

# TOWN OF FAIRFAX STAFF REPORT

## Department of Planning and Building Services

<b>TO:</b>	Fairfax Planning Commission
<b>DATE:</b>	March 18, 2010
<b>FROM:</b>	Jim Moore, Director of Planning and Building Services Linda Neal, Senior Planner
<b>LOCATION</b>	6 School Street Plaza, Suite 210; Assessor's Parcel No. 002-112-131
<b>PROJECT:</b>	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
<b>ACTION:</b>	Use Permit Modification; Use Permit # 97-UP-2
<b>APPLICANT:</b>	Lynette Shaw
<b>OWNER:</b>	Fred Ezazi
<b>CEQA STATUS:</b>	Categorically exempt, § 15301(a)

### BACKGROUND

The Town of Fairfax approved a Use Permit for the Marin Alliance for Medicinal Marijuana in 1997. The permit was approved after extensive collaboration between the Fairfax Police Chief, Planning Director and the applicant. This collaboration resulted in an extensive list of eighty-four (84) conditions that allowed the Town to approve a dispensary that could operate without creating enforcement problems or conflicts between uses; nor issues for the Towns Police Department, citizens, users of the adjacent ball field, nearby school and public park and/or other public and private indoor and/or outdoor areas (Exhibit A).

In 2001, after 4 years of successful operation of the dispensary with no resulting issues or problems for the Town, the Commission amended the Use Permit conditions, eliminating twelve (12) conditions and modifying others. The remaining seventy two (72) conditions that are currently in place are included in the following body of this staff report.

Subsequent to this applicant being submitted, on February 11, 2010 the applicant requested and received a "Planning Director Use Determination" (per Section 17.092.055 of the Town's Zoning Ordinance) allowing for the sale of products related to the use and/or production of medicinal marijuana in suite 200 adjacent to the Dispensary located in suite 210. Importantly, no medicinal marijuana will be located, sold, or used in the new ancillary space in suite 200, and conversely no products sold in the new ancillary space will be sold in suite 210 where the medicinal marijuana is being

sold. Staff has redacted the applicant's original letter dated August 20, 2009, that requested modifications of the use permit, to reflect the changes that resulted from the Planning Directors Use Determination approving specific activities in suite 200 as described above. A copy of the Planning Director's Use Determination Letter dated February 11, 2010 is attached.

Please note: It is now 2010 and the dispensary has been successfully operating for 13 years without any conflicts, problems or issues.

### Discussion

The applicant is now requesting a modification of the use permit to include the sale of live clones on site in suite 210, a delivery service, a grow site in Town, and removal or modification of the existing use permit conditions.

(See floor plan provided by applicant).

### **Sale of Clones**

The sale of live clones from dispensary suite 210 on the site is similar to the sale of medicinal marijuana and other marijuana based products currently permitted at the dispensary. It would also allow patients to provide medicine at home which is in keeping with Proposition 215.

The applicant plans to assemble delivery packages during administrative setup and close down times between 8:00 and 9:00 AM and 9:00 and 10:00 PM when the dispensary is closed for business.

The Fairfax Police Department is not opposed this request.

### **Delivery Service**

The applicant is proposing to expand the use permit to include a delivery service that would incorporate a number of changes and safeguards described in the supplemental information submitted (Please see Exhibit A, applicant's supplemental information).

The request describes a service that would operate throughout Marin County. The Town does not have the authority to approve a delivery service to other municipalities or to residents in the County. Therefore, the Planning Commission can only consider a modification to allow delivery to Fairfax residents. The proposal for the delivery service is described in Exhibit B, attached and includes a discussion of security measures and delivery routes and schedules.

Please note: The existing use permit allows gravely ill patients to designate a caregiver to obtain their medicine from the dispensary. The inclusion of a delivery system

includes new potential risks for the Town, patients, couriers and the general public that do not exist under the current use permit with a fixed location of operation.

The Fairfax Police Department is not in favor of this request and addressed the issue in their attached letter dated September 12, 2009 (Exhibit D, Fairfax Police Department memorandum dated 9/12/09).

### **Grow Site**

The applicant has not yet procured a specific location for a grow site. Therefore, a “grow site” cannot be adequately reviewed by the Town at this point in time. Having said this, the applicant would like to Planning Commission to address this request nonetheless. Likewise, the applicant would like the Planning Commission and Town to consider that disclosing a grow site location could increase security problems.

However, staffs position is that the Town would have a responsibility to properly notice (and reveal) a proposed grow site to neighboring property owners and tenants so that they could speak to the applicants request and express either their support or concerns before the Planning Commission; or at Town Council should any approvals by the Planning Commission be appealed by either the applicant or members of public.

Therefore, if and when the applicant does identifies a grow site, staff will return to the Planning Commission with a modified application after the required review by all relevant agencies, the public and staff.

### **Condition Modification/Removal Requests**

Please Note: The original condition(s) wording is in normal text, the applicant requested modification and/or removal is in bold text, and staff’s analysis and recommendation is in bold and italicized text.

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 (no change proposed).
2. No dispensary shall be operated within 500ft of any public or private school. (no change proposed)
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.***

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.**

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.**

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

**Applicant requests removal.**

**No: Staff recommends the condition be retained.**

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.**

8. 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. 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.

***No: Staff recommends the condition be retained. The Town previously eliminated the condition that patients have Marin Alliance cards when the applicant agreed to require that patients obtain cards from Marin County and have their staff review, issue and oversee issuance requirements. This would revert the condition to allowing patients to obtain only cards from the Marin Alliance Dispensary with no mechanism for checking for doctor's authorization letters, valid identification, etc. It is not clear what full privileges and extra services are.***

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

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 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 fill privileges and extra services.**

***No: Staff recommends the condition be retained.***

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).**

13. At the close the business each day, operators of the dispensary 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.
14. The proprietor(s), as primary care givers, shall record upon an individual receipt and retain each transaction whether or not funds were exchanged during, or were involved in, the transaction.
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.**

16. Receipts will show the date, time and amount of marijuana dispensed.
17. Receipts will show the amount paid for the marijuana, if any.
18. Proprietor(s) shall maintain financial records identifying information for all savings accounts, checking accounts, investment accounts and trusts associated with the operation of the dispensary.
19. The proprietor(s) shall maintain ledgers documenting all credits and debits affecting said accounts.
20. Proprietor(s) shall maintain records documenting all parties involved in, amounts of and purposes, for all cash transactions.
21. Proprietor(s) shall maintain records of all transactions related to the operation of the dispensary, including but not limited to rent, utilities, inventory, insurance and payroll.
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: It is premature to amend this condition without an identified grow site. Likewise, staff is unable to state that such a permit would be issued if it were created because it requires public review and the Town Council sets fees for processing permits based on the actual costs to the Town.***

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.***

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

**Applicant requests removal.**

***No: Staff recommends the condition be retained unless the requested change to item 22 above is granted 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.***

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.***

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.***

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.
29. Nothing in this section shall prohibit the discovery of 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.**

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.**

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.**

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 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.**

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

**See attached supplemental information submitted by the applicant in Exhibit C for extensive recommended language allowing a delivery service.**

**No: Change to condition is not recommended.**

38. The medicinal marijuana shall be transported only between the dispensary and the home(s) of the patient(s).
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.**

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"**

**No: The language requiring cards from the County eliminated the need for Police Officers to review and check validity of doctor's notes or other cards in the field when discovering marijuana in the possession of a patient. The proposed change would create confusion for officers and staff is not recommending that this condition be changed.**

41. No medicinal marijuana will be used or consumed at the dispensary site.
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.**

44. Proprietor(s) 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.
45. Proprietor(s) 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.

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.**

47. Any marijuana that is dispensed shall be in sealed containers. Commercially manufactured child-resistant containers shall be available.
48. 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.
49. The alarm is to be monitored by a professional alarm company at all times when the dispensary is closed for business.
50. All doors and windows of the premises shall be equipped with adequate security devices.
51. All medicinal marijuana and cash shall be stored in a locked safe at all times which the dispensary is closed for business.
52. This safe will be retained at the dispensary at all times.
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 duties assigned to be performed during their regular hours (service similar to those performed by the DARE officer. No change recommended.**

54. All medicinal marijuana and cash shall be stored in a locked safe at all times when the dispensary is closed for business.
55. This safe will be retained at the dispensary at all times.
56. Proprietor(s) shall notify the Fairfax Police Department of all criminal activity which is occurring at, or adjacent to, the dispensary.

57. This activity shall be reported as it is occurring, or when first discovered by the proprietor(s), and shall include all activity which can reasonably be determined to be criminal in nature.
58. For the purpose of these requirements the term: a) "Proprietor(s)" is defined to include, but not be limited to, 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.
59. "Operator(s)" is deemed to be synonymous with the term "Proprietor(s)".
60. "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.
61. Any violation of these conditions shall be cause for revocation of the use permit.

**Remove. No other Use Permit ever issued by the Town contains this condition.**

***No: Any business operating with a use permit is operating under this condition. Failure to comply with the approval conditions allow the Town to notice and hold a revocation hearing. Staff recommends the condition be retained.***

62. The use must be conducted in compliance with the provisions of Proposition 215.
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.***

64. No retail sales of any products other than medical marijuana will be permitted at the dispensary located at 6 School Street Place, Suite 210.
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.**

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.**

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.**

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 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 issues are continually arising and new court cases are occurring regarding the implementation of Prop 215.**

70. The applicant shall make a good faith effort to obtain any and all required permits and/or licenses from the State of County agencies having jurisdiction over this type of use (i.e. Marin County Health Department, State Board of Equalization, etc.).

71. There shall be no alcohol used on the premises of the dispensary.

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

**Remove**

**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.**

## RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve the requested modifications to Use Permit # 97-UP-2 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, sale of clones on site. Denial of the request for a delivery service and a grow site is based on the following findings:

The approval of the use permit to allow delivery service for medicinal marijuana does not comply with the intent of Proposition 215 which allows the possession of medicinal marijuana for personal use and does permit the transportation of marijuana for sale.

Transportation of a controlled substance throughout town could cause excessive or unreasonable detriment to adjoining properties or premises, or the public at large.

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 – Applicant’s supplemental information
- Exhibit B – Memorandum from Fairfax Police Chief dated 9/12/09
- Exhibit C – Planning Director Use Determination Letter for Suite 200