

CITY OF CAMBRIDGE, MASSACHUSETTS

# PLANNING BOARD

CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

Date: August 19, 2016

Subject: Healthy Pharms, Inc., Zoning Petition (Medical Marijuana Overlay District in Harvard Square)

Recommendation: The Planning Board recommends ADOPTION, with modifications.

To the Honorable, the City Council,

The Planning Board held a public hearing on this zoning petition on August 16, 2016. The Board heard testimony from representatives of Healthy Pharms, Inc., Community Development Department (CDD) staff, and interested members of the public.

The proposal would establish a new Medical Marijuana Overlay District (MMD-4) within portions of the Harvard Square Overlay District zoned Business B and Office 3, the highest-density commercial zones in that area. Registered Marijuana Dispensaries (RMDs) would be allowed within the overlay district, but would require special permit approval by the Planning Board. The special permit process would consider factors such as transportation, urban design and potential impacts of the RMD on surrounding uses, and would also consider whether the proposed RMD would be providing needed service to the area. According to the petition, only retail dispensing activities, and not cultivating activities, would be allowed within the proposed MMD-4 district.

The Board believes that the proposed districts in Harvard Square would be suitable locations for an RMD, based on their commercial character, central location and availability of various modes of transportation. The special permit process would allow the Planning Board to make sure that specific proposals are sited and designed to fit with the character of Harvard Square, applying the criteria for approval of an RMD along with the Harvard Square Development Guidelines and other planning objectives for the district. The Board also believes that reducing the required buffer from schools or other facilities in which children commonly congregate (as defined in state regulations) from 500 feet to 250 feet is appropriate, given that the distance is somewhat arbitrary, and the Board would still be able to assess potential impacts through the special permit process in a way that considers the unique characteristics of the site.

Regarding some details of the petition, the Board does not support requiring a setback of 15 feet from the street, because this setback would not serve to mitigate any potential impacts of an RMD, and is a condition with which most sites in Harvard Square would not be able to comply. The more relevant concern is the potential “deadening” effect of an RMD on the retail streetscape, given the access limitations and security requirements, and that could be mitigated,

for example, by locating RMDs above or below the ground floor, or by locating them in close proximity to active retail uses while requiring only minimal street frontage to access the RMD (as shown at the proposed Winthrop Street location). These issues would be addressed through the Board's special permit review. Also, the Board does not find it necessary to express a preference for areas with access to pedestrian and public transportation, given that any potential site in Harvard Square would conform to that standard. **Therefore, prior to adoption, the Board recommends striking paragraphs (b) and (d) from proposed Section 20.705.2 of the petition.**

Regarding medical marijuana zoning in general, the Board is supportive of the City considering whether RMDs should be allowed in other areas of Cambridge (but still subject to special permit review and approval by the Planning Board). For example, if it is appropriate to allow RMDs in Harvard Square, it may be similarly appropriate to allow RMDs in comparable transit-oriented commercial squares such as Porter Square, Central Square and potentially Kendall Square. While there are some advantages to the recent practice of reacting to zoning proposals one district at a time, which allows for direct discussions with prospective RMD operators, there could also be benefits to a more proactive, citywide approach that would provide clear guidance to prospective RMD operators in advance of making a proposal.

Attached is a report from CDD staff, providing some additional information and analysis related to zoning for medical marijuana at a citywide level.

Respectfully submitted for the Planning Board,



H Theodore Cohen, Chair.



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CITY OF CAMBRIDGE  
COMMUNITY DEVELOPMENT DEPARTMENT

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IRAM FAROOQ  
Assistant City Manager for  
Community Development

To: Planning Board  
From: Jeff Roberts, Land Use and Zoning Planner  
Date: August 9, 2016  
Re: **Medical Marijuana District (MMD) Zoning Petitions**

### Overview

There are currently two zoning petitions before the City Council to amend the Medical Marijuana Overlay Districts (MMDs) in the Cambridge Zoning Ordinance. Both are petitions by groups of Cambridge residents, but are organized by Registered Marijuana Dispensary (RMD) operators who are seeking approval through the Massachusetts Department of Public Health (MDPH) medical marijuana program.

The first petition is by Healthy Pharms, Inc., proposing to create a new MMD-4 in Harvard Square in areas zoned Business B (BB) and Office 3 (O-3). This petition will be heard by the Planning Board on August 16. The second petition is by the William Noyes Webster Foundation, Inc., to expand the current MMD-1 to include areas zoned Industry B-2 (IB-2) west of Smith Place. This petition will have a future hearing.

During the recent discussion of the Sage Cannabis, Inc. Zoning Petition, questions were raised about whether Cambridge's medical marijuana zoning should be reassessed in a more comprehensive way. Although the two petitions under consideration will be heard separately, it seemed beneficial to review them within this broader context of medical marijuana zoning citywide. The first part of this report focuses on medical marijuana zoning and regulations in general, rather than the specific proposals. Then, comments on each individual proposal are provided at the end.

### Background

In 2013, Cambridge adopted zoning regulations for RMDs following the promulgation of statewide medical marijuana regulations. These regulations allow RMDs to be established only within the designated MMDs, and only after the granting of a special permit by the Planning Board. Since 2013, no proposals have been made within the original MMDs, but there have been proposals to expand or enlarge the MMDs. The Sage Cannabis, Inc. petition is the only such proposal to be adopted thus far (establishing the MMD-3 District in 2016), and Sage Cannabis is also the only RMD to apply for and receive a special permit from the Planning Board.

An RMD cannot be established in Cambridge unless it has been approved at the state level by the MDPH. The state approval process is discussed on the following page, and more information is available at [www.mass.gov/medicalmarijuana](http://www.mass.gov/medicalmarijuana).

## **Statewide RMD Registration Process**

Since the MDPH regulations were first promulgated in 2013, there have been substantial changes to the way they are administered at the state level. Originally, there was a competitive selection process by which prospective RMD operators would apply, and a selection committee would score applications based on a set of evaluation criteria, one of which was geographic distribution of RMDs across the state. The 2012 law authorizing medical marijuana in Massachusetts sets a limit of no more than 35 RMDs across the state, and no more than 5 per county, but allows the MDPH to raise that limit on finding that “the number of treatment centers is insufficient to meet patient needs.” In practice, the competitive selection process resulted in very few RMDs being approved, despite over 100 initial applicants.

In 2015, the MDPH changed to a non-competitive approval process, through which it receives applications on a rolling basis and evaluates them individually for compliance with standards for operation, security, inspection and organizational solvency, among other standards. Instead of applying geographic distribution as a selection factor, MDPH relies on each applicant to receive a letter of support or non-opposition from a local host community. Therefore, municipalities have a greater say in determining whether, and how many, RMDs may be allowed in their communities.

Cambridge’s MMD zoning was created on the assumption that only one, if any, RMD would be allowed within the city given the statewide competitive selection process. As a result, the zoning only allowed RMDs within specific locations with the best access to regional roadways and transit. The MDPH’s procedural changes have led to multiple RMD operators expressing an interest in locating in Cambridge.

Therefore, aside from where to establish zoning districts, the following broader questions should now be considered:

- **How many RMDs should be allowed in Cambridge?**
- **If there are multiple RMDs in Cambridge, should they be concentrated in one or more areas, or distributed throughout the city?**
- **Given the broad interest among RMDs, should a local selection process be considered?**

Some of these questions could be addressed through the Zoning Ordinance. For example, zoning could establish a citywide “cap” on RMDs, or could establish limits on the number of RMDs allowed within any particular geographic area. Zoning issues are discussed in more detail on the following pages.

However, there are also non-zoning approaches that could be considered. Because applicants are required to seek a letter of support or non-opposition from host communities, many municipalities have negotiated “host community agreements” as a part of their process for deciding whether to support an RMD application. This process would allow the city to engage more directly with RMD operators and consider factors specific to that operator, rather than just the land use factors that are regulated through zoning.

Some aspects of RMD operation can also be regulated through the Cambridge Public Health Department, which is currently considering a draft set of regulations.

## Medical Marijuana Zoning in Cambridge

The zoning regulations for medical marijuana in Cambridge, set forth in Section 20.700 of the Zoning Ordinance, create a system by which RMDs are allowed by special permit from the Planning Board within specific designated Medical Marijuana Overlay Districts (MMDs).

In considering a special permit application, the Planning Board reviews the particulars of the proposal in order to assess site-specific impacts and require mitigation where appropriate. The special permit review addresses land use considerations including the expected service area for the proposed RMD, transportation and parking needs, loading and service activity, and conformance with urban design objectives. The review also considers whether the proposed site is at least 500 feet from schools and other facilities with programs for children, though the Planning Board may reduce the standard 500-foot distance in particular cases if such facilities are found to be adequately shielded from the operation of the proposed RMD.

### *MMD Locations*

When considering what areas should be designated as MMDs when the zoning was crafted in 2013, the following factors were considered:

1. **Allowed Uses:** RMDs would only be allowed in districts that otherwise allow commercial uses.
2. **Transportation:** Areas with access to regional roadways and public transportation would be preferred.
3. **Public Safety:** Areas that are isolated and difficult to reach for emergency vehicles would be excluded.
4. **Urban Character:** State-imposed security regulations would require an RMD to be inaccessible, physically and visually, to the general public. This could be disruptive in areas with an active streetscape character, such as squares and retail corridors.
5. **Buffers from Sensitive Uses:** While the special permit review process considers whether a proposed RMD is buffered from schools or other facilities that have programming directed toward children, areas with a large concentration of such facilities were excluded from consideration as MMDs.

Factors 1 and 3 above remain relevant and probably do not require reassessment. However, the remaining factors may be reassessed in the following ways:

- **Transportation:** The current MDPH selection process removes strict limits on the number of RMDs statewide and provides municipalities a greater role in determining the level of RMD service for their own communities, which implies that RMDs may be located to serve a more local rather than regional patient population. Therefore, it may not be as important to restrict RMDs to major regional roadways. Nevertheless, given that patients from surrounding communities will still be able to access any RMD, areas that are centrally located with good transit service and pedestrian and bicycle access are still preferable.

- **Urban Character:** Statewide security regulations require RMDs to be shielded from public view, and require strict monitoring of access and egress to ensure that only registered patients and employees may enter the facility. The potential disruption that these security measures may have on active, pedestrian-oriented retail corridors remains a concern. However, this concern could be mitigated in other ways, as evidenced by the Sage Cannabis petition, which limits RMDs to the basement or upper levels, retaining the ground floor for more active, publicly oriented retail. The Healthy Pharms proposal similarly suggests setting RMDs back from the street, with only limited frontage allowed for entry and exit of the RMD. The Sage Cannabis, Inc. petition also introduced the notion of limiting RMDs to dispensing operations only, not cultivating or processing facilities, so that they would be more compatible with retail and office districts.
- **Buffers from Sensitive Uses:** The attached map, which is an updated version of a map first prepared in 2013, shows zoning districts and transportation facilities along with a depiction of 500-foot buffers from schools, day care facilities, youth centers and playgrounds. Taken together, this map indicates where there are commercial-use districts (those areas colored in red, pink, purple and blue) that contain the most available area outside of the 500-foot buffers. State regulations also allow communities to set their own buffers, and so Cambridge could consider reducing the 500-foot buffer to some other distance, though it is difficult to determine what an acceptable distance might be for every case. Still, there are many commercial areas that are outside of the 500-foot buffers.

If the factors for assessing potential MMD locations were revisited in the ways described above, the following other commercial districts might be reevaluated for their appropriateness as potential MMDs:

- **Major Squares (Porter, Harvard, Central, Kendall)**  
These are predominantly commercial districts with superior access to public transit, and are in highly accessible areas for pedestrians and bicyclists. However, the planning for these areas encourages strong, publicly oriented ground floor retail, and therefore the impact of RMDs as a closed, non-public use would need to be mitigated. Potential approaches might include limiting the ground-floor street frontage of an RMD, encouraging the facility to be located above or below grade, or requiring it to be located behind an active retail frontage. The proximity of child-oriented facilities may also be a concern; Central Square in particular has nearby schools and youth centers, and other squares often have child care uses co-located with office or university functions.
- **Other Massachusetts Avenue Commercial Areas**  
The BB-2/MMD-3 district is an example of a higher-intensity mixed-use district along Massachusetts Avenue that has been deemed to be appropriate for an RMD. Other areas might be evaluated in a similar way, such as the nearby BB-1 district, or the section of Massachusetts Avenue south of Central Square. These parts of Massachusetts Avenue are predominantly commercial in character and have reasonably good access to transportation. However, they also have strong institutional presences, and the impacts on ground-floor retail character would still need to be considered.
- **Transitioning Industrial Areas**  
Cambridge has a few areas that are historically industrial, but have been transitioning to other uses in recent years. One such area is the former industrial land stretching from about the BU Bridge to

Kendall Square, north of the Grand Junction rail line. While this area remains predominantly commercial, some parts have transitioned to residential and institutional uses. A similar area is the “Quadrangle” north of Concord Avenue along Fresh Pond, some of which is already in the MMD-1 district (which is proposed to be expanded by the William Noyes Webster Foundation, Inc., petition). Although an RMD in either of these areas would have less impact on residential uses or urban character than in many other parts of the city, much thought will need to be given to how an RMD would fit into the future plans for these areas as they take on an increasingly mixed-use character with growing residential populations. Additionally, these areas tend not to be as well served by transit, though each has planned pedestrian and bicycle improvements (such as the Grand Junction multi-use pathway and the Alewife pedestrian/bicycle railroad crossing).

- **Neighborhood Retail Districts**

Areas such as Inman Square, northern Massachusetts Avenue, and sections of Concord Avenue, Huron Avenue and Mount Auburn Street (shown in pink on the map) allow commercial uses, but the surrounding character is more residential and the commercial uses tend to be neighborhood-oriented retail and services. While there may be some sites where it is possible to locate an RMD, there is greater potential in these areas for an RMD to displace or disrupt other neighborhood-serving retail uses. In addition, these areas are generally not as well served by transit and not as centrally located to serve a broad client base.

In addition to considering additional MMD areas, an option would be to adopt an approach of allowing or prohibiting RMDs directly within the base zoning regulations. While this might be a simpler approach, the results would be more difficult to predict, and it would be more difficult to establish unique regulations for specific districts (such as a “cap” on the number of RMDs allowed in a particular area, if desired).

## **Comments on Zoning Petitions**

The maps on Pages 7-8 depict the current MMDs in Cambridge and the proposed expansions of those districts. It should be noted that both petitions are by prospective RMD operators who have particular dispensing sites in mind; however, the proposed zoning changes would allow any potential RMD operator to seek a special permit for an RMD within that district.

### *Healthy Pharms, Inc. – MMD-4 in Harvard Square*

The proposal by Healthy Pharms, Inc., is to designate a new MMD within Harvard Square, specifically in areas that are within the Harvard Square Overlay District and also within the base zoning districts Business B (BB) and Office 3 (O-3), which include the higher-density areas in the heart of the square. The petition would also establish criteria particular to a Registered Marijuana Dispensary (RMD) in the MMD-4 district, including a use limitation to retail dispensing only, a maximum floor area of 10,000 square feet, a required 15-foot setback from sidewalks, and a reduction of the required buffer from schools, playgrounds and similar uses from 500 to 250 feet.

The “Major Squares” discussion in the prior section summarizes issues relevant to this proposal. Harvard Square is one of the most centrally located commercial areas in the city, readily accessible by walking and bicycling as well as subway and bus service. It is also along regional road networks (though traffic may be a concern), and public parking is available but limited. There is a strong ground-floor retail presence throughout Harvard Square, but also many opportunities to locate RMDs in places that do not occupy ground floor frontage, such as basements, upper floors, and the interiors of blocks.

There are a few particular issues raised by this proposal that are important to consider:

- Given the prominence of Harvard Square as a regional destination, there may be a higher likelihood that more than one RMD would seek to locate within the district. Without a statewide selection process to control the number of RMDs, it might be difficult for the Planning Board to assess whether or not a proposal would be providing needed service to the area if other RMDs are already approved or operating. At one extreme, Harvard Square could become home to a “cluster” of RMDs that might saturate the market or otherwise affect the character of the area. The Planning Board and City Council should consider whether this would be desirable or acceptable, and if not, might consider controls, such as a cap on the number of RMDs allowed within the district, or some other standard.
- The petition proposes a required 15-foot setback from the sidewalk for an RMD, which seems intended to address the concern about interrupting the character of retail ground floors. However, the proposal may not be adequate, because the distance from the street is not the issue so much as the amount of ground-floor frontage occupied by the RMD. The Board might consider an alternative standard that limits the ground-floor frontage of an RMD to some amount that is necessary for access and egress – perhaps 10 or 20 feet – and requires the rest of the facility to be either below grade, above the first floor, or behind a minimum depth of retail frontage. Such standards could also be subject to Planning Board modification during the special permit approval process.
- The petition proposes reducing the required buffer from facilities with programming for children from 500 to 250 feet. The map prepared by CDD shows that most of the district is outside the 500-foot buffers, although it is possible that this map does not include every use that may possibly fall under the MDPH definition for such a facility. The petitioners’ rationale for why 250 feet is a more appropriate buffer distance than 500 feet should be more fully explained.

#### *Expansion of MMD-1 in Alewife*

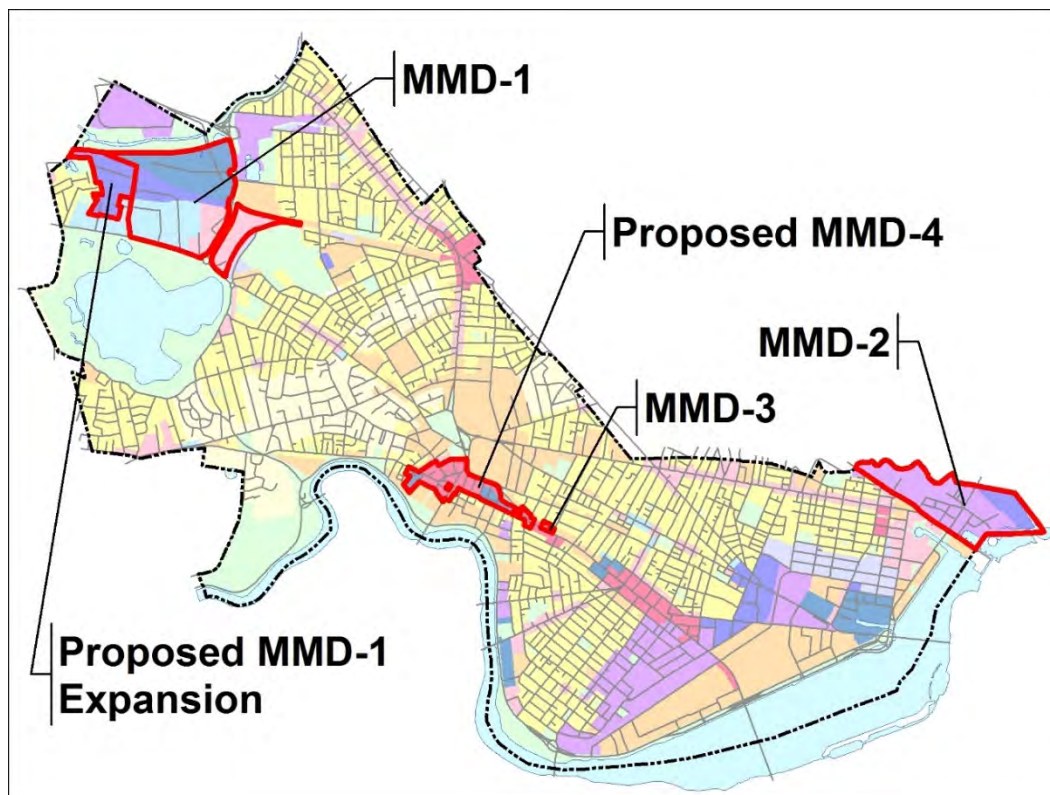
The proposal by the William Noyes Webster Foundation, Inc., is to expand the current MMD-1 district, which currently has Smith Place as its western boundary, to include the additional district west of Smith Place that is zoned Industry B-2 (IB-2) and Alewife Overlay District 1 (AOD-1). No other change to the approval criteria are proposed in that district, and therefore any type or size of RMD could be allowed subject to Planning Board review and approval.

The “Transitioning Industrial Areas” discussion in the prior section summarizes issues relevant to this proposal. While the proposed area of expansion has many characteristics that are similar to the current MMD-1 district, there are a few particular issues worthy of consideration:

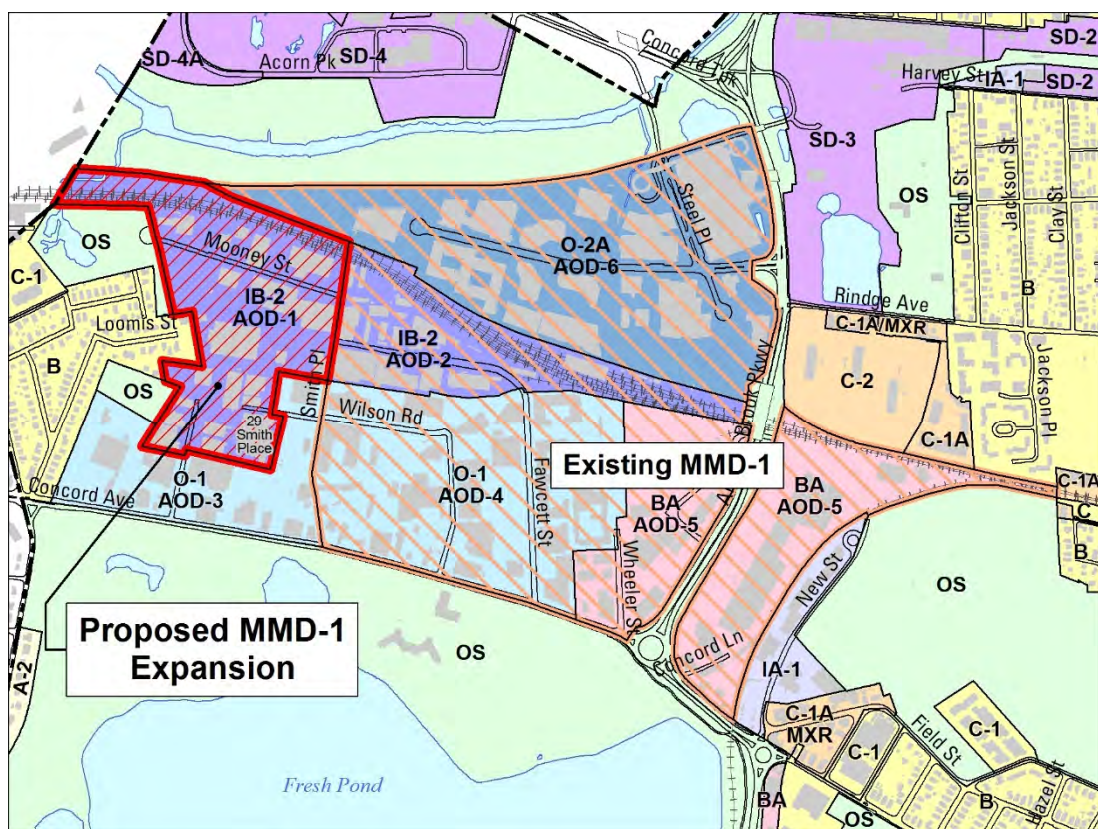


- Like Harvard Square, there is a strong likelihood that more than one RMD operator will want to locate in this area, not necessarily because of the desirability of the location but because there seems to be more available land to purchase or space to rent for such a use. Along with the site off of Smith Place that has been identified by the William Noyes Webster Foundation, this proposal includes a site on Mooney Street that was contemplated during the Flaherty, et al., Petition in 2014, and may still be a site of interest for potential RMDs. Again, the Board and Council may wish to consider if it is appropriate to include standards limiting the number of RMDs within a given area.
- Parts of the Quadrangle west of Smith Place tend to be more isolated from transit service, and given that they have a predominantly industrial character, many parts of the area are not particularly friendly for pedestrians and bicyclists. Improvements are expected as the area evolves to a more mixed-use character with more residences. As discussed in the Board's consideration of the Flaherty, et al., Petition, there may need to be stronger standards for transportation mitigation when considering an RMD proposal in the area.
- Parts of the subject area may have greater sensitivity to adjacent uses, such as the Cambridge Highlands neighborhood, Rafferty Park and playground, the private Fayerweather Street School on Spinelli Place, and other child care or recreation facilities along Concord Avenue. If the MMD-1 were expanded as proposed, these uses would need to be considered on a site-by-site basis through the Planning Board review process.

### Context Maps







## Status of Applications for RMDs in Cambridge

As a supplement to the report to the Planning Board regarding medical marijuana zoning in Cambridge, the following chart summarizes the status of applicants to establish RMDs in Cambridge, based on filings with the Massachusetts Department of Public Health (MDPH) and applications/petitions to the City of Cambridge.

RMD Applicant	Status
Sage Cannabis (formerly Milford Medicinals, Inc.)	<ul style="list-style-type: none"><li>• Received Provisional Certificate of Registration for Milford cultivating and dispensing facility</li><li>• Received Provisional Certificate of Registration for Cambridge dispensing facility at 1001 Massachusetts Ave (within MMD-3 district)</li><li>• Received Planning Board special permit for dispensing facility at 1001 Massachusetts Ave</li></ul>
Cardiac Arrhythmia Syndromes Foundation, Inc.	<ul style="list-style-type: none"><li>• Received Provisional Certificate of Registration for Fitchburg cultivating facility</li><li>• Received Provisional Certificate of Registration for Cambridge dispensing facility at 110 Fawcett Street (within MMD-1 district)</li></ul>
Healthy Pharms, Inc.	<ul style="list-style-type: none"><li>• Received Provisional Certificate of Registration for Georgetown cultivating and dispensing facility and Leicester dispensing facility</li><li>• Proposed creation of MMD-4 zoning district in Harvard Square, indicated dispensing site at 98 Winthrop Street</li></ul>
William Noyes Webster Foundation, Inc.	<ul style="list-style-type: none"><li>• Received Provisional Certificate of Registration for Plymouth cultivating facility and Dennis dispensing facility</li><li>• Proposed expansion of MMD-1 zoning district, indicated dispensing site at 29 Smith Place</li></ul>
Commonwealth Alternative Care, Inc.	<ul style="list-style-type: none"><li>• Applied for registration for Taunton cultivation/dispensing facility and Brockton dispensing facility</li><li>• Applied for registration for Cambridge dispensing facility at 61 Mooney Street (within proposed expansion of MMD-1 district)</li><li>• City Council Policy Order to communicate support to MDPH; referred to Ordinance Committee (August 1, 2016)</li></ul>

*External Source: Massachusetts Department of Public Health, Medical Marijuana Program ([www.mass.gov/medicalmarijuana](http://www.mass.gov/medicalmarijuana)), updated as of July 29, 2016.*



# Buffers from Schools, Day Care, Youth Centers, and Playgrounds

## July 2016

Cambridge, Massachusetts

