

Portland, Maine



Yes. Life's good here.

**CITY COUNCIL WORKSHOP
CITY HALL
389 CONGRESS STREET
CITY COUNCIL CHAMBERS**

DATE: January 7, 2019

TIME: 4:00 PM

AGENDA ITEMS:

1. Marijuana Zoning

Division 1. Generally

...

Sec. 14-47, Definitions

Marijuana cultivation facility. A cultivation facility required to be licensed pursuant to 22 M.R.S. § 201 or any other facility engaged primarily in the business of planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana, including mature marijuana plants, immature marijuana plants, seedlings and marijuana seeds, for use or sale.

Marijuana manufacturing facility. A manufacturing facility required to be licensed pursuant to 22 M.R.S. § 2423-F or 28-B M.R.S. § 201.

Marijuana product. As defined by 22 M.R.S.A. §2422 or 28-B M.R.S.A., §102.

Marijuana retail store. A retail establishment licensed to sell marijuana, marijuana products, immature marijuana plants and seedlings to adult use or medical marijuana customers. A marijuana retail store is only authorized as a principal use, and is not permitted as an accessory use. Accessory sales of incidental accessories are permitted, but no food or beverage that is not a marijuana product may be sold on the premises. A marijuana retail store may not exceed a maximum gross floor area of 2,000 square feet.

Marijuana testing facility. A facility licensed to develop, research and test marijuana, marijuana products and other substances as defined by 22 M.R.S.A. §2422 or 28-B M.R.S.A., §102.

~~Registered medical marijuana cultivation facility:~~ “~~Registered medical marijuana cultivation facility~~” means a facility registered under 22 M.R.S.A. §2428 that cultivates and manufactures marijuana or related supplies for a “registered medical marijuana dispensary” under common management and operating under the same state and local license(s).

~~Registered medical marijuana dispensary:~~ “~~Registered medical marijuana dispensary~~” or “~~dispensary~~” means a not for profit entity registered under 22 M.R.S.A. section 2428 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to registered patients who have designated the dispensary to cultivate marijuana for their medical use, and the registered primary caregivers of those patients.

Plant Canopy. As defined by 28-B M.R.S.A., §102.

Small-scale marijuana caregiver. A registered caregiver who sells or dispenses marijuana to no more than five individual registered patients in any one calendar month; does not process or manufacture marijuana using chemicals or solvents; who cultivates no more than 1) 250 square feet of plant canopy where located in a single-family dwelling or commercial space; or 2) 125 square feet of plant canopy where located in a dwelling unit within a two-family or multi-family building.

Registered dispensary. A registered medical marijuana dispensary as defined by 22 M.R.S.A. §2422.

Registered patient. As defined by 22 M.R.S.A. §2422.

...

Division 10. B-2, B-2b and B-2c Community Business Zones

Date of Draft: December 13, 2018

...

Sec. 14-182. Use Table

....

Group ¹	Use	B-2 ²	B-2b	B-2c
B	<u>Marijuana retail store</u>	Y	C	C
B	Registered <u>dispensary</u> medical marijuana dispensaries	Y	C	C
<u>B</u>	<u>Small-scale marijuana caregiver</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>

...

Division 12. B-3, B-3b and B-3c Downtown Business Zones

Sec. 14-217. Permitted uses

(a) The following uses are permitted in the B-3, B-3b and B-3c zones:

...

2. Business:

...

r. Registered dispensary ~~medical marijuana dispensaries~~.

s. Marijuana retail store

t. Small-scale marijuana caregiver

...

Division 12.5. B-4 Commercial Corridor Zone

...

Sec. 14-229.11. Permitted uses.

The following uses are permitted in the B-4 zone:

(a) Business:

27. Registered medical Marijuana cultivation facilities (maximum 7,000 square feet of plant canopy)

24. Marijuana manufacturing facility

25. Marijuana testing facility

26. Marijuana retail store

27. Registered dispensary

28. Small-scale marijuana caregiver

...

Division 13. I-L and I-Lb Industrial Zones

...

Sec. 14-232. Permitted uses

Draft Medical and Adult Use Zoning Text Amendment

Date of Draft: December 13, 2018

The following uses are permitted whether provided by private or public entities in the ~~I-L low impact industrial~~ zone and the I-Lb zone:

...

- (r) ~~Registered medical Marijuana cultivation facilities~~ (maximum 2,000 square feet of plant canopy).

...

- (x) Marijuana manufacturing facility

- (y) Marijuana testing facility

...

Division 14. I-M, I-Ma and I-Mb Industrial Zones

...

Sec. 14-247. Permitted uses

The following uses are permitted whether provided by private or public entities in the I-M moderate impact industrial zone, the I-Ma and the I-Mb zone:

...

- (v) ~~Registered medical Marijuana cultivation facilities~~ (maximum 7,000 square feet of plant canopy).

...

- (z) Marijuana manufacturing facility

- (z+) Marijuana testing facility

...

Division 17. B-7 Mixed Development District Zone

...

Sec. 14-295. Permitted uses

The following uses are permitted in the B-7 zone:

- (a) Commercial:

...

- 22. ~~Registered medical marijuana dispensaries~~ dispensary

...

- 27. Marijuana retail store

- 28. Small-scale marijuana caregiver

...

Division 15. I-H and I-Hb Industrial Zones

Sec. 14-262. Permitted uses

Draft Medical and Adult Use Zoning Text Amendment

Date of Draft: December 13, 2018

The following uses are permitted whether provided by private or public entities in the ~~high impact industrial I-H~~ zone and the I-Hb zone:

- (t) ~~Registered medical Marijuana cultivation facilities~~ (maximum 7,000 square feet of plant canopy)

...

(x) Marijuana manufacturing facility

(y) Marijuana testing facility

...

Division 24. Use Regulations and Exceptions

Sec. 14-401. Generally

The requirements of this article shall be subject to the use regulations and exceptions of this division.

...

Sec. 14-410. Home occupation.

Purpose. The purpose of home occupations is to allow the secondary and incidental use of a residence for the conduct of appropriate occupations whose external activity levels and impacts are so limited as to be compatible with the residential character of the neighborhood.

- (a) In connection with the operation of a home occupation, within a dwelling unit, the following requirements shall be met:
1. A home occupation shall not occupy more than five hundred (500) square feet of floor area or more than twenty-five (25) percent of the total floor area of such a dwelling unit, whichever is less, or in the case of licensed family day care homes, or home babysitting services, to accommodate not more than six (6) children plus two (2) children after school and having no nonresidential employees;
 2. There shall be no outside storage of goods and materials nor shall there be exterior displays, or display of goods visible from the outside;
 3. Storage of materials related to the home occupation shall count as a part of the occupancy limitations in subsection (a)1 above, but shall not constitute a dominant part of such occupancy provided, however, storage of such materials or products in garages or other accessory structures is prohibited;
 4. Exterior signs shall be limited to one (1) nonilluminated sign not exceeding a total area of two (2) square feet, affixed to the building and not projecting more than one (1) foot beyond the building;
 5. Any exterior alterations to the residence shall be compatible with the architecture of the building and maintain the residential appearance by virtue of exterior materials, lighting, and signs;
 6. *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article;
 7. The home occupation shall not produce offensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare or other objectionable effects;

Date of Draft: November 20, 2018

8. There shall be no more than one (1) nonresident employed in the home occupation, provided, however, family day care or home babysitting services shall have no nonresident employees;
 9. No traffic shall be generated by the home occupation in greater volumes than would normally be expected in a residential neighborhood;
 10. No motor vehicle exceeding a gross vehicle weight of six thousand (6,000) pounds shall be stored on the property in connection with the home occupation.
- (b) No residence shall be occupied, altered or used for any home occupation except the following:
1. Accountants and auditors;
 2. Answering services (telephone);
 3. Architects;
 4. Artists and sculptors;
 5. Authors and composers;
 6. Computer programming;
 7. Custodial services;
 8. Custom furniture repair and upholstery;
 9. Dentists, doctors, therapists, and health care practitioners;
 10. Direct mail services;
 11. Dressmakers, seamstresses and tailors;
 12. Engineers;
 13. Family planning services;
 14. Hairdressers (limited to no more than two (2) hair dryers);
 15. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, weaving, ceramics;
 16. Interior decorators;
 17. Lawyers, justices of the peace and notary publics;
 18. Licensed family day care home or babysitting services;
 19. Musicians or music teachers, including group instruction not to exceed six (6) students at any time but not including performances or band rehearsals, which shall meet the following requirements in addition to those set forth in subsection (a) of this section:
 - a. Electronic amplification is prohibited;
 - b. The applicant shall demonstrate that noise attenuation is provided which minimizes perception of sound at property lines at all times during the use. Noise attenuation measures may include, but are not limited to, insulation, double-pane windows, air conditioners or any combination of these or similar noise attenuation measures;
 - c. Hours of operation shall be limited to 8:30 a.m. to 9:30 p.m.
 20. Office facility of a minister, rabbi, or priest;
 21. Photographic studios;
 22. Professional counseling and consulting services;
 23. Professional research services;
 24. Sales persons provided that no retail or wholesale transactions are made on the premises;
 25. Small appliance repair;
 26. Snow plowing provided that only one (1) snow plow vehicle is stored on or generated from the site;
 27. Special tutoring or instruction (not to exceed three (3) pupils at any given time);

Date of Draft: November 20, 2018

28. Stenographic and other clerical services.
 29. Small-scale marijuana caregiver, except that no more than one small-scale caregiver may operate out of any one dwelling unit.
- (c) A home occupation that is not listed in paragraph (b) of this section but is similar to and no more objectionable than those home occupations listed in that paragraph, shall be permitted as a conditional use subject to the requirements of paragraph (a) of this section and section 14-474 (conditional use) of this article. This provision shall not include veterinarians, kennels, animal raising, funeral homes, retail uses including antique shops, restaurants, dancing studios, towing services, repair and painting of automobiles as home occupations.

Sec. 14-411. Marijuana Use Regulations

The following standards apply to the following marijuana-related uses: Marijuana cultivation facilities, Marijuana manufacturing facilities, Marijuana product, Marijuana retail store, Marijuana testing facility, Small-scale marijuana caregiver and Registered dispensaries. Marijuana-related uses shall comply with all other applicable local and state requirements in addition to the standards below.

(a) Location Criteria

1. Neither a marijuana cultivation facility, a marijuana manufacturing facility, a marijuana testing facility, a small-scale marijuana caregiver, a marijuana store or a registered dispensary may be located within 500 feet of a preexisting public school, private school, or a public preschool program, as defined by 20-A M.R.S.A. §1. Distance shall be measured from nearest property line of the respective marijuana-related use and the property line of the lot containing the public school, private school, or public preschool program.
2. Neither a marijuana cultivation facility, a marijuana manufacturing facility, or a marijuana testing facility may be located within 200 feet of the following residential zones: R-1, R-2, R-3, R-4, R-5, R-5A, R-6, R-6A, or R-7. Distance shall be measured from nearest property line of the respective marijuana-related use and the nearest applicable residential zone boundary.

(b) Supplemental Standards

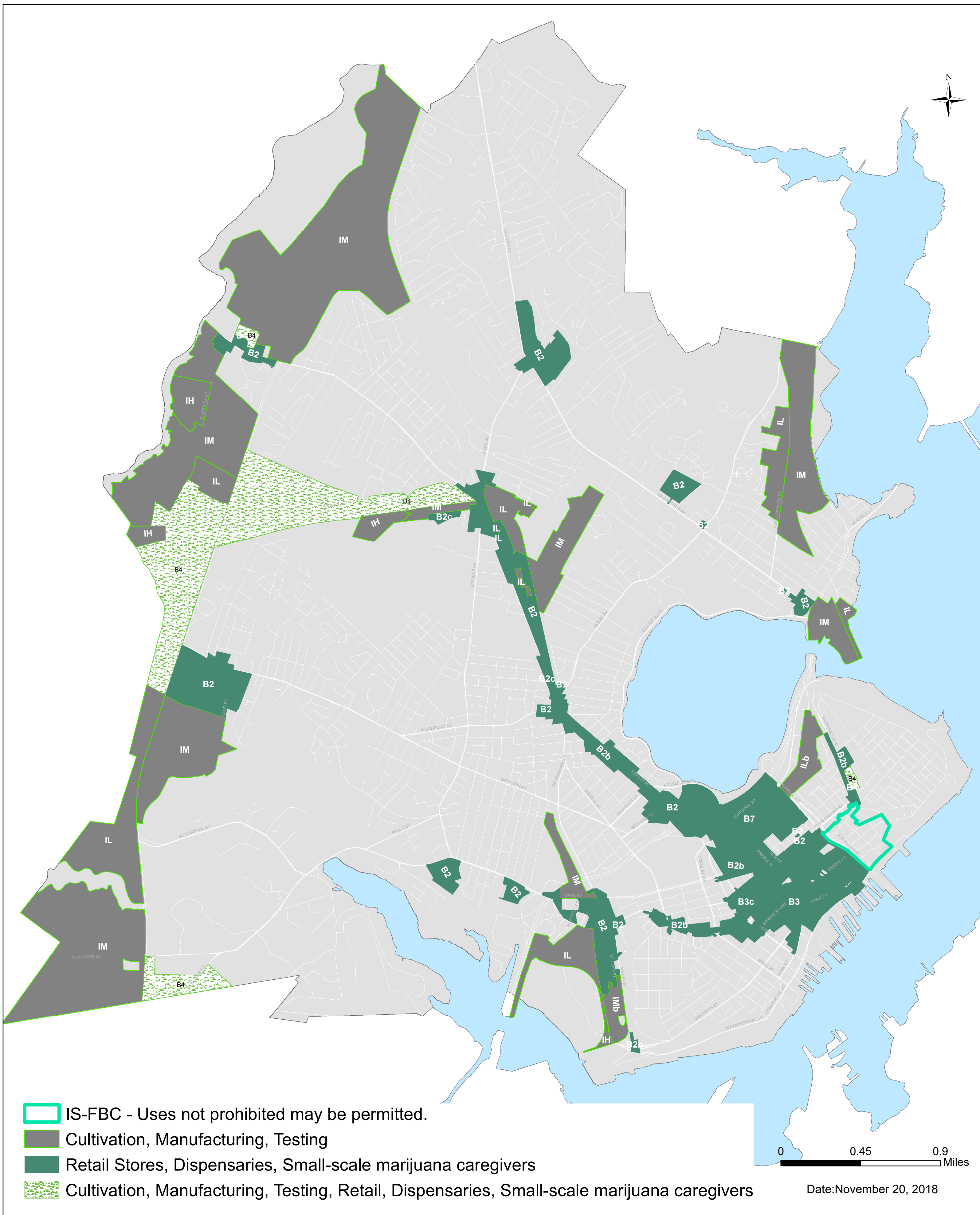
1. Marijuana-related uses may only be permitted within a fully enclosed building.
2. No outside storage of marijuana, marijuana products, or related supplies is permitted.
3. No drive-through service is permitted for marijuana-related uses.
4. No marijuana or marijuana product shall be smoked, eaten or otherwise consumed or ingested on the premises where sold.
5. An operating plan for marijuana cultivation facilities and marijuana manufacturing facilities shall be provided that at a minimum addresses the following:
 - a. wastewater;
 - b. disposal of waste;
 - c. security at the premises;
6. A ventilation plan shall be included for marijuana cultivation facilities, marijuana manufacturing facilities, and small-scale marijuana caregivers that provides for adequate ventilation so as to prevent pesticides, insecticides or other chemicals used in the cultivation or processing of marijuana or marijuana related products from being dispersed or released outside the premises. The plan shall further provide for resulting smoke, vapor, fumes, gases

- and particulate matter from marijuana or its processing or cultivation to be effectively confined to the premises.
7. Marijuana-related uses shall provide odor control measures so that odor generated on site is mitigated at the property line of the lot containing the marijuana-related use. Applications must demonstrate appropriate measures, such as carbon filtration, ventilation and exhaust systems, facility plans or other additional practices adequate to mitigate odors for the scale of operations for the uses proposed.

Sec. ~~14-411~~ 14-412. – Sec. 14-420. Reserved.

DRAFT

Areas Proposed for Marijuana-Related Uses





PLANNING BOARD REPORT PORTLAND, MAINE

Medical and Adult Use Zoning Text Amendments

Submitted to: Chair Dundon and Members of the Planning Board Public Hearing Date: November 27, 2018	Prepared by: Christine Grimando, Senior Planner Date: November 21, 2018
---	--

I. Introduction

The State of Maine recently legalized adult use (recreational) marijuana and made significant changes to the Medical Use of Marijuana Act, both of which have land use implications. In response to these changes are enclosed zoning amendments for both medical and adult use marijuana. The draft amendment (Attachment 1) includes proposed new uses, locations, dimensional standards as well as supplemental use standards. Zoning districts impacted by the text amendment include the B-2, B-2b, B-2c, B-3, B-3c, B-7, B-4, I-H, I-L, I-Lb, I-M and I-Mb. Provisions for small-scale marijuana caregivers as home occupations would also regulate activities within residences.

In addition to being responsive to changes in state law, the proposed amendments strive to balance both the needs and wishes of a burgeoning new sector of the local economy with reasonable limits on location, size, and performance standards. The zoning amendments serve to significantly update the City's medical marijuana standards and provide a unified zoning framework for both medical and adult use marijuana.

An overview of existing regulations, the proposed amendments, as well as revisions since the November 13th workshop, follows.

II. BACKGROUND

Portland has had regulations in place for medical marijuana since 2010. It's a simple framework, consisting of defined uses and zones where those uses are permitted or conditionally permitted. The two definitions are *Registered medical marijuana dispensary* and *Registered medical marijuana cultivation facility*:

Registered medical marijuana dispensary: "Registered medical marijuana dispensary" or "dispensary" means a not-for-profit entity registered under 22 M.R.S.A. section 2428 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to registered patients who have designated the dispensary to cultivate marijuana for their medical use, and the registered primary caregivers of those patients.

Registered medical marijuana cultivation facility: "Registered medical marijuana cultivation facility" means a facility registered under 22 M.R.S.A. section 2428 that cultivates and manufactures marijuana or related supplies for a "registered medical marijuana dispensary" under common management and operating under the same state and local license(s).

These two existing uses are currently permitted in the following zones (in Table I and associated map):

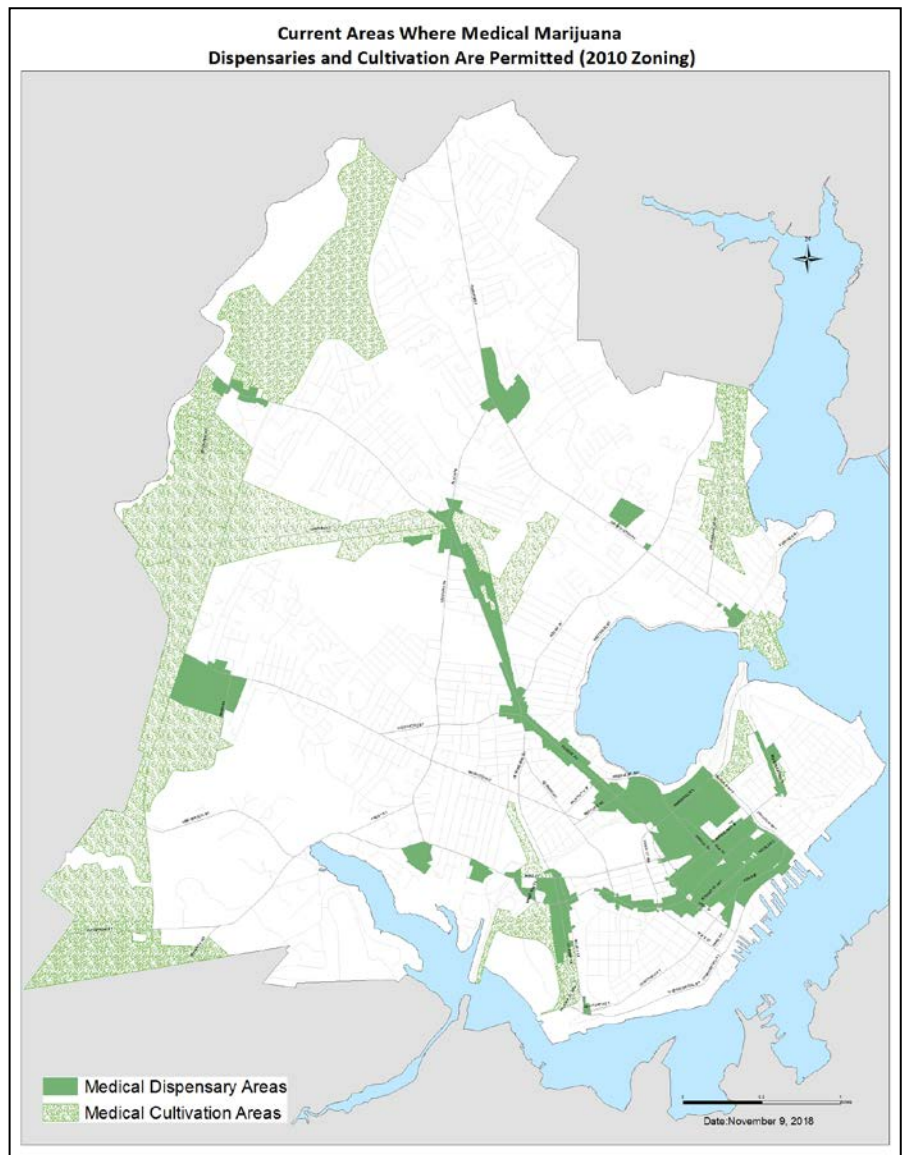
Table 1, Existing medical marijuana uses/zones

Use	Zones Permitted
Registered medical marijuana dispensaries	B2, B2b (conditional use), B2c (conditional use), B3, B3c, B7
Registered medical marijuana cultivation facilities	B4, IH, IL, ILb, IM, IMb

There have been changes to State law since 2010 that necessitate changes both to Maine medical marijuana law and to address the legalization of adult use (recreational) marijuana. In October 2018, the Council adopted a moratorium on new caregiver medical marijuana retail stores, manufacturing facilities, testing facilities, and grow facilities (see Attachment 4 for a summary of state marijuana law and considerations that informed the moratorium and Attachment 5 for the adopted moratorium) to provide time for the City to develop appropriate standards. The goal is to have a zoning framework in place by expiration by the time of the moratorium's expiration on December 13th.

III. PROCESS

Planning staff has participated in an internal working group to consider the multi-disciplinary implications of local regulation of both adult use and medical marijuana, including, life safety, code enforcement, permitting, licensing, and zoning. There has also been a council workshop and a public hearing on the moratorium, which included a discussion on the overall approach to zoning amendments. Staff has also met with various individuals within the medical and adult use



Map of areas permitting existing medical marijuana uses (2010 zoning)

marijuana industry, including representatives of dispensaries, caregivers, testing facilities, cultivation and manufacturing.

In addition to developing a zoning framework, the City is developing a licensing framework, the ultimate timing and final substance of which is contingent on state rulemaking. Recreational marijuana will not become effective until the State and City pass a comprehensive licensing scheme. Implementing adult use marijuana zoning prior to licensing allows the City create a land use framework for adult use marijuana that will be effective as soon as licensing is implemented and that will provide clarity and guidance for those planning to pursue adult use marijuana-related businesses.

The Planning Board held a workshop on this item on November 13th. Feedback was received during public comment at the workshop that included concerns about prohibition of accessory uses to retail, visibility of business activities, and regulation of deliveries.

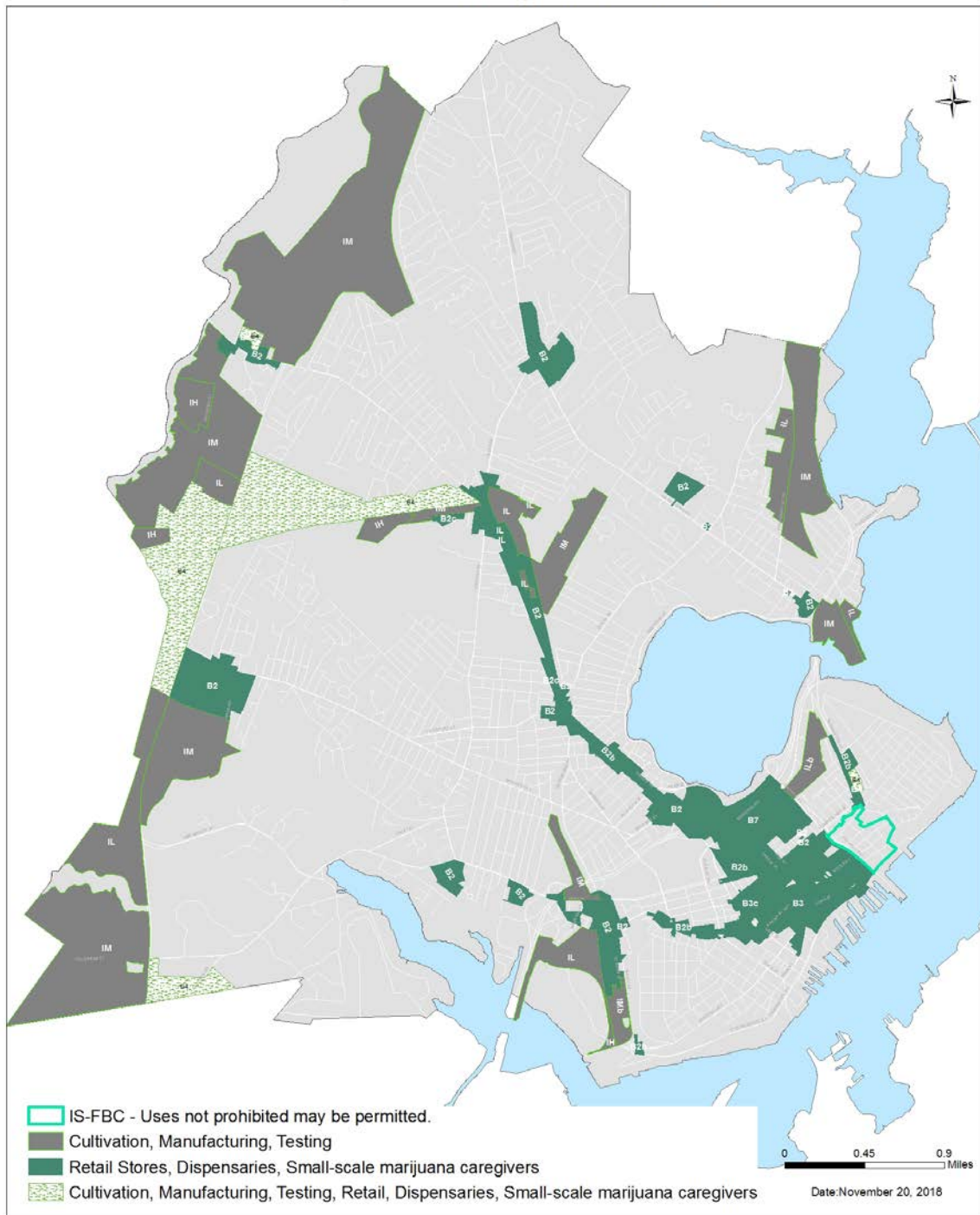
IV. PROPOSED AMENDMENTS

Our recommended approach for implementation of adult use and expanded medical marijuana zoning is to build off of the existing geographic framework for dispensaries and cultivation, adding new definitions and use categories to supplement the existing two marijuana-related definitions in the Land Use Code. These include *Marijuana*, *Marijuana Cultivation*, *Testing Facility*, *Marijuana Manufacturing Facility*, *Marijuana Retail Store*, *Registered Patient* and *Small-scale marijuana caregiver*. Added since November 13th is a definition of *Plant Canopy*. Retail stores are proposed where dispensaries are currently permitted, and testing, cultivation and manufacturing are proposed for the same zones as the current use of *Registered medical marijuana cultivation facility*, which currently encompasses manufacturing as well as cultivation. One change of permitted uses by zone, following discussion at the November workshop, is to allow marijuana retail stores and registered dispensaries in the B-4 zone. Another is to allow small-scale marijuana caregivers in commercial spaces in multiple B zones, in addition to allowing them as home occupations. Though not a change to the zoning text, the IS-FBC permits uses not prohibited, and so could potentially accommodate marijuana-related uses if they are able to meet the form and related requirements of the zone. The uses proposed as part of the current text amendment are proposed for the following zones:

Table 2, Proposed marijuana uses by zone:

Use	Zones Permitted
Marijuana cultivation facility	B4, IH, IL, ILb, IM, IMb
Marijuana manufacturing facility	B4, IH, IL, ILb, IM, IMb
Marijuana retail store	B2, B2b (conditional use), B2c (conditional use), B3, B3c, B4, B7
Marijuana testing facility	B4, IH, IL, ILb, IM, IMb
Registered dispensary	B2, B2b (conditional use), B2c (conditional use), B3, B3c, B4, B7
Small-scale marijuana caregiver	B2, B2b, B2c, B3, B3c, B4, B7, and as Home Occupation

Areas Proposed for Marijuana-Related Uses



Map of proposed marijuana uses by zone

Though the existing medical marijuana zoning forms the geographic framework for where new uses would be permitted, recommendations for new zoning regulations include new size caps for certain uses, such as a maximum retail store size and maximum plant canopy areas for cultivation facilities to reflect the intended intensities of the

respective industrial zones. Recommendations are included for regulating small scale caregivers as home occupations and as low impact commercial uses, a use previously regulated under State law but only recently something municipalities have the ability to regulate.

The draft zoning amendment does not distinguish between adult use and medical marijuana where the uses converge, creating unified performance standards and scale limits as much as possible – medical retail and adult use retail, for instance, though they may have different licensing requirements, are anticipated to have similar needs from a land use policy perspective, and warrant similar consideration of size limits and performance standards. Similarly, medical and adult use cultivation, manufacturing, and testing warrant similar treatment.

V. AMENDMENT UPDATES

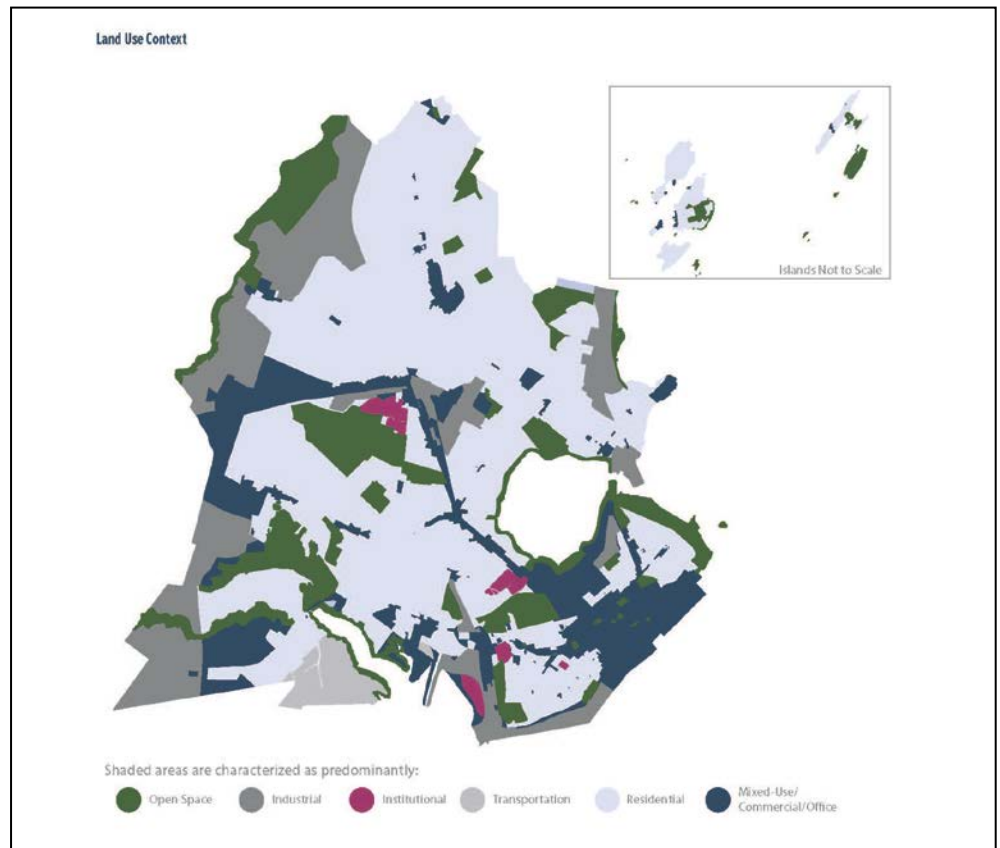
A number of revisions have been made to the ordinance amendment since the November 13th workshop, based on Planning Board feedback, public comment, and continued staff discussion. The Planning Board workshop discussion focused on location criteria, accessory uses in retail stores and performance standards such as odor, hours, and deliveries.

- Retail store and dispensary has been added to the B-4 zone. As a business zone that also allows for a number of industrial uses, it is the sole zone that is proposed to allow manufacturing, cultivation, testing, as well as retail and accessory uses.
- Small-scale marijuana caregivers have been added as permitted uses to the B2, B2b, B2c, B3, B3c, B4, B7 zones. Clarifying language about the time period for the five patient maximum and the sharing of common facilities have been added, as well.
- Size limits:
 1. A size cap of 2,000 square feet has been added to the definition of retail store.
 2. A maximum 2,000 square feet of plant canopy for cultivation has been added to the I-L/I-Lb zone.
 3. A maximum 7,000 square feet of plant canopy for cultivation has been added to the B4, IH, IM, IMb I-M, I-H, and B-4 zones. Canopy caps limit mature plant growing area, but do not limit related activities within a cultivation facility, such as office and storage areas ancillary to the cultivation.
 4. Small-scale marijuana caregiver maximum cultivation areas have been changed from a total maximum plant limit to maximum plant canopy areas of 250 square feet for single family homes or a commercial space, and 125 square feet for dwelling units in two-family or multi-family buildings. The intent of this change is to allow small-scale caregivers many possible areas to operate, while insuring the scale is limited in its impact.
- Accessory Uses in retail stores. The pervious iteration of the definition of retail store prohibited all sales accessory to marijuana sales, but following the November 13th workshop this was amended to allow sales of incidental accessories but not food or beverages.
- Supplemental Use regulations:
 1. Small-scale marijuana caregiver has been added to the marijuana-related uses with a distance requirement from schools.
 2. Retail stores and dispensaries have been are not subject to the distance requirement from residential zones.
 3. Prohibition on visibility of marijuana-related activities is not included.
 4. Prohibition on deliveries is not included.
 5. Additional odor control language has been added.

6. Hours of operation limits are not included.
7. The requirement for a security plan is not included.

In regard to hours of operation, delivery restrictions, and security requirements, these are items that can be considered as the City develops local licensing requirements, but that aren't best addressed in the Land Use Code. In considering which of these items to not include in the zoning text amendment, but instead pass along for potential inclusion in licensing requirements, staff has evaluated what activities, standards, and land use impacts are best addressed by zoning and other, related tools of the Land Use Code (such as site plan review, where applicable), and these have to do with physical form, scale, intensity of uses, and location.

- Home occupations. The previous memo indicated that small-scale marijuana caregivers, proposed as a home occupation, would be permitted in the R-zones. The City's Land Use Code specifies home occupations as permitted uses in the residential zones (and is mentioned as an accessory use in the I-B). Section 14-404 of the code indicates that home occupations are considered accessory uses, which would make them permitted accessory uses in residences city-wide, regardless of zone. No change has been made to the home occupations section included in the draft to indicate this, but this serves to clarify the geographic implications of where home occupations may occur.



Land Use Context from Portland's Plan 2030

VI. COMPREHENSIVE PLAN POLICIES

Marijuana isn't addressed specifically in [Portland's Plan 2030](#), but the plan is encouraging to new areas of economic growth. The plan's vision supports *creating a resilient economy through innovation, investment, and commitment to diversity* (p.6). The Economy Policy Guide *supports creating economic prosperity by growing Portland's tax and employment base and promoting an economic climate that increases job opportunities and overall economic well-*

being (p.43). Future Land Use reinforces the continued importance of City's industrial and mixed-use areas (p.81, see inset).

VII. NEXT STEPS

Following Planning Board recommendations on the enclosed text amendments, the recommendations will be forwarded to the City Council for consideration.

VIII. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of the information contained in the Planning Report and testimony presented at the Public Hearing, the Board finds:

The proposed Zoning text amendments to Division 1, Sec. 14-47, Definitions; Division 10, B-2, B-2b and B-2c Community Business Zones; Division 12, B-3, B-3b, B-3c Downtown Business Zones; Division 12.5, B-4 Commercial Corridor Zone; Division 13, I-L and I-Lb Industrial Zones; Division 14, I-M, I-ma and I-Mb Zones; Division 17, B-7 Mixed Development District Zone; Division 15, I-H and I-Hb Industrial Zones; Division 24, Use Regulations and Exceptions **[is or is not]** in conformance with the City of Portland's Comprehensive Plan and therefore **[recommends or does not recommend]** approval of the amendments to the City Council.

IX. ATTACHMENTS

1. Zoning Text Amendments 11-21-2018
2. Map of areas currently permitting medical marijuana uses (2010 Zoning)
3. Map of areas proposed for marijuana-related uses
4. Background Memo from Corporation Counsel
5. Adopted Moratorium