



CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT

BRIAN MURPHY
Assistant City Manager for
Community Development

To: Richard C. Rossi, City Manager
From: Brian Murphy, Assistant City Manager for Community Development
Date: September 26, 2013
Re: **Medical Marijuana Regulations**

Background

The Law for the Humanitarian Medical Use of Marijuana was adopted by Massachusetts voters in November, 2012. In April, 2013, the Cambridge City Council enacted a zoning moratorium, Section 11.700 of the Cambridge Zoning Ordinance, prohibiting the establishment of medical marijuana-related uses to allow sufficient time for the City to develop a permanent zoning amendment regarding such uses.

Section 11.706 of the Ordinance provides that the provisions of the zoning moratorium "[s]hall no longer apply after one hundred eighty (180) days have elapsed since May 1, 2013. However, if the Massachusetts Department of Public Health has failed to promulgate regulations with regard to the certification and administration of Medical Marijuana Treatment Centers by May 1, 2013, the provisions of this Section 11.700 shall continue to apply until one hundred eighty (180) days have elapsed since the date on which such regulations will have been promulgated, or until June 30, 2014, whichever date is earlier." On May 8, 2013, the Public Health Council approved regulations presented to it by the Massachusetts Department of Public Health (MDPH) with regard to the certification and administration of medical marijuana. These regulations were first published in the Massachusetts Register (Issue 1235) on May 24, 2013, went into effect on that date, and were thus promulgated on May 24, 2013. Therefore, the moratorium expires 180 days later, on November 20, 2013.

Current Status of Statewide Registration Process

In August, MDPH accepted Phase 1 applications from companies seeking to operate a Registered Marijuana Dispensary (RMD) in Massachusetts. On September 23, MDPH released the list of applicants that were approved in Phase 1 and may submit a more detailed Phase 2 application. There were 40 approved Phase 1 applications to operate an RMD in Middlesex County. Phase 2 applications have not yet been made available, but it is expected that the Phase 2 application process will begin in October and will be completed in early 2014. At the end of Phase 2, MDPH will permit up to 35 RMDs statewide, with at least one but no more than five in each county. Information is available at www.mass.gov/medicalmarijuana.

Local Regulation

The MDPH regulations (105 CMR 725.000) permit local regulatory oversight so long as it does not conflict with state regulations.¹ While the Cambridge moratorium has been in effect, representatives from various City departments including the Community Development Department, Public Health Department, Law Department, Police Department, Department of Human Service Programs, Inspectional Services Department, License Commission and City Manager’s office have been meeting to review the statewide regulations and discuss local regulatory approaches.

The expectation is that land use characteristics such as location, parking and urban design would be controlled through the Zoning Ordinance, and the operational aspects of RMDs could be controlled through Cambridge public health regulations that would be enforced locally in addition to the state public health regulations which would be enforced by MDPH. The Cambridge Public Health Department, Inspectional Services Department, License Commission and Police Department would be authorized to enforce the local health regulations.

The zoning petition is being submitted at this time so that the public hearing process may begin prior to the expiration of the moratorium. The public hearings, beginning in October, will provide an opportunity for review and discussion of both zoning and public health regulations by the Planning Board, the City Council and the public at large.

Below is the anticipated timeline for development of the zoning petition and public health regulations.

Anticipated Timeline

September 30, 2013	City Manager submits zoning petition and requests City Council referral to Planning Board and Ordinance Committee to schedule public hearings.
October 22, 2013	Planning Board holds combined public hearing with Public Health Department to discuss proposed zoning amendment and draft public health regulations.
December 3, 2013	Cambridge Public Health Department presents draft public health regulations to Public Health Subcommittee for review and approval.
January 20, 2014	Final date for City Council adoption of zoning petition.

¹ 105 CMR 725.600 (B) states in relevant part: “[n]othing in 105 CMR 725.000 shall be construed so as to prohibit lawful local oversight and regulation, including fee requirements, that does not conflict or interfere with the operation of 105 CMR 725.000.”

Proposed Zoning Regulations for Registered Marijuana Dispensaries

Introduction

The Law for the Humanitarian Medical Use of Marijuana was adopted by Massachusetts voters in November, 2012. The measure became law on January 1, 2013 (Chapter 369 of the Acts of 2012). In May, 2013, the Massachusetts Department of Public Health promulgated regulations set forth at 105 CMR 725.000 by which it will approve, register and control the establishment of up to 35 Registered Marijuana Dispensaries (RMDs) statewide in the first year, with at least one but no more than five RMDs in each county. Local regulatory oversight is allowed so long as it does not conflict with state regulations. This proposal includes a set of zoning regulations that will work in concert with state and other local regulations while focusing on land use planning issues such as district character, compatibility among adjacent uses, transportation and parking, and urban design. In addition to the zoning, a proposed set of local public health regulations will be considered to supplement the controls and oversight at the state level, providing guidance on operational matters.

Outline of Zoning Proposal

1. Define Registered Marijuana Dispensary in the Zoning Ordinance
This definition will parallel the definition in the state regulations.
2. List Registered Marijuana Dispensary in the Table of Use Regulations
Clarify that the use is allowed by special permit only, and refer to Overlay District provisions that will control the approval of RMDs by special permit.
3. Delete Existing Interim Regulations for Medical Marijuana Uses
This would end the current "moratorium" when the new regulations are adopted. If the new regulations are not adopted, the moratorium could be extended for an additional six months.
4. Create Medical Marijuana Overlay Districts
Designate areas of the city where RMDs would be allowed, subject to a set of zoning requirements and approval by the Planning Board.

Note: Additions and creations are underlined. Deletions are in ~~strikeout~~.

1. Create the following Definition within Article 2.000:

Marijuana Dispensary, Registered. Registered Marijuana Dispensary, also known as RMD or Medical Marijuana Treatment Center, shall mean an establishment properly registered with the Massachusetts Department of Public Health under 105 CMR 725.100 that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers.

This proposed definition is the same as the definition provided in the state medical marijuana regulations, found in 105 CMR 725.000.

2. Add the following text to Section 4.35 of the Table of Use Requirements and to the Use Requirements in Article 16.000 for the North Point Residence, Office and Business District:

4.35 Retail Business and Consumer Service Establishments

[...]

	Res C, C-1, C-1A, 1,	Off 2A, 2B, 3, 3A, 3B, 3, 3A, 3B	Bus A-1, A-2, A-3	Bus B, B-1, B-2	Bus C, C-1	Ind A-1, A-2
Open Space	No	No	No	No	No	No
Res 1&2	A	B	A	A	A	A
Res 3, 3A, 3B	No	No	No	No	No	No
Registered Marijuana Dispensary	No	No	PB ⁵⁸	No	No	No
Off 1, 2A, 2B, 3, 3A, 3B	No	PB ⁵⁸	No	No	No	No
Bus A-1, A-2, A-3	No	No	No	No	No	No
Bus B, B-1, B-2	No	No	No	No	No	No
Bus C, C-1	No	No	No	No	No	No
Ind A-1, A-2	No	No	No	No	No	No
Ind B-1, B-2	No	No	No	No	No	No
Ind A	No	No	No	No	No	No
Ind B	No	No	No	No	No	No
Ind C	No	No	No	No	No	No
PB ⁵⁸	No	No	No	No	No	No
PB ⁵⁸	No	No	No	No	No	No

[...]

S8. Permitted by special permit from the Planning Board only within the Medical Marijuana Overlay Districts pursuant to the requirements of Section 20.700.

Listing RMDs in the use table provides a reference to the controlling Overlay District special permit requirements and clarifies that it is not otherwise considered an allowed use under base zoning. The same text is added to Article 16.000 for the "Np" base district, which is not referenced in the Table of Use Regulations.

16.21.7 Registered Marijuana Dispensary, Section 4.35 s, permitted by special permit from the Planning Board only within the Medical Marijuana Overlay Districts pursuant to the requirements of Section 20.700.

Note: Additions and creations are underlined. Deletions are in ~~strikeout~~.

3. ~~Delete the existing Section 11.700 and replace with a reference as follows:~~

11.700 INTERIM REGULATIONS FOR MEDICAL MARIJUANA USES

11.701 Purpose. ~~This section is intended to provide restrictions that will allow the City adequate time to consider whether to allow facilities associated with the medical use of marijuana, to the extent that such facilities are permitted under state laws and regulations, and, if so, where and under what conditions. Given that a law permitting the medical use of marijuana in the Commonwealth of Massachusetts shall be in effect beginning January 1, 2013, and that the Massachusetts Department of Public Health has yet to promulgate the regulations by which facilities that produce or dispense medical marijuana shall be registered and administered, a restriction on the establishment of such facilities in Cambridge shall provide the opportunity to study their potential impacts on adjacent uses and on general public health, safety and welfare, and to develop zoning and other applicable regulations that appropriately address these considerations consistent with statewide regulations and permitting procedures.~~

11.702 Definition. ~~A Medical Marijuana Treatment Center shall mean any medical marijuana treatment center, as defined under state law as a Massachusetts not-for-profit entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, ointments, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers, which is properly licensed and registered by the Massachusetts Department of Public Health pursuant to all applicable state laws and regulations;~~

11.703 Exclusion of Other Marijuana Uses. ~~Any establishment that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers shall not be permitted if such establishment has not been properly registered and licensed in accordance with applicable state and local laws and regulations, or is not operated as a not-for-profit entity, or otherwise fails to meet the definition of a Medical Marijuana Treatment Center.~~

11.704 Exclusion of Accessory Uses. ~~In no case shall the acquisition, cultivation, possession, processing, transference, transportation, sale, distribution, dispensing, or administration of marijuana,~~

The interim zoning was enacted in April, 2013, prior to the promulgation of state regulations for the registration of medical marijuana dispensaries. The text of the interim measure reflects the uncertainty at the time in how medical marijuana would be regulated.

In the proposed text, the definition (previous pages) and zoning regulations (following pages) are intended to be harmonious with the regulations that have been promulgated by the Massachusetts Department of Public Health. Therefore, the text in this section is deleted in its entirety.

Registered Marijuana Dispensaries – Proposed Zoning Text

Note: Additions and creations are underlined. Deletions are in ~~strikeout~~.

~~products containing or derived from marijuana, or related products be considered accessory to any use.~~

~~**11.705** *Interim Restriction.* Medical Marijuana Treatment Centers shall not be permitted in any zoning district in the City of Cambridge so long as this Section 11.700 is effective, as set forth in Section 11.706 below. Use variances shall be strictly prohibited.~~

~~**11.706** *Expiration.* The provisions of this Section 11.700, in their entirety, shall no longer apply after one hundred eighty (180) days have elapsed since May 1, 2013. However, if the Massachusetts Department of Public Health has failed to promulgate regulations with regard to the certification and administration of Medical Marijuana Treatment Centers by May 1, 2013, the provisions of this Section 11.700 shall continue to apply until one hundred eighty (180) days have elapsed since the date on which such regulations will have been promulgated, or until June 30, 2014, whichever date is earlier.~~

~~**Section deleted. Refer to Section 20.700 for Medical Marijuana regulations.**~~

If it is determined through the public hearing process that the proposed zoning should not be enacted at this time, an alternative approach would be to retain all of the existing zoning text except for the 180-day expiration timeframe. This would result in June 30, 2014 being the final expiration date, and would allow an additional six months to develop an alternate proposal.

Note: Additions and creations are underlined. Deletions are in ~~strikeout~~.

4. *Create the following New Section within Article 20.000 Overlay Districts:*

20.700 MEDICAL MARIJUANA OVERLAY DISTRICTS

20.701 Purpose

The purpose of the Medical Marijuana Overlay Districts is to provide for the limited establishment of Registered Marijuana Dispensaries as they are authorized pursuant to state regulations set forth at 105 CMR 725.000, implementation of an Act for the Humanitarian Medical Use of Marijuana. Given that Registered Marijuana Dispensaries shall be limited in number and strictly regulated by the Massachusetts Department of Public Health, these zoning regulations intend to permit them where there is access to both regional roadways and public transportation, where they may be readily monitored by law enforcement for health and public safety purposes, and where they will not impact the character of lower-scale residential neighborhoods, business districts and educational institutions.

The proposed zoning is meant to dovetail with state registration requirements, which will allow for a very limited number of RMDs (up to 35 RMDs statewide), with an allowance for increases only if more service is needed.

If state laws or regulations change in the future to allow for a significant expansion in the number or type of marijuana providers, this zoning should be revisited accordingly.

20.702 Establishment. There is hereby established on the Zoning Map of the City of Cambridge the Medical Marijuana Overlay Districts, which shall be defined as follows:

Medical Marijuana Overlay District 1 shall be coterminous with the area encompassed by the Alewife Overlay Districts 2, 4, 5 and 6, having Office 1, Office 2A, Business A and Industry B-2 base zoning designations.

Because RMDs will be so limited in number, it is important to plan for them as regional service providers rather than typical retail establishments.

Medical Marijuana Overlay District 2 shall be the area bounded by Monsignor O'Brien Highway to the south and the Cambridge Municipal Boundary on all other sides, commonly referred to as the North Point area, including the North Point Residence Office and Business District, a portion of Special District 1, and a district with an Industry A base zoning designation.

The areas proposed are among those in Cambridge with the best access to both regional roadways and public transportation, and the least impact on residential neighborhoods.

20.703 Requirements

20.703.1 Use. Notwithstanding the use limitations of the base zoning district or any other overlay

zoning district, a Registered Marijuana Dispensary shall be allowed within the Medical Marijuana Overlay District upon the granting of a special permit by the Planning Board, subject to the requirements set forth in this Section.

(SEE MAP)

Registered Marijuana Dispensaries – Proposed Zoning Text

Note: Additions and creations are underlined. Deletions are in ~~strikeout~~.

20.703.2 Registration. All permitted Registered Marijuana Dispensaries shall be properly registered with the Massachusetts Department of Public Health pursuant to 105 CMR 725.100 and shall comply with all applicable state and local public health regulations and all other applicable state and local laws, rules and regulations at all times. No Building Permit or Certificate of Occupancy shall be issued for a Registered Marijuana Dispensary that is not properly registered with the Massachusetts Department of Public Health.

20.703.3 Limitation of Approval. A special permit authorizing the establishment of a Registered Marijuana Dispensary shall be valid only for the registered entity to which the special permit was issued, and only for the site on which the Registered Marijuana Dispensary has been authorized by special permit. If the registration for a Registered Marijuana Dispensary has been revoked, transferred to another controlling entity, or relocated to a different site within the Medical Marijuana Overlay Districts, a new special permit shall be required prior to issuance of a Certificate of Occupancy.

20.703.4 Building. A Registered Marijuana Dispensary shall be located only in a permanent building and not within any mobile facility. All sales shall be conducted either within the building or by home deliveries to qualified clients pursuant to applicable state and local regulations.

20.703.5 Dimensional Requirements. Except where it is explicitly stated otherwise in this Section

20.700, a Registered Marijuana Dispensary shall conform to the dimensional requirements applicable to non-residential uses within the base and overlay zoning districts.

20.703.6 Parking and Loading. Notwithstanding anything to the contrary in Article 6.000 of this Ordinance, the required number of parking and bicycle parking (both long-term and short-term) spaces for a Registered Marijuana Dispensary shall be determined by the Planning Board based on the transportation analysis provided by the applicant. At least one loading bay shall be provided and may not be shared with any other use; however, the Planning Board may require a greater number of loading bays if it finds, based on the transportation analysis, that one loading bay shall not be sufficient. Except as set forth above, all parking, bicycle parking and loading facilities shall conform to the requirements set forth in Article 6.000.

Any special permit must go hand-in-hand with state registration and is conditioned on compliance with local public health regulations. A special permit is not valid for an unregistered dispensary – whether it has not received its registration, has lost its registration, or needs to seek a new registration for any reason.

Based on the state regulations, each RMD is expected to be a secure, stand-alone facility. It will likely be expected to have its own parking and loading facilities and continual monitoring of the site.

Although the design of RMDs will be constrained by state requirements to some extent, zoning can help ensure consistency with the development standards for the district.

Because it is not clear what kind of traffic will be generated by a typical RMD, it will be prudent to review RMDs on a case-by-case basis and apply the City's general standards to require an adequate supply of parking and bicycle parking while not creating an oversupply of parking and thus encouraging excess auto traffic.

Registered Marijuana Dispensaries – Proposed Zoning Text

Note: Additions and creations are underlined. Deletions are in ~~strikeout~~.

20.703.7 Signage. All signage shall conform to the requirements of Article 7.000 of this Ordinance. The Planning Board may impose additional restrictions on signage as appropriate to mitigate any aesthetic impacts.

20.704 Application Requirements. An application to the Planning Board shall include, at a minimum, the following information:

- (a) Description of Activities: A narrative providing information about the type and scale of all activities that will take place on the proposed site, including but not limited to cultivating and processing of marijuana or marijuana infused products (MIPs), on-site sales, off-site deliveries, distribution of educational materials, and other programs or activities.
- (b) Service Area: A map and narrative describing the area proposed to be served by the Registered Marijuana Dispensary and the anticipated number of clients that will be served within that area. This description shall indicate where any other Registered Marijuana Dispensaries exist or have been proposed within the expected service area.
- (c) Transportation Analysis: A quantitative analysis, prepared by a qualified transportation specialist acceptable to the Planning Board, modeling the expected origin and frequency of client and employee trips to the site, the expected modes of transportation used by clients and employees, and the frequency and scale of deliveries to and from the site.
- (d) Context Map: A map depicting all properties and land uses within a one thousand-foot (1,000') radius (minimum) of the project site, whether such uses are located in Cambridge or within surrounding communities, including but not limited to all educational uses, daycare, preschool and afterschool programs.
- (e) Site Plan: A plan or plans depicting all proposed development on the property, including the dimensions of the building, the layout of automobile and bicycle parking, the location of pedestrian, bicycle and vehicular points of access and egress, the location and design of all loading, refuse and service facilities, the location, type and direction of all outdoor lighting on the site, and any landscape design.

The information provided in a special permit application should describe the RMD in terms of the type and scale of activities that will occur there. The purpose of this information is so that the Planning Board can fully understand the scope of the operation and what impact it may have on traffic patterns and on the operation of adjacent uses. Much of this information will reflect what is in the RMD's registration issued by the state Department of Public Health.

- (f) Building Elevations and Signage: Architectural drawings of all exterior building facades and all proposed signage, specifying materials and colors to be used. Perspective drawings and illustrations of the site from public ways and abutting properties are recommended but not required.
- (g) Registration Materials: Copies of registration materials issued by the Massachusetts Department of Public Health and any materials submitted to the Massachusetts Department of Public Health for the purpose of seeking registration, to confirm that all information provided to the Planning Board is consistent with the information provided to the Massachusetts Department of Public Health.

20.705 Special Permit Criteria. In granting a special permit for a Registered Marijuana Dispensary, in addition to the general criteria for issuance of a special permit as set forth in Section 10.43 of this Ordinance, the Planning Board shall find that the following criteria are met:

- (a) The Registered Marijuana Dispensary is located to serve an area that currently does not have reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by other Registered Marijuana Dispensaries, it has been established by the Massachusetts Department of Public Health that supplemental service is needed.
- (b) The site is located at least five hundred feet distant from a school, daycare center, preschool or afterschool facility or any facility in which children commonly congregate, or if not located at such a distance, it is determined by the Planning Board to be sufficiently buffered from such facilities such that its users will not be adversely impacted by the operation of the Registered Marijuana Dispensary.
- (c) The site is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site using all modes of transportation, including drivers, pedestrians, bicyclists and public transportation users.
- (d) Traffic generated by client trips, employee trips, and deliveries to and from the Registered Marijuana Dispensary shall not create a substantial adverse impact on nearby residential uses.

Because RMDs will be regulated by various authorities, most significantly the Massachusetts Department of Public Health, it is important to be clear and specific about what aspects of the RMD will be under the Planning Board's purview to regulate.

This proposal focuses on those aspects of project review that are typically addressed by the Planning Board (similar to the Article 19.000 process for large projects):

- Compatibility with adjacent uses
- Traffic and transportation
- Environmental impacts on abutters
- Overall urban design

The Planning Board review is meant to supplement the informational and operational requirements imposed at the state and local level while avoiding conflicts with those other jurisdictions and ensuring compatibility with the City's overall zoning objectives.

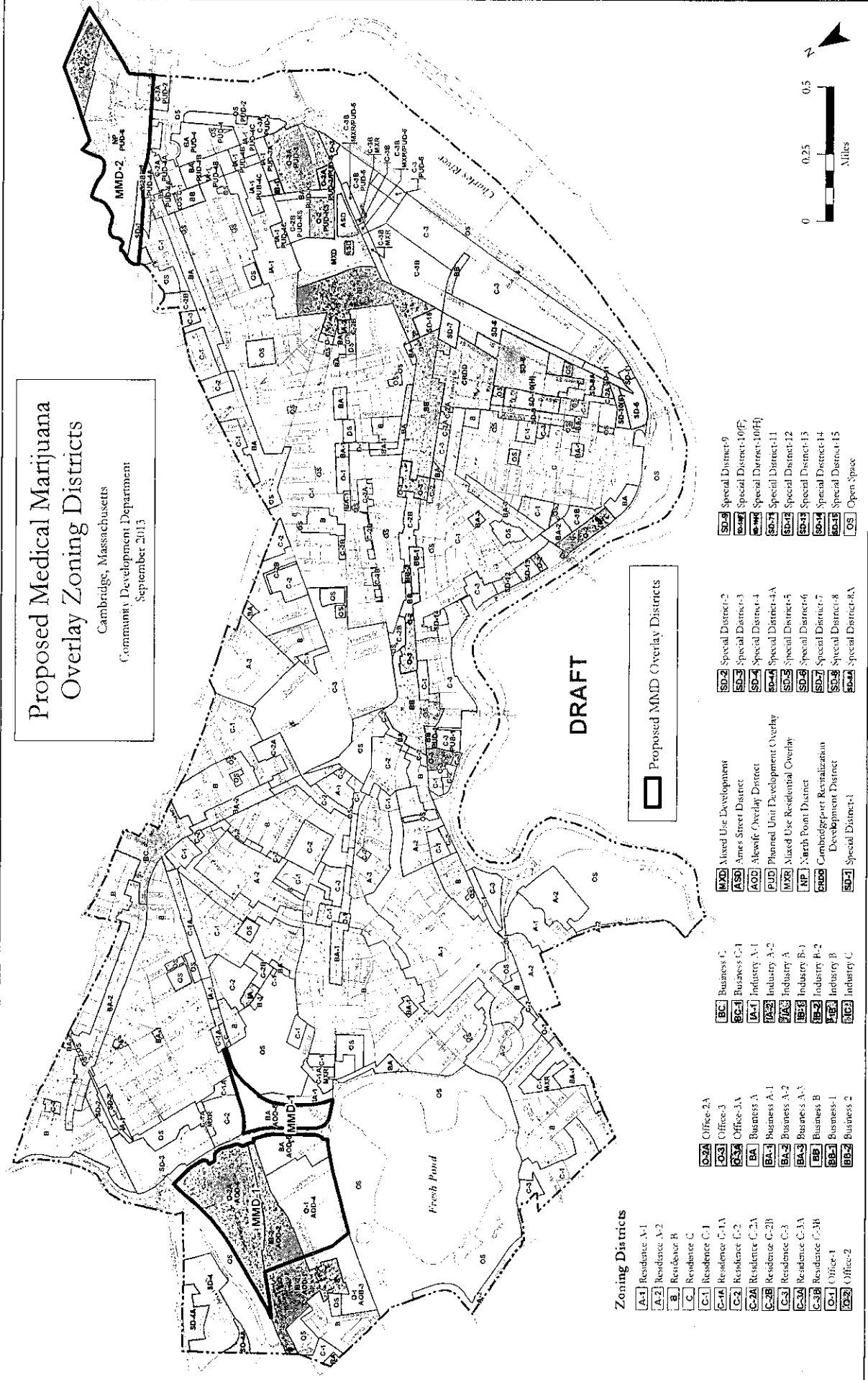
Registered Marijuana Dispensaries – Proposed Zoning Text

Note: Additions and creations are underlined. Deletions are in ~~strikeout~~.

- (e) Loading, refuse and service areas are designed to be secure and shielded from abutting uses.
- (f) The building and site have been designed to be compatible with other buildings in the area and to mitigate any negative aesthetic impacts that might result from required security measures and restrictions on visibility into the building's interior.

Proposed Medical Marijuana Overlay Zoning Districts

Cambridge, Massachusetts
Community Development Department
September 2013



DRAFT

Zoning Districts

- OA-1 Office-1
- OA-2 Office-2
- OA-3 Office-3
- OA-4 Office-4
- OA-5 Office-5
- OA-6 Office-6
- OA-7 Office-7
- OA-8 Office-8
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Proposed MMD Overlay Districts

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