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CITY OF CAMBRIDGE  
COMMUNITY DEVELOPMENT DEPARTMENT

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To: Planning Board and Ordinance Committee  
From: Jeff Roberts, Senior Manager for Zoning and Development  
Date: October 25, 2016  
Re: **Medical Marijuana Citywide Zoning Petition**

### Overview

The City Council has referred for consideration a petition that would change the zoning regulations for Registered Marijuana Dispensaries (RMDs), which produce and sell marijuana and marijuana products for medical purposes to qualified patients. The petition would retain the current system of allowing RMDs only by special permit from the Planning Board, as well as the same application requirements and criteria for review and approval, including a requirement to be located at least 500 feet from a school or other facility in which children commonly congregate, unless the Planning Board approves a reduction of that distance.

However, while the current zoning system establishes specific overlay districts in the city where RMDs could be located, this proposal would allow RMDs to be approved under base zoning regulations, which would potentially allow them in other districts throughout the city that allow a wide range of commercial uses.

### Background

This proposal follows several other zoning changes that have been proposed and/or adopted since Cambridge first adopted zoning for RMDs in 2013. Previous zoning proposals, made by approved or prospective RMD operators, have focused on adding to the set of Medical Marijuana Overlay Districts where RMDs may be permitted. This would be the first proposal to substantially change the original zoning approach.

With the most recent proposals (including the Healthy Pharms, Inc. and William Noyes Webster Foundation, Inc. zoning petitions), CDD provided analysis of additional areas that might be considered as potential RMD districts (see CDD memo dated August 9, 2016), and the Planning Board recommended that the City Council consider expanding the set of districts where RMDs could be permitted.

This report addresses the current proposal, as well as two additional issues that are relevant to the broader discussion of marijuana regulations at the state and local level:

- Current Massachusetts Department of Public Health (MDPH) registration procedures for RMDs.
- Pending ballot initiative to allow the sale and use of marijuana for non-medical purposes, and its relationship to the current RMD regulation system.

## **Proposed Change to Medical Marijuana Zoning**

The comments below address the broader implications of changing from an overlay zoning system to a base zoning system for RMDs, as well as the specific districts that are proposed to allow RMDs.

### *Proposed Change from Overlay to Base Zoning*

The current overlay zoning system, which treats RMDs as a special use with its own specially designated districts, is a reflection of the original expectation that RMDs would be limited in number and distributed evenly throughout the state. The proposed zoning, which would regulate RMD location primarily through Section 4.35 of the Table of Use Regulations, would treat RMDs in a way that is similar to other retail uses that require conditional approval (such as fast order food establishments, for example). In some ways, the proposed change is a reflection of the change in the statewide permitting process, which allows local governments discretion in determining what RMD service should be permitted in their community (see discussion on page 5).

This change in approach results in some practical complications. Under the current system, it is absolutely clear that RMDs may be permitted within Medical Marijuana Overlay Districts but not outside those districts. Under the proposed zoning, it is clear that RMDs may be permitted in the referenced business (BA, BB, BB-1, BB-2 and BC) and industry (IA-1, IB-1, IB-2) base districts. However, there are also special zoning districts and overlay zoning districts whose use regulations refer to other districts – for example, some districts allow the same uses as BB or IA-1 districts, and others allow any retail use listed in Section 4.35, in some cases only by special permit.

The attached map shows (in solid colors) the locations of the base districts in which RMDs could be permitted under the proposed zoning. It also shows (in striped colors) the locations of special base and overlay zoning districts that could allow the same set of uses as one of these base districts, or any use listed in Section 4.35. It is not clear if the intent of the petition was to include all of these districts, but the petition would appear to allow the Planning Board to grant a special permit for RMDs in any of the districts shown. If that was not the intent, the petition could be clarified.

### *Proposed Districts*

The original set of Medical Marijuana Overlay Districts, established in 2013, was created following an analysis that considered the following factors in determining what areas would be most suitable for an RMD:

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.

CDD has continued to apply these factors in evaluating proposals to alter or expand the Medical Marijuana Overlay Districts, and discussed these factors more broadly in the CDD memo dated August 9, 2016, which reassessed the potential for RMD locations throughout the city while also evaluating the specific proposals by Healthy Pharms, Inc. and the William Noyes Webster Foundation, Inc. Below, each of these factors is applied to the districts included in the current proposal.

#### 1. **Allowed Uses**

The current proposal would continue to allow RMDs only in those districts that otherwise allow commercial uses. However, the current zoning does not make a distinction among the cultivation, processing and retail sale of marijuana and marijuana products. Under state laws and regulations, a single RMD operator must oversee all products from cultivation to sale, though not necessarily in the same location. For zoning purposes, it may be worthwhile to differentiate between activities that are industrial in nature and activities that are retail-oriented, and to allow the former only in districts otherwise zoned for industrial activity. Under current zoning, only retail dispensing activities are allowed in MMD-3 and MMD-4 (Massachusetts Avenue and Harvard Square), but the current petition seems to eliminate this restriction.

#### 2. **Transportation**

As discussed in prior zoning petitions (and on page 5 of this memo), the current statewide RMD approval process removes limits on the number of RMDs statewide and provides municipalities a greater role in determining the level of RMD service for their own communities. Therefore, RMDs may be located to serve a more local rather than regional patient population, and access to regional roadways may not be as important. 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.

In making recommendations on prior zoning petitions, the Planning Board had suggested that major transit nodes like Porter Square, Harvard Square, Central Square and Kendall Square could be considered as potential RMD locations along with currently zoned areas at Alewife and Lechmere. These are all included in the petition area, as well as some smaller commercial areas along Massachusetts Avenue that have reasonably good transit, walking and bicycling access.

The petition also includes some areas that are less centrally located and not as well served by transit. These include some Business A (BA) base districts along Kirkland Street, Memorial Drive and Fresh Pond Parkway, Industry A-1 (IA-1) districts in the Western part of the city, and some special

districts and overlay districts such as SD-5 and SD-11 (which refer to BB use regulations) and SD-8 (which refer to IA-1 use regulations) in the southern Cambridgeport area, and Mixed Use Residential (MXR) overlay districts (which refer to IA-1 use regulations), in various locations throughout the city. Inman Square and Cambridge Street are also areas which, despite having some bus service, are not as readily accessible as major transit nodes.

### **3. Public Safety**

While it appears that the proposal continues to exclude districts that might be less conveniently reachable by emergency vehicles, further review by the Cambridge Police Department is needed to determine if there are any specific public safety concerns regarding any of these areas.

### **4. Urban Character**

The potential conflict between the security requirements of an RMD and the desired streetscape character of a retail district continues to be one of the more complex issues in planning for RMDs. State law and MDPH regulations strictly limit visual and physical access to RMDs, and require video surveillance of the perimeter. However, it has been shown through the Sage Cannabis, Inc. and Healthy Pharms, Inc. proposals that it is possible to design and locate RMDs to minimize impacts on the character of the streetscape, primarily by locating the RMDs either above, below or behind more active retail at the ground floor.

It should be noted that the proposed petition would eliminate requirements, currently applicable in MMD-3 and MMD-4, which prevent RMDs from occupying significant ground-floor street frontage. However, the proposed zoning retains the general approval standard that “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.” There may still be a benefit to creating clearer guidelines or criteria regarding how RMDs should be sited in areas that have a strong ground-floor retail character.

Additionally, while there are ways to design RMDs to coexist with retail uses in core commercial districts, there may be concerns in mixed-use districts that are more residential in character. For example, areas zoned Business A along Cambridge Street (including Inman Square), Broadway, and Kirkland Street allow various retail uses, but have a residential character with retail uses primarily at the ground floor (though some buildings may have upper-story office and retail). Retail uses in these areas provide services to the neighborhood, promote a sense of safety along the street and contribute to a sense of community. The risk of allowing RMDs in these types of areas is that they might replace such ground-floor establishments with uses that are inaccessible – visually and physically – to most of the general public.

### **5. Buffers from Sensitive Uses**

The proposed zoning would continue to require that RMDs be located at least 500 feet from a school or other facility in which children commonly congregate, consistent with state law, unless the Planning Board determines that a smaller distance is appropriate for a particular proposal. Because

the 500-foot buffer applies in addition to the district requirements, it is not necessary for all permissible zoning districts to be located outside the 500-foot buffer area. However, if the base zoning says that an RMD could be permitted in a particular district, but the entire district is within 500 feet of such a use, it may send a confusing message to potential RMD operators.

Attached to this memo is a version of the proposed zoning districts map that also shows 500-foot buffers surrounding schools, youth centers, child care facilities and playgrounds. (It is possible there are other uses that would meet the state’s criteria for a facility where children commonly congregate, but are not identified in the city’s Geographic Information System). While these buffers limit the available sites within many zoning districts, there are also some districts, including areas zoned Business A along Broadway, Kirkland Street, Fresh Pond Parkway and much of Cambridge Street, where all or nearly all of the district is contained within these buffers.

### **Statewide RMD Registration Process**

At previous hearings, staff has discussed changes made earlier this year in the RMD approval process administered by the Massachusetts Department of Public Health (MDPH). As a result of these changes, local communities now have a more meaningful role in the approval process, because MDPH relies on communities to provide a letter of support or non-opposition as a core requirement of the application process, and does not select RMDs through the previous competitive selection process that was intended to achieve geographic distribution across the state.

When considering a specific RMD proposal, the special permit process allows the Planning Board to consider land use issues, such as the suitability of a particular site for an RMD and potential concerns about concentration of RMDs in one area. However, the special permit process only allows the Planning Board to evaluate proposals individually, and to evaluate those proposals based on their conformance with zoning criteria rather than other considerations specific to the company proposing the RMD. Also, when there are several companies applying to open RMDs in Cambridge at the same time, the special permit process does not provide a way for the city to select among potential RMD operators.

The MDPH “letter of support or non-opposition” mechanism could potentially provide a separate avenue by which the city could consider other factors when evaluating RMD proposals. This approach might make sense if the city wished to limit the total number of RMDs established in Cambridge or to consider the characteristics of the proponents in more detail. Other communities have also used the “letter of support or non-opposition” mechanism as a way to develop host community agreements.

As another avenue of regulation, the Cambridge Public Health Department has promulgated regulations for RMDs, which accounts for operational considerations that are not within the normal purview of zoning.

### **Recreational Marijuana Ballot Initiative**

In the upcoming election, voters will consider a statewide ballot question to provide for the “legalization, regulation and taxation of marijuana,” which would apply to the production and sale of marijuana and marijuana products to anyone age 21 or older for non-medical purposes.

As requested at a previous Ordinance Committee hearing, the City Solicitor has issued an opinion summarizing the proposed ballot initiative and its relationship to the zoning and permitting of RMDs under the statewide medical marijuana program. The full opinion is attached. One of the key findings is that, although the new ballot initiative leaves in place the current laws pertaining to medical marijuana, there are some provisions of the ballot initiative that “refer to, and in some cases, give certain preferences to approved medical marijuana dispensaries in connection with the legalization of marijuana for non-medical purposes.”

The outcome of the ballot initiative is uncertain at this stage, and if it were adopted, a new statewide commission would be tasked with promulgating and administering regulations related to non-medical marijuana. However, while aspects of the proposed law are not clear, it seems that decisions made with regard to the zoning and permitting of medical marijuana could also affect the future regulation of non-medical marijuana if the ballot initiative is enacted.

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## CITY OF CAMBRIDGE

Office of the City Solicitor  
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October 17, 2016

Lisa C. Peterson  
Acting City Manager  
City Hall  
Cambridge, MA 02139

***Re: Ordinance Committee request for legal opinion concerning proposed state ballot question 4 entitled "Legalization, Regulation, and Taxation of Marijuana"***

Dear Ms. Peterson:

On September 22, 2016, the City Council's Ordinance Committee voted to ask the City Clerk to contact the City Manager to request that the City Solicitor prepare a legal opinion concerning certain questions about the proposed state ballot question relating to the legalization of marijuana (hereafter "Question 4"). Question 4, to be voted on by Commonwealth voters on November 8, 2016, is an initiative petition that proposes a very detailed state law governing the manner in which marijuana is proposed to be legalized for people over the age of twenty-one subject to state licensing, regulation and taxation. A copy of Question 4 is attached together with a summary of Question 4.

The Ordinance Committee's questions relate to the relationship between the provisions of Question 4 and previously approved medical marijuana dispensaries under existing state and local laws. The following discussion of certain provisions of Question 4 addresses the Ordinance Committee's questions regarding the potential impact of Question 4 on how medical marijuana dispensaries are zoned, regarding how Question 4 treats the shared use of medical and recreational marijuana facilities, and whether there is a relationship among the number of dispensaries, recreational stores and liquor stores in the City.

There is a blanket statement in SECTION 5 of Question 4, which proposes (among other things) a new Massachusetts General Laws Chapter 94G, at Section 2(g), which provides:

(g) Relation to medical use of marijuana. This chapter shall not be construed to affect the provisions of chapter 369 of the acts of 2012, relating to the medical use of marijuana as enacted by the people in the state election in 2012.



This provision appears to explicitly leave in place the legal regulatory scheme for medical marijuana dispensaries.

However, there are other provisions of Question 4 that refer to and, in some cases, give certain preferences to approved medical marijuana dispensaries in connection with the legalization of marijuana for non-medical purposes. For example, the definition stated for “experienced marijuana establishment operator” is an existing medical marijuana treatment center or one that has a provisional registration to operate. Question 4, SECTION 5, at proposed M.G.L.c.94G, s.1(d). The proposed new state Cannabis Control Commission is required to adopt regulations implementing the new law. The state regulations “shall not: ... (4) prohibit a medical marijuana treatment center and an experienced marijuana establishment operator from operating a medical marijuana treatment center and a marijuana establishment at a shared location;....” The definition of “marijuana establishment” includes a cultivator, product manufacturer, and retailer. Question 4, SECTION 5, at proposed M.G.L.c.94G, s.1(j). Another example is that if a city limits the number of marijuana establishments that may be licensed in the city so that the state cannot give a license to all applicants who meet the state licensure requirements, then “until January 1, 2018, the [state] commission shall issue licenses first to applicants with the most experience operating medical marijuana treatment centers....” Question 4, SECTION 5, at proposed M.G.L.c.94G, s.5(c). Another preference for existing treatment centers is at Question 4, SECTION 6, as follows:

Notwithstanding any general or special law to the contrary, if the cannabis control commission fails to adopt regulations necessary for the implementation of this chapter on or before January 1, 2018, each medical marijuana treatment center may begin to possess, cultivate, process, manufacture, package, purchase or otherwise obtain and test marijuana and marijuana products and may deliver, sell or otherwise transfer marijuana to any person who is at least 21 years of age until the commission adopts the regulations necessary for implementation of this chapter and begins to issue licenses to operate marijuana establishments pursuant to section 5 of this chapter.

Despite the detailed provisions for state control over the licensing and regulation of non-medical marijuana contained in Question 4, there are also specific provisions that relate to municipal controls that may be enacted.

Following is a summary of the section of the proposed law entitled “Local control.” Question 4, SECTION 5, at proposed M.G.L.c.94G, s.3. Local ordinances may impose “reasonable safeguards” on the operation of marijuana establishments, provided that such ordinances do not make it so difficult “that a reasonably prudent businessperson would not operate a marijuana establishment,” and provided that such ordinance is not in conflict with state law or state regulations. In addition to that baseline, local ordinances are restricted to five categories. The first, in essence, is that the “time, place and manner” of operations may be regulated locally, except that zoning may not prohibit a marijuana establishment in any area in which a medical marijuana treatment center is registered to engage in the same type of activity. Second, a municipality may limit the number of



marijuana establishments in the city, but (it appears<sup>1</sup>) certain strict limitations may only be imposed in a city “by a vote of the voters of that city,” in particular, if one or more types of marijuana establishments are to be prohibited within the city; if the number of marijuana retailers is to be limited to fewer than 20% of the number of liquor licenses issued in the city for the retail sale of alcoholic beverages not to be drunk on the premises; or if there is to be a limit on the number of marijuana establishments to fewer than the number of medical marijuana treatment centers in the same city. Third, a city may impose restrictions to the extent any activity is otherwise allowed under the new law that is a public nuisance. Fourth, local reasonable restrictions on signage for marijuana establishments may be imposed. Fifth, a local civil penalty for violation of a local ordinance may be imposed in some cases.

It is also worth noting that Question 4, SECTION 5, at proposed M.G.L.c.94G, s.3(d) prohibits a city agreeing with a marijuana establishment that the establishment must pay a fee to the city “that is not directly proportional and reasonably related to the costs imposed upon the city or town by the operation of a marijuana establishment.” Such costs that a city or town claims have been imposed upon it must be documented.

The proposed Cannabis Control Commission is required to promulgate the initial regulations under the new law not later than September 15, 2017. Question 4, SECTION 9. Until those regulations are issued, it is not possible to state with certainty exactly how the new statute will be implemented in all its detail.

In summary, Question 4 does not directly impact local zoning of medical marijuana dispensaries, but it does not allow a local prohibition of marijuana establishments in an area where a dispensary is registered to operate. Shared medical and recreational marijuana facilities may not be prohibited, assuming licensing requirements for both are met. There does not appear to be any impact of the proposed law on the number of liquor stores licensed by the City, except that unless the City’s voters limit the number of marijuana retailers, then the number of marijuana retailers cannot be limited to less than 20% of the number of licenses for retail sale of alcoholic beverages not to be drunk on the premises.

Very truly yours,



Nancy E. Glowa  
City Solicitor

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<sup>1</sup> This provision of the proposed law is not perfectly clear.

## QUESTION 4: Law Proposed by Initiative Petition

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives on or before May 3, 2016?

### SUMMARY

The proposed law would permit the possession, use, distribution, and cultivation of marijuana in limited amounts by persons age 21 and older and would remove criminal penalties for such activities. It would provide for the regulation of commerce in marijuana, marijuana accessories, and marijuana products and for the taxation of proceeds from sales of these items.

The proposed law would authorize persons at least 21 years old to possess up to one ounce of marijuana outside of their residences; possess up to ten ounces of marijuana inside their residences; grow up to six marijuana plants in their residences; give one ounce or less of marijuana to a person at least 21 years old without payment; possess, produce or transfer hemp; or make or transfer items related to marijuana use, storage, cultivation, or processing.

The measure would create a Cannabis Control Commission of three members appointed by the state Treasurer which would generally administer the law governing marijuana use and distribution, promulgate regulations, and be responsible for the licensing of marijuana commercial establishments. The proposed law would also create a Cannabis Advisory Board of fifteen members appointed by the Governor. The Cannabis Control Commission would adopt regulations governing licensing qualifications; security; record keeping; health and safety standards; packaging and labeling; testing; advertising and displays; required inspections; and such other matters as the Commission considers appropriate. The records of the Commission would be public records.

The proposed law would authorize cities and towns to adopt reasonable restrictions on the time, place, and manner of operating marijuana businesses and to limit the number of marijuana establishments in their communities. A city or town could hold a local vote to determine whether to permit the selling of marijuana and marijuana products for consumption on the premises at commercial establishments.

The proceeds of retail sales of marijuana and marijuana products would be subject to the state sales tax and an additional excise tax of 3.75%. A city or town could impose a separate tax of up to 2%. Revenue received from the additional state excise tax or from license application fees and civil penalties for violations of this law would be deposited in a Marijuana Regulation Fund and would be used subject to appropriation for administration of the proposed law.

Marijuana-related activities authorized under this proposed law could not be a basis for adverse orders in child welfare cases absent clear and convincing evidence that such activities had created an unreasonable danger to the safety of a minor child.

The proposed law would not affect existing law regarding medical marijuana treatment centers or the operation of motor vehicles while under the influence. It would permit property owners to prohibit the use, sale, or production of marijuana on their premises (with an exception that landlords cannot prohibit consumption by tenants of marijuana by means other than by smoking); and would permit employers to prohibit the consumption of marijuana by employees in the workplace. State and local governments could continue to restrict uses in public buildings or at or near schools. Supplying marijuana to persons under age 21 would be unlawful.

The proposed law would take effect on December 15, 2016.

**A YES VOTE** would allow persons 21 and older to possess, use, and transfer marijuana and products containing marijuana concentrate (including edible products) and to cultivate marijuana, all in limited amounts, and would provide for the regulation and taxation of commercial sale of marijuana and marijuana products.

**A NO VOTE** would make no change in current laws relative to marijuana.



## QUESTION 4: Law Proposed by Initiative Petition

### FULL TEXT OF QUESTION

Be it enacted by the People, and by their authority, as follows:

#### THE REGULATION AND TAXATION OF MARIJUANA ACT

SECTION 1. The purpose of this Act is to control the production and distribution of marijuana under a system that licenses, regulates and taxes the businesses involved in a manner similar to alcohol and to make marijuana legal for adults 21 years of age or older. Its intent is to remove the production and distribution of marijuana from the illicit market and to prevent the sale of marijuana to persons under 21 years of age by providing for a regulated and taxed distribution system. To the fullest extent possible, its terms are to be interpreted in accordance with the purpose and intent set forth in this section.

SECTION 2. This act may be known as "The Regulation and Taxation of Marijuana Act."

SECTION 3. Chapter 10 of the General Laws is hereby amended by inserting after section 75 the following sections:

Section 76. Cannabis Control Commission; members; appointment; terms; chairman; secretary

(a) There shall be a commission known as the cannabis control commission to have general supervision and sole regulatory authority over the conduct of the business of marijuana establishments as defined in chapter 94G of the General Laws. The commission shall consist of 1 commissioner and 2 associate commissioners who shall be appointed by the treasurer. Not more than 2 members of the commission shall be of the same political party. The commissioner shall serve a term co-terminous with the treasurer. The associate commissioners shall serve a term of 4 years. Any vacancy occurring for any reason other than the expiration of a term shall be filled for the unexpired term in the same manner as the original appointment.

(b) The treasurer shall appoint commissioners based on their experience or expertise in public health, law enforcement, social justice, the regulation and business of consumer commodities and the production and distribution of marijuana and marijuana products.

(c) The commissioner shall serve as chair and shall preside over all official activities of the commission.

(d) The treasurer may remove any member for neglect of duty, misconduct or malfeasance in office, after providing the member with a written statement of the charges and an opportunity to be heard.

(e) Two members shall constitute a quorum for

conducting the business of the commission. A vacancy shall not impair the right of the remaining members to exercise the powers of the commission.

(f) The commission may expend for such investigators and clerical and other assistants as may be necessary for the performance of its duties. The commissioner may appoint a chief investigator and other investigators, who shall be exempt from chapter 31 of the General Laws, to enforce or cause to be enforced the penalties provided by law against a marijuana establishment that violates chapter 94G of the General Laws and shall make all necessary and appropriate investigations for that enforcement.

(g) All records of the commission shall be considered public records within the meaning of chapter 66 of the General Laws.

#### Section 77. Cannabis Advisory Board

(a) There shall be a cannabis advisory board to study and make recommendations on the regulation of marijuana and marijuana products. The board shall consist of 15 members appointed by the governor and shall consist of: 1 expert in marijuana cultivation, 1 expert in marijuana retailing, 1 expert in marijuana product manufacturing, 1 expert in marijuana testing, 1 board member or officer of a medical marijuana treatment center, 1 registered medical marijuana patient, 1 individual who represents marijuana retail consumers, 2 experts in public health, 2 experts in law enforcement, 2 experts in social welfare or social justice, and 2 attorneys with experience providing legal services to marijuana businesses, marijuana consumers or medical marijuana patients in the commonwealth. Members of the board shall serve terms of 2 years. Members of the board shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the discharge of their official duties. Members of the board shall not be state employees for purposes of chapter 268A of the General Laws by virtue of their service on the advisory board. The board shall meet at the discretion of the commission. A majority of the members of the board present and voting shall constitute a quorum.

(b) The cannabis advisory board shall:

(1) advise the commission on marijuana cultivation, processing, manufacture, transport, distribution, testing and sale;

(2) consider all matters submitted to it by the commission;

(3) on its own initiative, recommend to the commission guidelines, rules and regulations and any changes to guidelines, rules and regulations that the board

## QUESTION 4: Law Proposed by Initiative Petition

### FULL TEXT OF QUESTION (continued)

considers important or necessary; and

(4) advise on the preparation of regulations under chapters 64N and 94G.

(c) All records of the cannabis advisory board shall be public records under chapter 66 of the General Laws.

SECTION 4. The General Laws are hereby amended by inserting after chapter 64M the following chapter:

#### CHAPTER 64N.

##### MARIJUANA TAX.

Section 1. Definitions. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

(a) "Commissioner", the commissioner of revenue.

(b) "Marijuana," "Marijuana establishment," "Marijuana product" and "Marijuana retailer", as defined in chapter 94G of the General Laws.

Section 2. State excise imposition; rate; payment. An excise tax is hereby imposed upon the sale of marijuana or marijuana products by a marijuana retailer to anyone other than a marijuana establishment at a rate of 3.75 per cent of the total sales price received by the marijuana retailer as a consideration for the sale of marijuana or marijuana products. The excise tax shall be levied in addition to state tax imposed upon the sale of property or services as provided in section 2 of chapter 64H of the General Laws and shall be paid by a marijuana retailer to the commissioner at the time provided for filing the return required by section 16 of chapter 62C of the General Laws.

Section 3. Local tax option. Any city or town may impose a local sales tax upon the sale or transfer of marijuana or marijuana products by a marijuana retailer operating within the city or town to anyone other than a marijuana establishment at a rate not greater than 2 per cent of the total sales price received by the marijuana retailer as a consideration for the sale of marijuana or marijuana products. A marijuana retailer shall pay a local sales tax imposed under this section to the commissioner at the same time and in the same manner as the sales tax due to the commonwealth.

All sums received by the commissioner under this section shall not be considered received on account of the commonwealth and shall at least quarterly be distributed, credited and paid by the state treasurer upon certification of the commissioner to each city or town that has adopted this section in proportion to the amount of such sums received from the sale or transfer of marijuana and marijuana products in the city or town.

Section 4. Exemptions. This chapter shall not apply to the sale of marijuana or marijuana products by a medical marijuana treatment center or a registered personal caregiver to a qualifying patient or personal caregiver pursuant to chapter 369 of the acts of 2012, nor to any unlawful sale subject to taxation pursuant to chapter 64K of the General Laws.

Section 5. Application of tax revenue. The commissioner shall deposit revenue collected pursuant to this chapter, other than revenue collected pursuant to section 2 of chapter 64H of the General Laws, in the Marijuana Regulation Fund established by chapter 94G of the General Laws and it shall be subject to appropriation.

SECTION 5. The General Laws are hereby amended by inserting after chapter 94F the following chapter:

#### CHAPTER 94G

##### REGULATION OF THE USE AND DISTRIBUTION OF MARIJUANA NOT MEDICALLY PRESCRIBED

##### Section 1. Definitions

As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

(a) "Consumer", a person who is at least 21 years of age.

(b) "Controlling person", an officer, board member or other individual who has a financial or voting interest of 10 per cent or greater in a marijuana establishment.

(c) "Commission", the cannabis control commission established by section 76 of chapter 10 of the General Laws.

(d) "Experienced marijuana establishment operator", (i) a medical marijuana treatment center as defined in chapter 369 of the acts of 2012 with a registration in good standing, or (ii) a reorganized marijuana business established by a vote of at least 2/3 of the board of directors of an entity that submitted an application for a registration to operate a medical marijuana treatment center to the department of public health before October 1, 2015 and was issued a provisional registration to operate a medical marijuana treatment center by the department of public health before the effective date of this chapter.

(e) "Hemp", the plant of the genus *Cannabis* or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus *Cannabis*, or per volume or weight of marijuana product, or the combined per cent of delta-9-



## QUESTION 4: Law Proposed by Initiative Petition

### FULL TEXT OF QUESTION (continued)

tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus *Cannabis* regardless of moisture content.

(f) "Manufacture", to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

(g) "Marijuana" or "Marihuana", all parts of any plant of the genus *Cannabis*, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C of the General Laws; provided that "Marijuana" shall not include:

(1) The mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination;

(2) Hemp; or

(3) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.

(h) "Marijuana accessories", equipment, products, devices or materials of any kind that are intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body.

(i) "Marijuana cultivator", an entity licensed to cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer marijuana to other marijuana establishments, but not to consumers.

(j) "Marijuana establishment", a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.

(k) "Marijuana product manufacturer", an entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.

(l) "Marijuana products", products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients

that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

(m) "Marijuana testing facility", an entity licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants.

(n) "Marijuana retailer", an entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.

(o) "Process" or "processing", to harvest, dry, cure, trim and separate parts of the marijuana plant by manual or mechanical means, except it shall not include manufacture as defined in subsection (f) of this section.

(p) "Unreasonably impracticable", that the measures necessary to comply with the regulations, ordinances or by-laws adopted pursuant to this chapter subject licensees to unreasonable risk or require such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate a marijuana establishment.

### Section 2. Limitations

(a) Operating under the influence. This chapter does not amend existing penalties for operating, navigating or being in actual physical control of any motor vehicle, train, aircraft, motorboat or other motorized form of transport or machinery while impaired by marijuana or a marijuana product or for consuming marijuana while operating, navigating or being in actual physical control of any motor vehicle, train, aircraft, motorboat or other motorized form of transport or machinery.

(b) Transfer to or possession by a person under 21 years of age. This chapter shall not be construed to permit the knowing transfer of marijuana, marijuana products or marijuana accessories, with or without remuneration, to a person under 21 years of age or to allow a person under 21 years of age to possess, use, purchase, obtain, cultivate, process, manufacture, deliver or sell or otherwise transfer marijuana or marijuana accessories.

(c) Manufacture of products. Unless done pursuant to a marijuana product manufacturer license issued by the commission, this chapter does not authorize a person to manufacture marijuana or hemp by means of any liquid or gas, other than alcohol, that has a flashpoint below 100 degrees Fahrenheit.

(d) Property. This chapter shall not be construed to:

(1) prevent a person from prohibiting or otherwise regulating the consumption, display, production,



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### FULL TEXT OF QUESTION (continued)

processing, manufacture or sale of marijuana and marijuana accessories on or in property the person owns, occupies or manages, except that a lease agreement shall not prohibit a tenant from consuming marijuana by means other than smoking on or in property in which the tenant resides unless failing to do so would cause the landlord to violate a federal law or regulation;

(2) prevent the commonwealth, a subdivision thereof or local government agency from prohibiting or otherwise regulating the possession or consumption of marijuana or marijuana accessories within a building owned, leased or occupied by the commonwealth, a political subdivision of the commonwealth or an agency of the commonwealth or a political subdivision of the commonwealth; or

(3) authorize the possession or consumption of marijuana or marijuana accessories on the grounds of or within a public or private school where children attend classes in preschool programs, kindergarten programs or grades 1 to 12, inclusive, or on the grounds of or within any correctional facility.

(e) Employment. This chapter shall not require an employer to permit or accommodate conduct otherwise allowed by this chapter in the workplace and shall not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees.

(f) Negligent conduct. This chapter shall not amend existing penalties for conduct involving the performance of any task while impaired by marijuana that would constitute negligence or professional malpractice and shall not prevent the imposition of any civil, criminal or other penalty for such conduct.

(g) Relation to medical use of marijuana. This chapter shall not be construed to affect the provisions of chapter 369 of the acts of 2012, relating to the medical use of marijuana as enacted by the people in the state election in 2012.

(h) Adulteration and misbranding. This chapter shall not exempt marijuana or marijuana products from sections 186 to 195, inclusive, of chapter 94 of the General Laws, relating to the adulteration and misbranding of food, drugs and various articles. Marijuana included in a marijuana product manufactured in compliance with the regulations under this chapter shall not be considered an adulterant.

### Section 3. Local control

(a) A city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not

unreasonably impracticable and are not in conflict with this chapter or with regulations made pursuant to this chapter and that:

(1) govern the time, place and manner of marijuana establishment operations and of any business dealing in marijuana accessories, except that zoning ordinances or by-laws shall not prohibit placing a marijuana establishment which cultivates, manufactures or sells marijuana or marijuana products in any area in which a medical marijuana treatment center is registered to engage in the same type of activity;

(2) limit the number of marijuana establishments in the city or town, except that a city or town may only adopt an ordinance or by-law by a vote of the voters of that city or town if the ordinance or by-law:

(i) prohibits the operation of 1 or more types of marijuana establishments within the city or town;

(ii) limits the number of marijuana retailers to fewer than 20 per cent of the number of licenses issued within the city or town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under chapter 138 of the General Laws; or

(iii) limits the number of any type of marijuana establishment to fewer than the number of medical marijuana treatment centers registered to engage in the same type of activity in the city or town.

(3) restrict the licensed cultivation, processing and manufacturing of marijuana that is a public nuisance;

(4) establish reasonable restrictions on public signs related to marijuana establishments; and

(5) establish a civil penalty for violation of an ordinance or by-law enacted pursuant to this subsection, similar to a penalty imposed for violation of an ordinance or by-law relating to alcoholic beverages.

(b) The city council of a city and the board of selectmen of a town shall, upon the filing with the city or town clerk of a petition (i) signed by not fewer than 10 per cent of the number of voters of such city or town voting at the state election preceding the filing of the petition and (ii) conforming to the provisions of the General Laws relating to initiative petitions at the municipal level, request that the question of whether to allow, in such city or town, the sale of marijuana and marijuana products for consumption on the premises where sold be submitted to the voters of such city or town at the next biennial state election. If a majority of the votes cast in the city or town are not in favor of allowing the consumption of marijuana or marijuana products on the premises where sold, such city or town shall be taken to have not authorized the consumption of



## QUESTION 4: Law Proposed by Initiative Petition

### FULL TEXT OF QUESTION (continued)

marijuana and marijuana products on the premises where sold.

(c) No city or town shall prohibit the transportation of marijuana or marijuana products or adopt an ordinance or by-law that makes the transportation of marijuana or marijuana products unreasonably impracticable.

(d) No agreement between a city or town and a marijuana establishment shall require payment of a fee to that city or town that is not directly proportional and reasonably related to the costs imposed upon the city or town by the operation of a marijuana establishment. Any cost to a city or town by the operation of a marijuana establishment shall be documented and considered a public record as defined by clause Twenty-Sixth of section 7 of chapter 4 of the General Laws.

#### Section 4. The Cannabis Control Commission

(a) The commission shall, in consultation with the cannabis advisory board and in accordance with chapter 30A of the General Laws, adopt regulations consistent with this chapter for the administration, clarification and enforcement of laws regulating and licensing marijuana establishments. The regulations shall include:

(1) procedures for the issuance and renewal of licenses to operate marijuana establishments;

(2) a schedule of application, license and renewal fees in an amount necessary to pay for all regulation and enforcement costs of the commission; provided however that fees may be relative to the volume of business conducted or to be conducted by the marijuana establishment and shall not exceed:

(i) For an initial application, \$3,000;

(ii) For a license for a retail marijuana store, \$15,000;

(iii) For a license for a marijuana product manufacturer, \$15,000;

(iv) For a license for a marijuana cultivator, \$15,000; and

(v) For a license for a marijuana testing facility, \$10,000.

(3) qualifications for licensure and minimum standards for employment that are directly and demonstrably related to the operation of a marijuana establishment and similar to qualifications for licensure and employment standards in connection with alcoholic beverages as regulated under chapter 138 of the General Laws; provided that a prior conviction solely for a marijuana-related offense or for a violation of section 34 of chapter 94C of the General Laws shall not disqualify an

individual or otherwise affect eligibility for employment or licensure in connection with a marijuana establishment, unless the offense involved the distribution of a controlled substance, including marijuana, to a minor;

(4) procedures and policies to promote and encourage full participation in the regulated marijuana industry by people from communities that have previously been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities;

(5) requirements for the security of marijuana establishments, including security, lighting, video and alarm requirements and requirements for the secure transportation and storage of marijuana, marijuana plants and marijuana products, provided that the requirements shall not prohibit the cultivation of marijuana outdoors or in greenhouses;

(6) requirements to prevent the sale of marijuana and marijuana products to persons under 21 years of age;

(7) requirements for record keeping by marijuana establishments and procedures to track marijuana and marijuana products cultivated, processed, manufactured, delivered or sold by marijuana establishments;

(8) health and safety standards for the cultivation, processing, manufacture and distribution of marijuana and marijuana products, including standards regarding sanitation for the preparation, storage, handling and sale of food products and reasonable limitations on the use of organic and non-organic pesticides;

(9) requirements for the packaging of marijuana and marijuana products, which shall include special packaging requirements to protect children from ingesting marijuana or marijuana products and requirements for dividing each serving within a package containing multiple servings in a manner that allows consumers to easily identify a single serving;

(10) requirements for the labeling of a package containing marijuana or marijuana products that shall include a symbol or other easily recognizable mark indicating that the package contains marijuana and an identification of the marijuana cultivator or the marijuana product manufacturer who produced the marijuana or marijuana product, and for the labeling of a package containing marijuana products, the amount of tetrahydrocannabinol in a package and in each serving of a marijuana product, the number of servings in a package and a list of ingredients and possible allergens;

(11) requirements for the testing of random samples of marijuana and marijuana products to verify



## QUESTION 4: Law Proposed by Initiative Petition

### FULL TEXT OF QUESTION (continued)

that marijuana and marijuana products are accurately labeled and to verify that products intended for human consumption do not contain contaminants that are in excess of typical standards applied to other commercially available products intended for human consumption;

(12) requirements for safe disposal of excess, contaminated, adulterated or deteriorated marijuana or marijuana products;

(13) reasonable restrictions on signs, marketing, displays and advertising with respect to marijuana, marijuana products and marijuana accessories, including prohibiting marketing or advertising designed to appeal to children;

(14) procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person or to another suitable location, which shall not be more restrictive than laws governing the transfer of a license for the sale of alcoholic beverages under chapter 138 of the General Laws; and

(15) provisions for: enforcing this chapter, including penalties for civil violations for the failure to comply with any regulation made pursuant to this section or for any violation of section 13 of this chapter; collecting fees and penalties imposed; suspending the license of a marijuana establishment that include provisions to allow for the continued maintenance and security of any marijuana and marijuana products; terminating the license of a licensee; and appealing civil penalties or licensing actions.

(b) In furtherance of the intent of this act, the commission may also adopt regulations in accordance with chapter 30A of the General Laws which:

(1) establish and provide for issuance of additional types or classes of licenses to operate marijuana-related businesses, including licenses that authorize only limited cultivation, processing, manufacture, possession or storage of marijuana or marijuana products, limited delivery of marijuana or marijuana products to consumers, licenses that authorize the consumption of marijuana or marijuana products on the premises where sold, licenses that authorize the consumption of marijuana at special events in limited areas and for a limited time and licenses intended to facilitate scientific research or education;

(2) regulate the cultivation, processing, distribution and sale of hemp by marijuana establishments; and

(3) limit the total amount of marijuana cultivated within the commonwealth, if the commission determines after an analysis of the current and anticipated supply of and demand for marijuana and marijuana products, that a limit on the amount of marijuana cultivated within the

commonwealth is necessary to minimize illicit markets for marijuana. If the commission limits the total amount of marijuana that may be cultivated within the commonwealth, the commission shall reconsider that determination biannually and shall not set the limit at a level below that which is necessary to provide an adequate supply of marijuana and marijuana products in the commonwealth. No such limit shall be imposed if the import or export of marijuana to or from the commonwealth is not prohibited by federal law.

(c) Regulations made pursuant to this section shall not:

(1) prohibit the operation of a marijuana establishment either expressly or through regulations that make operation of a marijuana establishment unreasonably impracticable;

(2) require testing of marijuana or marijuana products before the commission has licensed any marijuana testing facilities or, if such facilities have been licensed, before such facilities are capable of performing any required tests in a timely manner;

(3) require a customer to provide a marijuana retailer with identifying information other than identification to determine the customer's age and shall not require the marijuana retailer to acquire or record personal information about customers other than information typically required in a retail transaction;

(4) prohibit a medical marijuana treatment center and an experienced marijuana establishment operator from operating a medical marijuana treatment center and a marijuana establishment at a shared location;

(5) prohibit marijuana establishments from transferring or acquiring marijuana seeds, clones, cuttings, plants or plant tissue from other marijuana establishments or from medical marijuana treatment centers or prohibit a marijuana establishment from transferring or otherwise selling marijuana to a marijuana retailer, a marijuana product manufacturer or a marijuana cultivator; or

(6) prohibit marijuana establishments from using inorganic cultivation methods.

(d) The commission shall administer the laws and regulations relating to licensing in this chapter.

(e) The commission may suspend or revoke the license of a licensee under regulations made pursuant to this chapter upon written notice of a violation and, if applicable, an opportunity to cure any violation within 30 days of such notice. All licensees shall be entitled to an adjudicatory hearing pursuant to chapter 30A of the General Laws prior to suspension of a license for longer than 5 days or the revocation of a license.

## QUESTION 4: Law Proposed by Initiative Petition

### FULL TEXT OF QUESTION (continued)

(f) The commission shall enforce the laws and regulations relating to the cultivation, processing, manufacture, delivery, storage, sale and testing of marijuana and marijuana products by marijuana establishments. The commission shall conduct investigations of compliance with this chapter and shall perform regular inspections of marijuana establishments and the books and records of marijuana establishments as necessary to enforce this chapter. The commission shall cooperate with appropriate state and local organizations to provide training to law enforcement officers of the commonwealth and its political subdivisions.

(g) The commission shall hold a public hearing before the adoption, amendment or repeal of any regulation. Adjudicatory proceedings shall be conducted pursuant to chapter 30A of the General Laws and to standard rules of adjudicatory procedure established pursuant to section 9 of chapter 30A of the General Laws.

(h) The commission shall annually publish a full report of its action during each year containing a comprehensive description of its activities and including the number of licenses of each class issued, actions taken pursuant to clause (4) of subsection (a) of this section and a statement of revenue and expenses of the commission.

(i) The commission shall annually review the tax rate established by chapter 64N of the General Laws and may make recommendations to the General Court as appropriate regarding changes to the tax rate that further the intent of this act. The commission may study marijuana commerce and make recommendations to the General Court regarding changes in the laws of the commonwealth that further the intent of this act by filing those recommendations with the clerk of the house and senate who shall forward the recommendations to the joint committee on consumer protection and professional licensure, the joint committee on revenue and any other committee deemed appropriate by the commission.

(j) The commission shall deposit all license, registration and monetary penalties collected pursuant to this chapter in the Marijuana Regulation Fund established by section 15 of this chapter.

(k) The commission and the department of public health shall work collaboratively to ensure that the production and distribution of marijuana is effectively regulated in the commonwealth in furtherance of the intent of this act.

### Section 5. Licensing of marijuana establishments

(a) Upon receipt of a complete marijuana establishment license application and the application fee,

the commission shall forward a copy of the application to the city or town in which the marijuana establishment is to be located, determine whether the applicant and the premises qualify for the license and has complied with this chapter and shall, within 90 days:

(1) issue the appropriate license; or

(2) send to the applicant a notice of rejection setting forth specific reasons why the commission did not approve the license application.

(b) Except as provided in subsection (c) of this section, the commission shall approve a marijuana establishment license application and issue a license if:

(1) the prospective marijuana establishment has submitted an application in compliance with regulations made by the commission, the applicant satisfies the requirements established by the commission, the applicant is in compliance with this chapter and the regulations made by the commission and the applicant has paid the required fee;

(2) the commission is not notified by the city or town in which the proposed marijuana establishment will be located that the proposed marijuana establishment is not in compliance with an ordinance or by-law consistent with section 3 of this chapter and in effect at the time of application;

(3) the property where the proposed marijuana establishment is to be located, at the time the license application is received by the commission, is not located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a city or town adopts an ordinance or by-law that reduces the distance requirement; and

(4) an individual who will be a controlling person of the proposed marijuana establishment has not been convicted of a felony or convicted of an offense in another state that would be a felony in the commonwealth, except a prior conviction solely for a marijuana offense or solely for a violation of section 34 of chapter 94C of the General Laws, unless the offense involved distribution of a controlled substance, including marijuana, to a minor.

(c) If a city or town limits the number of marijuana establishments that may be licensed in the city or town pursuant to clause (2) of subsection (a) of section 3 of this chapter and that limit prevents the commission from issuing a license to all applicants who meet the requirements of subsection (b) of this section:

(1) until January 1, 2018, the commission shall issue licenses first to applicants with the most experience operating medical marijuana treatment centers and then by



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### FULL TEXT OF QUESTION (continued)

lottery among qualified applicants; or

(2) on and after January 1, 2018, the commission shall issue licenses by lottery among qualified applicants.

The lottery shall also designate the priority order of unselected applicants in the event that a license becomes available within a year.

#### Section 6. Expiration and renewal

(a) License term. Unless the commission authorizes the renewal of a license for a longer period, all licenses under this chapter shall be effective for 1 year from the date of issuance.

(b) Renewal. The commission shall issue a renewal license within 30 days of receipt of a renewal application and renewal license fee from a marijuana establishment to licensees in good standing and who have filed any tax returns required pursuant to chapter 64N of the General Laws.

#### Section 7. Personal use of marijuana

(a) Notwithstanding any other general or special law to the contrary, except as otherwise provided in this chapter, a person 21 years of age or older shall not be arrested, prosecuted, penalized, sanctioned or disqualified under the laws of the commonwealth in any manner, or denied any right or privilege and shall not be subject to seizure or forfeiture of assets for:

(1) possessing, using, purchasing, processing or manufacturing 1 ounce or less of marijuana, except that not more than 5 grams of marijuana may be in the form of marijuana concentrate;

(2) within the person's primary residence, possessing up to 10 ounces of marijuana and any marijuana produced by marijuana plants cultivated on the premises and possessing, cultivating or processing not more than 6 marijuana plants for personal use so long as not more than 12 plants are cultivated on the premises at once;

(3) assisting another person who is 21 years of age or older in any of the acts described in this section; or

(4) giving away or otherwise transferring without remuneration up to 1 ounce of marijuana, except that not more than 5 grams of marijuana may be in the form of marijuana concentrate, to a person 21 years of age or older, as long as the transfer is not advertised or promoted to the public.

(b) Notwithstanding any other general or special law to the contrary, except as otherwise provided in this chapter, if the import or export of marijuana to or from the

commonwealth is not prohibited by federal law, a person 21 years of age or older shall not be arrested, prosecuted, penalized, sanctioned or disqualified under the laws of the commonwealth in any manner, or denied any right or privilege and shall not be subject to seizure or forfeiture of assets for possessing, using, purchasing, cultivating, processing or manufacturing any amount of marijuana or marijuana products for personal use.

(c) Notwithstanding any other general or special law to the contrary, except as otherwise provided in this chapter, a person shall not be arrested, prosecuted, penalized, sanctioned or otherwise denied any benefit and shall not be subject to seizure or forfeiture of assets for allowing property the person owns, occupies or manages to be used for any of the activities conducted lawfully under this chapter or for enrolling or employing a person who engages in marijuana-related activities lawfully under this chapter.

(d) Absent clear, convincing and articulable evidence that the person's actions related to marijuana have created an unreasonable danger to the safety of a minor child, neither the presence of cannabinoid components or metabolites in a person's bodily fluids nor conduct permitted under this chapter related to the possession, consumption, transfer, cultivation, manufacture or sale of marijuana, marijuana products or marijuana accessories by a person charged with the well-being of a child shall form the sole or primary basis for substantiation, service plans, removal or termination or for denial of custody, visitation or any other parental right or responsibility.

(e) The use of marijuana shall not disqualify a person from any needed medical procedure or treatment, including organ and tissue transplants.

(f) Notwithstanding any general or special law to the contrary, except as otherwise provided in this chapter, a person 21 years of age or older shall not be arrested, prosecuted, penalized, sanctioned or disqualified and is not subject to seizure or forfeiture of assets for possessing, producing, processing, manufacturing, purchasing, obtaining, selling or otherwise transferring or delivering hemp.

(g) For the purposes of this section, "marijuana concentrate" shall mean the resin extracted from any part of the plant of the genus *Cannabis* and every compound, manufacture, salt, derivative, mixture or preparation of that resin but shall not include the weight of any other ingredient combined with marijuana to prepare marijuana products.

#### Section 8. Marijuana accessories authorized

Notwithstanding any general or special law to the contrary,

## QUESTION 4: Law Proposed by Initiative Petition

### FULL TEXT OF QUESTION (continued)

except as otherwise provided in this chapter, a person 21 years of age or older shall not be arrested, prosecuted, penalized, sanctioned or disqualified and shall not be subject to seizure or forfeiture of assets for possessing, purchasing or otherwise obtaining or manufacturing marijuana accessories or for selling or otherwise transferring marijuana accessories to a person who is 21 years of age or older.

#### Section 9. Lawful operation of marijuana establishments

(a) Notwithstanding any general or special law to the contrary, except as otherwise provided in this chapter, the following people involved in the distribution of marijuana as authorized by this chapter shall not be arrested, prosecuted, penalized, sanctioned or disqualified and shall not be subject to seizure or forfeiture of assets for activities specified for:

(1) a marijuana retailer or an owner, operator, employee or other agent acting on behalf of a marijuana retailer possessing or testing marijuana or marijuana products; purchasing, selling or otherwise transferring or delivering marijuana or marijuana products to or from a marijuana establishment; or selling or otherwise transferring or delivering marijuana or marijuana products to a consumer;

(2) a marijuana cultivator or an owner, operator, employee or other agent acting on behalf of a marijuana cultivator cultivating, propagating, breeding, harvesting, processing, packaging, testing, storing or possessing marijuana or marijuana products, or selling or otherwise transferring, purchasing or delivering marijuana and marijuana products to or from a marijuana establishment;

(3) a marijuana product manufacturer or an owner, operator, employee or other agent acting on behalf of a marijuana product manufacturer packaging, processing, manufacturing, storing, testing or possessing marijuana or marijuana products, or delivering, selling or otherwise transferring and purchasing marijuana or marijuana products to or from a marijuana establishment; or

(4) a marijuana testing facility or an owner, operator, employee or other agent acting on behalf of a marijuana testing facility possessing, processing, storing, transferring or testing marijuana or marijuana products.

(b) Notwithstanding any general or special law to the contrary, except as otherwise provided in this chapter, a person acting in the person's capacity as an owner, employee or other agent of a marijuana retailer who transfers marijuana or marijuana accessories to a person under 21 years of age shall not be subject to arrest or prosecution, penalty, sanction or disqualification, or seizure

or forfeiture of assets, if the person reasonably verified that the recipient appeared to be 21 years of age or older by means of government-issued photographic identification containing a date of birth.

#### Section 10. Contracts pertaining to marijuana enforceable

It is the public policy of the commonwealth that contracts related to the operation of marijuana establishments under this chapter shall be enforceable. A contract entered into by a licensee or its agents as permitted pursuant to a valid license issued by the commission, or by those who allow property to be used by a licensee or its agents as permitted pursuant to a valid license issued by the commission, shall not be unenforceable or void exclusively because the actions or conduct permitted pursuant to the license is prohibited by federal law.

#### Section 11. Provision of professional services

A person engaged in a profession or occupation subject to licensure shall not be subject to disciplinary action by a professional licensing board solely for providing professional services to prospective or licensed marijuana establishments related to activity under this chapter that is not subject to criminal penalty under the laws of the commonwealth.

#### Section 12. General marijuana establishment operation

(a) In addition to requirements established by regulation pursuant to section 4 of this chapter or by a city or town pursuant to section 3 of this chapter, a marijuana establishment shall:

(1) secure every entrance to the establishment so that access to areas containing marijuana is restricted to employees and others permitted by the marijuana establishment to access the area and to agents of the commission or state and local law enforcement officers and emergency personnel; and

(2) secure its inventory and equipment during and after operating hours to deter and prevent theft of marijuana, marijuana products and marijuana accessories.

(b) No marijuana establishment may cultivate, process, test, store or manufacture marijuana or marijuana products at any location other than at a physical address approved by the commission and within an area that is enclosed and secured in a manner that prevents access by persons not permitted by the marijuana establishment to access the area. A greenhouse or outdoor marijuana cultivation area shall have sufficient security measures to demonstrate that outdoor areas are not readily accessible by unauthorized individuals, including perimeter security fencing designed to prevent unauthorized entry.



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(c) No marijuana establishment shall allow cultivation, processing, manufacture, sale or display of marijuana or marijuana products to be visible from a public place without the use of binoculars, aircraft or other optical aids.

(d) No marijuana establishment shall refuse representatives of the commission the right at any time of operation to inspect the entire licensed premises or to audit the books and records of the marijuana establishment.

(e) No marijuana establishment shall allow any person under 21 years of age to volunteer or work for the marijuana establishment.

(f) No marijuana establishment shall cultivate, manufacture, sell or otherwise transact business with any products containing cannabinoids other than those that were produced, distributed and taxed in compliance with this chapter.

### Section 13. Penalties

(a) Restrictions on personal cultivation. No person shall cultivate or process marijuana plants pursuant to section 7 of this chapter if the plants are visible from a public place without the use of binoculars, aircraft or other optical aids or cultivate or process marijuana plants outside of an area that is equipped with a lock or other security device. A person who violates this subsection shall be punished by a civil penalty of not more than \$300 and forfeiture of the marijuana, but shall not be subject to any other form of criminal or civil punishment or disqualification solely for this conduct.

(b) Restrictions on personal possession. No person shall possess more than 1 ounce of marijuana or marijuana products within the person's place of residence pursuant to section 7 of this chapter unless the marijuana and marijuana products are secured by a lock. A person who violates this subsection shall be punished by a civil penalty of not more than \$100 and forfeiture of the marijuana.

(c) Restrictions on public consumption of marijuana. No person shall consume marijuana in a public place or smoke marijuana where smoking tobacco is prohibited. A person who violates this subsection shall be punished by a civil penalty of not more than \$100. This subsection shall not apply to a person who consumes marijuana or marijuana products in a designated area of a marijuana establishment located in a city or town that has voted to allow consumption on the premises where sold and shall not be construed to limit the medical use of marijuana.

(d) Possession of marijuana in motor vehicles. No person shall, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access

as invitees or licensees, possess an open container of marijuana or marijuana products in the passenger area of any motor vehicle. A person who violates this subsection shall be punished by a civil penalty of not more than \$500. For purposes of this section, "open container" shall mean that the package containing marijuana or marijuana products has its seal broken or from which the contents have been partially removed or consumed and "passenger area" shall mean the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or passenger while in a seated position; provided however that the passenger area shall not include a motor vehicle's trunk, locked glove compartment or the living quarters of a house coach or house trailer, or if a motor vehicle is not equipped with a trunk, the area behind the last upright seat or an area not normally occupied by the driver or passenger.

(e) Possession or cultivation of excess marijuana. Notwithstanding chapter 94C of the General Laws and until the import or export of marijuana to or from the commonwealth is not prohibited by federal law, a person who is at least 21 years of age and who cultivates more than 6 but not more than 12 marijuana plants or who possesses an amount of marijuana outside of his or her place of residence having a weight of more than 1 ounce but not more than 2 ounces shall be subject only to a civil penalty of not more than \$100 and forfeiture of the marijuana not allowed by section 7 of this chapter, but shall not be subject to any other form of criminal or civil punishment or disqualification solely for this conduct.

(f) Procurement of marijuana by a person under 21 years of age. A person under 21 years of age, except a qualifying patient holding a valid registration card for the medical use of marijuana, who purchases or attempts to purchase marijuana, marijuana products or marijuana accessories, or makes arrangements with any person to purchase or in any way procure marijuana, marijuana products or marijuana accessories, or who willfully misrepresents such person's age, or in any way alters, defaces or otherwise falsifies identification offered as proof of age, with the intent of purchasing marijuana, marijuana products or marijuana accessories, shall be punished by a civil penalty of not more than \$100 and shall complete a drug awareness program established pursuant to section 32M of chapter 94C of the General Laws. The parents or legal guardian of any offender under the age of 18 shall be notified in accordance with section 32N of chapter 94C of the General Laws and the failure within 1 year of the offense of such an offender to complete a drug awareness program may be a basis for delinquency proceedings for persons under the age of 17 at the time of the person's

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### FULL TEXT OF QUESTION (continued)

offense.

(g) Enforcement. Civil penalties imposed pursuant to this section shall be enforced by utilizing the non-criminal disposition procedures provided in section 32N of chapter 94C of the General Laws.

#### Section 14. Marijuana Regulation Fund

(a) There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Marijuana Regulation Fund. It shall, subject to appropriation, consist of all monies received on account of the commonwealth as a result of applications for and licensing of marijuana establishments, all civil penalties received for violations of this chapter, revenue generated by the state tax imposed by section 2 of chapter 64N of the General Laws and interest earned or other income on balances in the fund.

(b) Subject to appropriation, the fund shall be expended first for the implementation, administration and enforcement of this chapter by the commission and by the cities and towns that authorize the operation of marijuana establishments within their jurisdictions. Subject to appropriation, at the end of a fiscal year, unexpended balances may be redeposited in the General Fund after all necessary funds are expended for the implementation, administration and enforcement of this chapter.

SECTION 6. Notwithstanding any general or special law to the contrary, if the cannabis control commission fails to adopt regulations necessary for the implementation of this chapter on or before January 1, 2018, each medical marijuana treatment center may begin to possess, cultivate, process, manufacture, package, purchase or otherwise obtain and test marijuana and marijuana products and may deliver, sell or otherwise transfer marijuana to any person who is at least 21 years of age until the commission adopts the regulations necessary for implementation of this chapter and begins to issue licenses to operate marijuana establishments pursuant to section 5 of this chapter.

SECTION 7. The state treasurer shall make the initial appointments to the cannabis control commission under section 76 of chapter 10 of the General Laws by March 1, 2017. The initial appointments shall include 1 member who shall serve an initial term of 2 years.

SECTION 8. The governor shall make the initial

appointments to the cannabis advisory board under section 77 of chapter 10 of the General Laws by February 1, 2017. Seven of the initial appointees, as determined by the governor, shall serve for a term of 1 year.

The cannabis advisory board shall meet not less frequently than quarterly until January 1, 2020.

SECTION 9. The cannabis control commission shall promulgate the initial regulations under section 4 of chapter 94G of the General Laws not later than September 15, 2017.

SECTION 10. The commission shall begin accepting applications:

(a) for marijuana testing facility licenses, by October 1, 2017;

(b) from each experienced marijuana establishment operator for 1 marijuana cultivator license, 1 marijuana product manufacturer license and 1 marijuana retailer license, by October 1, 2017;

(c) if fewer than 75 provisional registrations to operate medical marijuana treatment centers have been issued on October 1, 2017, from all applicants for marijuana retailer, marijuana product manufacturer and marijuana cultivator licenses, on and after January 1, 2018;

(d) from all applicants for marijuana retailer licenses or for marijuana product manufacturer licenses, on and after October 1, 2018; and

(e) from all applicants for marijuana cultivator licenses, on and after October 1, 2019.

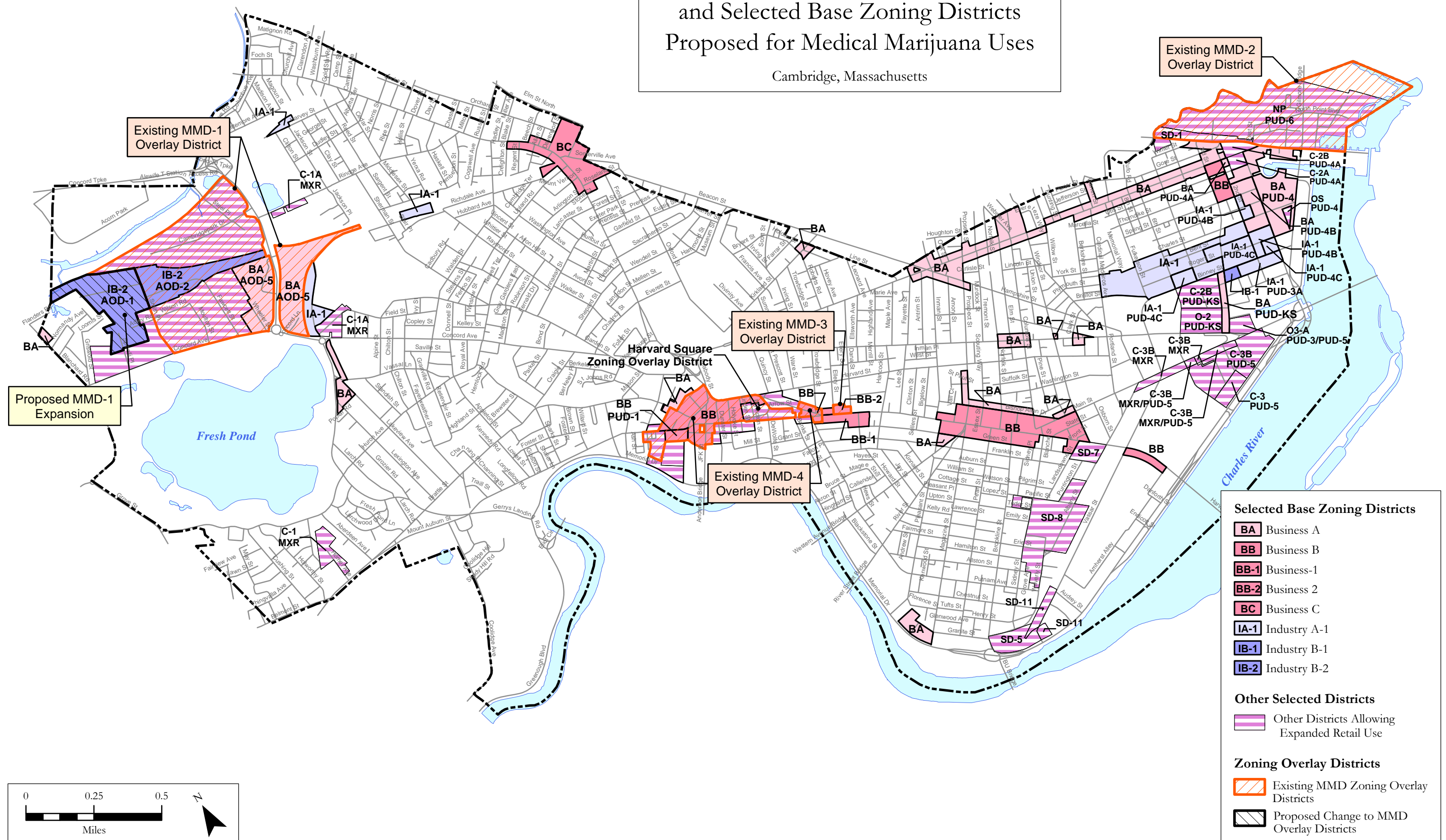
SECTION 11. If the commission accepts applications pursuant to subsection (c) of section 10 of this act, it shall license no more than 75 marijuana retailers, 75 marijuana product manufacturers and 75 marijuana cultivators until additional applications are accepted pursuant to subsection (d) or subsection (e) of section 10 of this act. If this section prevents the commission from issuing licenses to all applicants who meet the requirements of this act, the commission shall issue licenses first to qualified applicants who submitted applications for registrations to operate medical marijuana treatment centers to the department of public health by October 1, 2015 and then by lottery among qualified applicants.

SECTION 12. This act shall take effect on December 15, 2016.



# Medical Marijuana Overlay Districts and Selected Base Zoning Districts Proposed for Medical Marijuana Uses

Cambridge, Massachusetts





Cambridge, Massachusetts

