropriately located, secure, medical cannabis garden within the Town limits.

No: The Planning Commission does not have jurisdiction to permit a grow site without identifying a subject property. Thus, it is premature to amend this condition. Likewise, staff is unable to state that such a permit would be issued if a site was identified. If a site is identified, the applicant would be required to apply for a permit, which would be subject to public review pursuant to the Town Code. The Town Council sets fees for processing permits based on the actual costs to the Town.

(24) The dispensary shall not obtain marijuana from any other source.

Applicant requests removal.

No: Staff recommends the condition be retained unless and until an identified grow site is approved by the Planning Commission.

(25) The cultivation site(s) used as the source for medicinal marijuana shall not be designated in areas zoned as residential.

Applicant requests removal.

No: Staff recommends the condition be retained.

No: Delivery Related

(6) Except as provided in items 47 through 52, there shall not be transportation of medicinal marijuana.

Applicant requests removal.

No: Staff recommends the condition be retained.

(34) The patient may transport no more medicinal marijuana than is recommended for use during the period of one week.

The applicant is requesting that this condition be eliminated.

No: Staff recommends that this conditions be retained. Both the State and Marin County Police Departments limit the amount of medicinal marijuana a person can possess at any one time and there is no compelling reason for the Town of Fairfax to take any other position on this matter.

(35) The medicinal marijuana shall be transported only between the dispensary and the patient's home.

Applicant requests removal.

No: Staff recommends this condition be retained unless the applicant can present compelling information for why the condition should be removed.

(36) A designated care-giver may transport medicinal marijuana to a patient only when the patient is so gravely disabled that the patient is not capable of traveling to the dispensary.

The applicant is requesting that conditions 34 through 36 be eliminated.

No: Staff recommends that these conditions be retained. Both the State and Marin County Police Departments limit the amount of medicinal marijuana a person can possess at any one time and there is no compelling reason for the Town of Fairfax to take any other position on this matter.

(37) A designated care-giver may transport no more medicinal marijuana than is approved for each patient on the delivery route on the day that delivery is to be made.

Previous approval of language outlining "delivery route on the day that the deliver is to be made" condition show the intent and approval to establish a licensed delivery route service of some type.

No: Change to condition is not recommended.

<i>No: Records and/or Inspection Related</i>

(12) Prior to commencing business each day, the dispensary operator will record the total gross weight of all marijuana possessed at the dispensary which is no longer affixed to any living marijuana plant.

Applicant requests removal.

No: Staff recommends this condition and #13 below be amended to include the recordation of the number of live clones possessed by the dispensary (if the sale of clones is allowed).

(23) Proprietor(s) shall maintain the records regarding the estimated yield that the growth will provide during each harvest.

Applicant requests removal.

No: Staff recommends the condition be retained unless the applicant is able to present compelling information regarding why the condition should be removed.

(27) Unless the proprietor(s) use the alternatives set forth in items 36 – 38, below, 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.

The applicant is requesting that conditions 27 through 31 be removed.

No: Staff recommends the conditions be retained; except for condition 28 which staff feels should be removed.

(29) Nothing in this section shall prohibit the discovery or seizure of records pursuant to court process.

(30) Proprietor(s) may use alternatives for inspection of designated records. Records not specifically exempted herein shall be available to police inspection under the provisions of items 23 through 34.

(31) 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 proprietor(s) as primary care givers 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.

The applicant is requesting that conditions 27 through 31 be removed.

No: Staff recommends the conditions be retained; except for condition 28 which staff feels should be removed.

(33) 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 proprietor(s) as

primary care givers 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.

Applicant requests removal.

No: Staff recommends this condition be retained unless the applicant can present compelling information for why the condition should be removed.

No: Amount Related

(7) 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.

Applicant requests removal.

No: Staff recommends the condition be retained.

(39) 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.

Applicant requests removal.

No: Staff recommends the condition be retained unless the applicant is able to present compelling information regarding why the condition should be removed.

(46) Proprietor(s) 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.

Proprietor(s) shall not distribute any amount of medicinal marijuana to an individual that exceeds their physician's recommendation for personal medicinal use.

No: Staff recommends the condition be retained as is.

No: Proximity to Youth Activities

(4) The dispensary shall not be in operation when there is any organized youth activity occurring within 500ft of the dispensary for which the dispensary has received at least 7

days prior notice. It shall be the responsibility of the permittee to prohibit dispensary clients from being on the parcel of real property that is the subject of the Use Permit at any time an organized youth activity is occurring within 500ft of the dispensary for which the alliance has received 7 days prior notice from the youth activity organizer.

Applicant requests removal.

No: Staff recommends the conditions be retained.

<i>No: Age Related</i>

(63) No persons under the age of 18 shall be permitted in the dispensary at any time.

Add "exception made for enrolled, underage patients accompanied by a parent, legal guardian or medical professional.

No: Staff recommends the condition be retained. Underage patients can obtain medicine from the dispensary via licensed caregivers so removal of the condition is not necessary.

(67) 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.

Add "medical exceptions allowed" to signage on door

No: Staff recommends condition is retained as is.

<i>No: Miscellaneous</i>

(10) Gravely ill, homebound patients may have a designated care-giver on record that shall be entitled to obtain marijuana on behalf of the patient.

Remove "gravely ill, homebound".

No: Staff recommends the condition be retained as is. The intent of Proposition 215 was to allow ill persons to use marijuana. The Town already allows for designated caregivers to obtain and provide marijuana to patients physically unable to obtain their medicine from the dispensary on their own.

(53) The police department crime prevention officer is available to provide advice.

Remove. No need to spend police budget on special duty time.

No: Each officer has extra assigned duties to be performed during their regular hours (service similar to those performed by the DARE officer. No change recommended.

(66) The operator and/or property owners will be required to report any illegal activity occurring on the site or associated with the dispensary immediately.

Applicant requests removal

No: Staff recommends the condition be retained.

(68) The use shall be subject to all State adopted guidelines immediately upon adoption of such guidelines.

Applicant requests removal

No: Staff recommends the condition be retained. The Town should continue to be aligned with the State's position on the use, procurement, etc. of marijuana.

(69) The use permit shall be revoked if any final judicial decision is made rendering the use illegal.

Remove. Issues are now legally resolved.

No: Condition should be retained. New legal issues regarding the implementation of Prop 215 continue to arise.

RECOMMENDATION

1. Open the public hearing (if necessary) and take testimony.
2. Close the public hearing.
3. Move to approve the requested modifications to Use Permit # 97-UP-2 as articulated above; and/or to allow the expansion of hours to allow administrative operations (but not sales from 8 AM to 9 AM and 9 PM to 10 PM), and to allow for the sale of clones on site in the Dispensary.

4. Move to deny the request to Use Permit # 97-UP-2 as articulated above; and/or to deny a delivery service and a grow site based on the following findings:

Transportation of large quantities of marijuana through town raises significant public safety concerns. Because of the nature of the medication, the Police Department believes that a medical marijuana delivery service would be more vulnerable to crime than other types of medical delivery services. The Police Department believes that this use could potentially subject delivery personnel, patients, and the general public to an unacceptable risk of robbery and other violent crimes.

The Town is not authorized to approve a modification of a use permit to allow a grow site at an undesignated site in Town.

ATTACHMENTS

Exhibit A – “Tally Sheet”

Exhibit B – March 18, 2010 Staff Report

Exhibit C – April 15, 2010 Staff Report