



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: December 20, 2016
Re: **Medical Marijuana Zoning Petition**

Update

The Planning Board opened a hearing on this zoning petition on November 1, 2016, and immediately continued the hearing to a future date, in order to contemplate the outcome of the question on the 2016 election ballot regarding the retail sale of marijuana for non-medical use. *Refer to CDD Memo dated October 25, 2016 for background information prepared by staff.*

The Ordinance Committee also held a hearing on this petition on November 9, 2016, just after the outcome of the election was known. While much was (and is) still unclear about the future implementation of the non-medical marijuana initiative, the committee held a thorough discussion and raised the following general questions regarding both medical and non-medical marijuana establishments.

- How many medical marijuana dispensaries are needed to serve Cambridge?
- How should dispensaries be distributed to avoid “clustering” issues that might affect the character of an area?
- Which of the proposed areas might not be as appropriate for dispensary locations due to their existing character?
- How will the zoning for medical marijuana affect the future establishment of non-medical marijuana retailers?
- How many non-medical marijuana retailers might be expected in Cambridge?
- What should be the local review process in the future for both medical marijuana dispensaries and medical marijuana retailers? (It was noted that the Planning Board already has a substantial caseload.)

The following pages provide supplemental information to the original CDD memo addressing these specific questions. Also attached is a helpful advisory from the Massachusetts Municipal Lawyers Association regarding “The Regulation and Taxation of Marijuana Act” (the recently approved ballot initiative).

It should also be noted that an interdepartmental working group will be formed starting in January to begin considering local approaches to permitting and regulating non-medical marijuana retail establishments, including through zoning.

How many medical marijuana dispensaries are needed to serve Cambridge?

When the Massachusetts medical marijuana law was first adopted, it provided for initial registration of up to 35 dispensaries statewide, with no more than 5 per county. The dispensaries would be distributed geographically, so each dispensary would be expected to serve multiple communities. The population of registered patients was estimated to be about 0.5% of the total population. Deducing from those figures, there would be about one dispensary for every 1,000 patients.

If those initial assumptions were applied to Cambridge, only one dispensary would be needed to serve the city's expected patient population. However, since the initial passage of the law, the registration process has changed to remove the "cap" on the total number of dispensaries and to take into account which communities are supportive of hosting dispensaries. Also, some have questioned the expected patient population, suggesting that it could be as much as 2% of the total population. As a result, there is some rationale for siting more than one dispensary within Cambridge, both because there might be a larger patient demand from within the immediate area, and because more dispensaries may be needed in Cambridge to serve patients in communities that do not have other dispensaries nearby. Still, given that dispensaries only serve a limited set of registered patients, the number of dispensaries that are supportable within Cambridge and the immediate area is not expected to be that many.

In Cambridge, there are currently three medical marijuana dispensaries in the permitting pipeline: Sage Cannabis, at 1001 Massachusetts Avenue (MMD-3 district), has received a special permit and is in construction; CAS Foundation, Inc. at 110 Fawcett Street (MMD-1 district), is under review before the Planning Board; and Healthy Pharms, Inc. at 98 Winthrop Street (MMD-4 district), is in the pre-application phase prior to appearing before the Planning Board. All three in areas that would be allowed under the proposed zoning. There are also several medical marijuana dispensaries being considered within Somerville and other surrounding communities.

How should dispensaries be distributed to avoid "clustering" issues that might affect the character of an area?

One of the concerns raised at the Ordinance Committee hearing is whether there might be a negative impact to "clustering" of medical marijuana dispensaries in one area. One specific concern was that having multiple dispensaries in one district might affect the character of other uses within that district. This concern also relates to the provision in the recently approved non-medical marijuana law that could favor locating commercial marijuana retailers in areas where medical marijuana dispensaries have already been registered (see below).

The proposed zoning, in the section on "Applicability," reads, "No Registered Marijuana Dispensaries shall be allowed within 1,500 square feet of another Registered Marijuana Dispensary." It is presumed that this intended to prohibit dispensaries from locating within 1,500 linear feet of each other. The approach of requiring separation would be one way to protect against a "clustering" effect.

To provide context, the stretch of Massachusetts Avenue within the Central Square Business B (BB) zoning district is approximately 3,000 feet long (the longest Business B district in the city, measured end-to-end). In theory, a required 1,500-foot separation could allow up to three dispensaries, with one

immediately in the center and one at each end. However, given other constraints limiting the availability of dispensary sites (such as buffers from schools), it is much more likely that this provision would limit the possibility to no more than one or two dispensaries in Central Square or other districts of a similar size. If there was a desire to specifically limit dispensaries to only one within any given district, that approach could also be considered as an alternative.

Any limitation on the distance between dispensaries, on the number of dispensaries within a particular district, or similar measure should be included in the “Requirements” section of the zoning. Otherwise, if the City wishes to allow for some case-by-case discretion, it could be included in the criteria for granting a special permit.

Which of the proposed areas might not be as appropriate for dispensary locations due to their existing character?

Members of the Ordinance Committee noted that the original petition focused on the named base districts (Business A, Business B, Business B-1, Business B-2, Business C, Industry A-1, Industry B-1 and Industry B-2) and did not necessarily intend include all districts whose zoning made reference to the uses allowed in those districts (see attached map, also included in the previous CDD memo). Committee members also noted that some areas may not be as desirable for medical marijuana dispensaries given the more residential character of the districts.

If the intent is to include only higher-intensity commercial districts, then a suggestion would be to exclude Business A and Industry A-1 from the above list, since those are more widespread throughout the city and tend to have a more mixed-use residential character. That would leave the following districts:

- Business B, Business B-1, Business B-2, Business C
- Industry B-1 and Industry B-2

These include areas with a stronger commercial character such as Porter Square, Harvard Square, Central Square, part (but not all) of the Alewife Quadrangle, some short segments of Massachusetts Avenue, and small parts of Kendall Square.

Districts that are outside of these base zoning districts, but refer to the use regulations of the Business B district, include the following:

- North Point
- PUD-KS (Volpe site)
- SD-5 (near Central Square)
- SD-7 and SD-11 (Cambridgeport near the B.U. Bridge)

These are also fairly high-intensity districts with a commercial character, and might be as appropriate to allow approval of marijuana dispensaries as in other areas zoned Business B. Additionally, the North Point area is currently zoned to allow approval of medical marijuana dispensaries.

Other districts that allow any use listed in Section 4.35 by special permit include the following:

- The remainder of the Alewife Overlay Districts that are currently part of the MMD-1 overlay (the “Triangle” area along Cambridgepark Drive and the “Shopping Center” area along Fresh Pond Parkway)
- PUD-1 district (Kendall Square)
- PUD-4, PUD-4A, PUD-4B, PUD-4C and PUD-5 districts (East Cambridge and Kendall Square)
- Harvard Square Overlay District (which includes some areas not zoned Business B)

Of these, it may be worth considering whether dispensaries should continue to be allowed in the Alewife Overlay Districts (with the possible exception of those areas zoned Office 1, which contain more residential use), where they are currently allowed by special permit.

Another issue to consider is whether only retail medical marijuana dispensaries would be anticipated. The definition of an “RMD” (registered marijuana dispensary) could include cultivation and processing facilities, though so far there has only been interest in establishing retail dispensaries in Cambridge. Given that such activities would not generally be allowed in districts zoned “Business,” it may be sensible to only allow cultivation and processing in the “Industry” subset of the allowed districts.

How will the zoning for medical marijuana affect the future establishment of non-medical marijuana retailers?

As discussed in the previous memo, the opinion from the City Solicitor’s office, and the attached advisory from the Massachusetts Municipal Lawyers Association, the new non-medical marijuana law is separate from the existing medical marijuana law, and the current medical marijuana program is expected to continue under the oversight the Massachusetts Department of Public Health. However, there are a few key provisions in the new non-medical marijuana law that relate to medical marijuana dispensaries.

- Section 5 of the Act, creating new G.L.c.94G, Section 3, Paragraph (a)(1): “... 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.”

Though some aspects of this provision require clarification, it would seem to suggest that if a medical marijuana dispensary is established and registered in a particular district, the zoning could not prohibit non-medical marijuana retail uses in that same district (and comparably, if a medical marijuana processing facility is established, zoning could not prohibit processing of marijuana for non-medical use). So far, it is not clear how other provisions of the zoning might apply, such as required special permit approval or buffer distances from other marijuana establishments or other uses.

- Section 6 of the Act: “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.”

The law elsewhere provides that “experienced marijuana establishment operators,” which include RMDs, would have the first opportunity to apply for licenses to sell retail marijuana products in October, 2017. There are some outstanding questions regarding this aspect of the law, such as how it would affect local permits that have been issued specifically for medical marijuana dispensaries, and how it would impact current laws and regulations requiring, for instance, that RMDs must be not-for-profit organizations and may only serve registered patients.

Another provision that relates the non-medical and medical marijuana permitting processes is described in response to the question below.

How many non-medical marijuana retailers might be expected in Cambridge?

The new law provides that a city or town may establish requirements for non-medical marijuana retailing, cultivating and processing facilities, but a requirement resulting in any of the following restrictions would require “a vote of the voters of that city or town” (Section 5 of the Act, creating new G.L.c.94G, Section 3, Paragraph (a)(2)):

- (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.

As noted above, an interdepartmental working group will be looking more closely at options for zoning and other local regulations for non-medical marijuana establishments over the coming months. However, this seems to suggest that, except by a vote of the voters, any “cap” could not be less than the number of medical marijuana dispensaries, which could be as many as three, or possibly more, in Cambridge by 2017. Such a cap could also not be less than one-fifth of the number of package store licenses except by a vote of the voters. According to the License Commission, this number is 40 under the existing liquor license cap (however, more analysis may be needed to determine if this is the precise number for applying the provisions of (ii) above), resulting in a potential minimum cap of eight non-medical marijuana establishments. Any lower cap would need to be approved by voters.

What should be the local review process in the future for both medical marijuana dispensaries and medical marijuana retailers? (It was noted that the Planning Board already has a substantial caseload.)

Initially, the rationale for making the Planning Board the review authority for medical marijuana dispensaries was that these were new uses for which the potential impacts on the city are not well understood – particularly related to transportation and urban design, issues typically under the purview

of the Planning Board. As the impacts become better known, it may be desirable to establish objective requirements in place of the Planning Board review criteria, and to proceed by allowing or disallowing such use based on the applicable zoning district and conformance with a clear set of standards. Another approach would be to make the dispensaries conditional uses subject to special permit approval by the Board of Zoning Appeal (BZA), which typically reviews other conditional uses such as fast order food establishments and commercial recreation facilities.

Some of the potential urban design impacts of medical marijuana dispensaries have been identified through the Planning Board's recent case review. The primary concern is that the security requirements imposed by state regulations allow for no visual access to the dispensary, therefore having a potentially negative effect on a streetscape. This approach has been addressed, conceptually, by limiting the allowed frontage on major retail streets, and requiring most of the dispensary's floor space to be above or below the ground floor, or set back behind another active use. It could be possible to incorporate those provisions as requirements in zoning rather than part of the Planning Board's review. Signage and lighting are also potential concerns that could be addressed through required standards (as there are already citywide standards for all signage).

Transportation and parking impacts will not be as well known until dispensaries are actually operating. Thus far, the transportation analyses submitted with special permit applications have acknowledged that little is known about the impacts of this use type, but anticipates the impacts would not be substantially different from those of other small retail or office uses. Special permit approvals have allowed for either no off-street parking (which is typical for small retail establishments) or a modest amount, but have required traffic demand mitigation measures and a monitoring program to learn more about what the impacts might be. In the future, it may be possible to establish required parking and bicycle parking ratios as for other retail or small office uses (which could be reduced in some cases, as-of-right or by special permit from the BZA), as well as requiring other specific mitigation measures that would not require discretionary review and approval.

It has not been decided whether the Planning Board would also conduct special permit review of non-medical marijuana establishments, though that will be a topic of future discussion. If there are significantly more applications for non-medical marijuana retailers than for medical marijuana dispensaries, it may be worthwhile to have review and permitting conducted by another agency such as the BZA (if it is subject to conditional zoning) or other departments or commissions, depending on the desired scope and purpose of the review. However, the same concerns regarding transportation and urban design may still apply to non-medical marijuana retailers, and very little will be known about what the potential concerns might be until statewide regulations are created.



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**“THE REGULATION AND TAXATION OF MARIJUANA ACT”:
What Municipalities Need to Know
AN INFORMATIONAL MEMO FROM THE
MASSACHUSETTS MUNICIPAL LAWYERS ASSOCIATION**

The “Regulation and Taxation of Marijuana Act” (“Act”), which was approved by the voters at the November 2016 state election, adds several new provisions to existing statutes and enacts new statutes, related to the licensing and taxation of marijuana production and sales. (Although this has been popularly referred to as allowing “recreational” use of marijuana, the term “recreational” is not used in the Act.)

The Act adds a new **Chapter 94G** to the General Laws, entitled “Regulation of the Use and Distribution of Marijuana Not Medically Prescribed.” The following summarizes the key provisions of Chapter 94G that particularly affect the extent of municipal authority to regulate the siting and operation of **marijuana establishments (“MEs”)** that will produce and sell marijuana products, as well as the possession and use of marijuana in public buildings and places, use by municipal employees, and the personal use and cultivation of marijuana.

When Do Provisions of the Act Take Effect?

Unless the Legislature changes the dates, the Act legalizes (with restrictions) the personal use and cultivation of marijuana, as of December 15, 2016. The licensing process for MEs is scheduled to begin on October 1, 2017. To prepare for the implementation of the Act, municipalities need to understand, and respond to, several provisions of the Act, especially those that affect:

- **Zoning Bylaws and Ordinances**
- **Local Excise Taxes**
- **Regulation of Marijuana Use in Public Spaces and by Municipal Employees**

What Agency Will Issue Licenses to ME’s?

Unlike the licensing of alcohol sales, licenses for MEs will be issued by a state agency, not by municipalities. The Act establishes a Cannabis Control Commission (“CCC”), to be appointed by the State Treasurer, which will largely control the licensing of MEs other than

medical marijuana treatment centers (“MMTCs”). MMTCs will remain under the control of the Department of Public Health.

May Municipalities Regulate the Operation of MEs?

Under Section 3 of Chapter 94G, municipalities may adopt ordinances/bylaws for MEs that impose “reasonable safeguards” on the time, place, and manner of operation of an ME, as long as the requirements are not “unreasonably impracticable,” and not in conflict with Chapter 94G or CCC regulations. An “unreasonably impracticable” requirement is one that subjects an ME licensee 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” an ME.

May Municipal Zoning Ordinances and Bylaws Regulate or Prohibit MEs?

A zoning ordinance or bylaw may limit the location of MEs. However, such an ordinance/bylaw may not prohibit an ME “in any area in which a MMTC is registered to engage in the same type of activity.”

Further, an ordinance/bylaw that limits the number of MEs in the municipality requires a “vote of the voters” if the ordinance/bylaw would:

- (a) Prohibit one or more types of MEs;
- (b) Limit the number of marijuana retailers to fewer than 20% of the number of licenses issued in the municipality for the retail sale of alcoholic beverages; or,
- (c) Limit the number of MEs to fewer than the number of registered MMTCs registered to engage in the same type of activity in the municipality.

It is unclear what procedure is to be followed to implement the requirement for a “vote of the voters” or, indeed, whether that requirement for the adoption of an ordinance/bylaw is consistent with other statutes that apply to municipalities.

Section 3 also provides for a municipal referendum, to be held at a biennial state election, on whether to allow or prohibit the consumption of marijuana products on the premises where they are sold. If there is a majority vote not to allow such businesses, the municipality “shall be taken to have not authorized” such consumption.

What Effect Will Local Zoning Provisions Have on State Licensing of MEs?

Under Chapter 94G, when the CCC receives an ME license application, it may not issue the license if the municipality in which the ME is to be located informs the CCC that the ME is not in compliance with an ordinance/bylaw that (i) is in effect at the time of the application, and (ii) that complies with the provisions of Chapter 94G.

Since Chapter 94G directs the CCC to begin accepting ME applications by October 1, 2017, municipalities should have ordinances/bylaws that control ME locations (and that comply with the limitations discussed above) in effect before that date, in order to have an effect on CCC licensing.

What Other Controls May Municipalities Impose on Marijuana Production and Sales?

Under Chapter 94G, municipalities will have authority to:

- Restrict the licensed cultivation, processing and manufacturing of marijuana that is a public nuisance.
- Establish reasonable restrictions on public signs related to marijuana establishments.
- Establish civil penalties for ordinance/by-law violations.

Municipalities may not prohibit the transportation of marijuana or marijuana products, or impose requirements that make such transportation “unreasonably impracticable.”

May Municipalities Impose Excise Taxes and Fees on MEs?

Under the Act, municipalities, as a local option, may impose a local excise tax of up to 2% on the sales of marijuana and marijuana products (other than medical marijuana). (The Act also imposes a state excise tax of 3.75%.) The Act does not specify the procedure for adopting the local excise tax. Presumably this would require action by the municipal legislative body (i.e., town meeting or the town/city council).

Chapter 94G provides that municipalities may have agreements with MEs for the payment of a fee to the municipality, but the fee must be “directly proportional and reasonably related to the costs imposed” on the municipality by the operation of the ME. It is not clear whether this provision would affect “host community agreements” that have already been executed with MMTCs.

How Might Chapter 94G Affect Municipal Authorization of MMTCs?

Although MMTCs are not directly affected by Chapter 94G, municipalities should be aware that the licensing of MMTCs in the municipality will affect municipal regulation of MEs.

As noted above, under Chapter 94G, a zoning ordinance/bylaw may not prohibit an ME “in any area in which an MMTC is registered to engage in the same type of activity.” Therefore, approval of an MMTC may limit the future regulation of ME’s within the same “area.” (While ambiguous, this term might be interpreted to mean the zoning district where the MMTC is allowed).

Further, Chapter 94G directs the CCC to give licensing priority to MMTCs that wish to establish a related ME. If a municipality wishes to ensure that an MMTC (or a for-profit affiliate) does not undertake the sale or production of non-medical marijuana, this should be the subject of a contractual agreement between the municipality and the MMTC.

May Municipalities Regulate Marijuana Use in Public Places and by Municipal Employees?

Under Chapter 94G, a municipality may:

- Regulate or prohibit possession or consumption in a public building.
- Prohibit smoking in public places or where tobacco smoking is otherwise prohibited.
- Enforce municipal workplace policies restricting consumption of marijuana by municipal employees.

Section 2(d) of Chapter 94G provides that the possession or consumption of marijuana may be prohibited or otherwise regulated “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.” However, a provision of the same section that applies to all property states 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.” Therefore, the effect of the Act on the use of non-smoking marijuana products in public housing may need to be clarified.

How Does Chapter 94G Affect the Personal Use and Cultivation of Marijuana Products?

Municipal officials should be aware of the following provisions of Chapter 94G that affect personal possession and use.

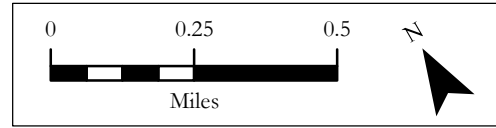
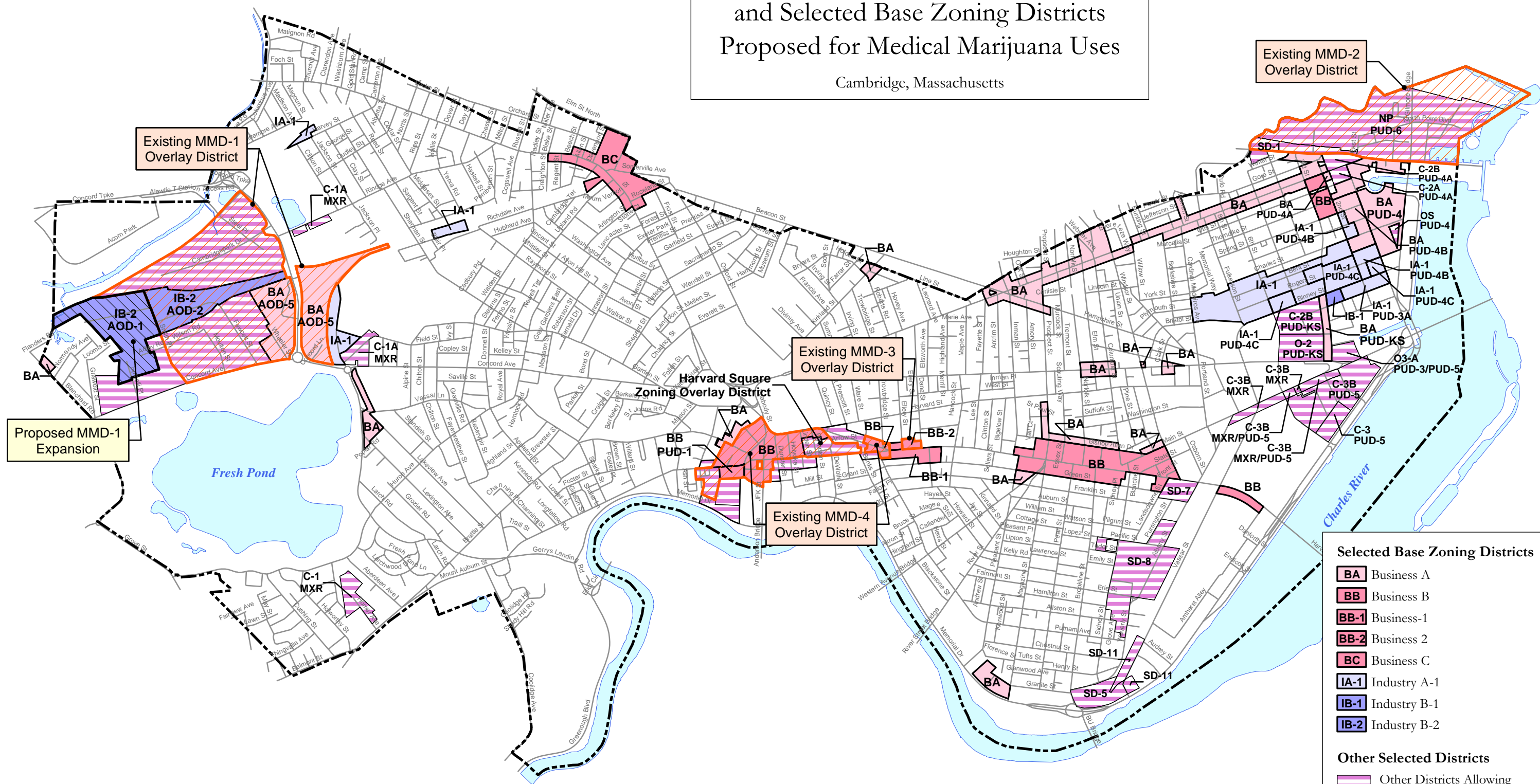
Chapter 94G allows the possession, use, purchasing, processing, and manufacturing of one ounce or less of marijuana. Within his or her “primary residence,” a person may possess up to ten ounces of marijuana, and may possess, cultivate, or process not more than 6 plants for personal use, “so long as not more than 12 plants are cultivated on the premises at once”.

Chapter 94G does not affect existing penalties for operating a motor vehicle while impaired by marijuana use. Further, the statute does not permit either the transfer of marijuana products to a person under 21 years of age or the possession, use, or sale of marijuana by such persons.

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

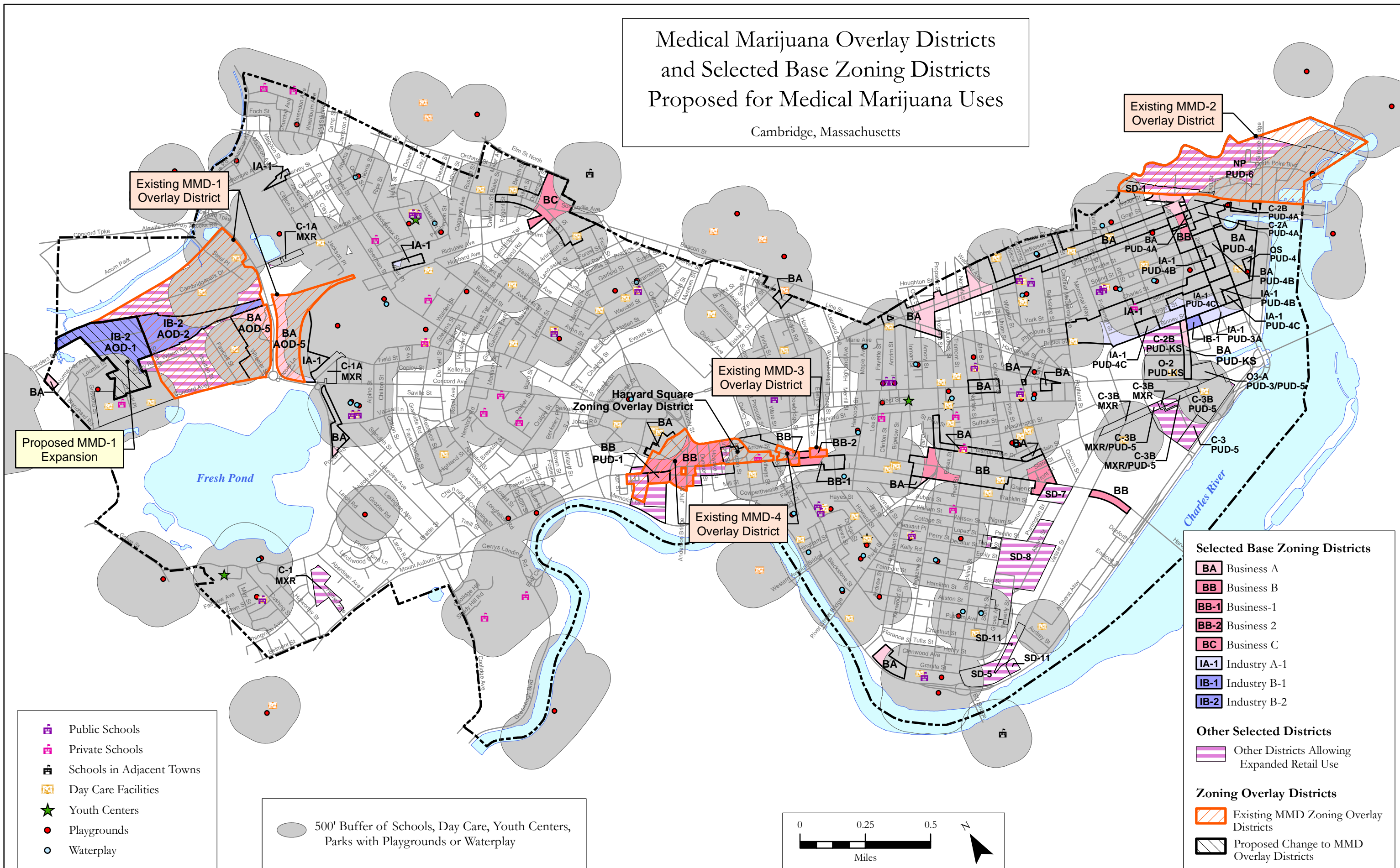
Cambridge, Massachusetts



- Selected Base Zoning Districts**
- BA Business A
 - BB Business B
 - BB-1 Business-1
 - BB-2 Business 2
 - BC Business C
 - IA-1 Industry A-1
 - IB-1 Industry B-1
 - IB-2 Industry B-2
- Other Selected Districts**
- Other Districts Allowing Expanded Retail Use
- Zoning Overlay Districts**
- Existing MMD Zoning Overlay Districts
 - Proposed Change to MMD Overlay Districts

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

Cambridge, Massachusetts



Existing MMD-1
Overlay District

Existing MMD-2
Overlay District

Existing MMD-3
Overlay District

Existing MMD-4
Overlay District

Proposed MMD-1
Expansion

Harvard Square
Zoning Overlay District

Selected Base Zoning Districts

- BA Business A
- BB Business B
- BB-1 Business-1
- BB-2 Business 2
- BC Business C
- IA-1 Industry A-1
- IB-1 Industry B-1
- IB-2 Industry B-2

Other Selected Districts

- Other Districts Allowing Expanded Retail Use

Zoning Overlay Districts

- Existing MMD Zoning Overlay Districts
- Proposed Change to MMD Overlay Districts

- Public Schools
- Private Schools
- Schools in Adjacent Towns
- Day Care Facilities
- Youth Centers
- Playgrounds
- Waterplay

500' Buffer of Schools, Day Care, Youth Centers, Parks with Playgrounds or Waterplay

