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AMESBURY CITY CLERK

SPONSORED BY:

[Handwritten Signature]

C. Kenneth Gray, Mayor

BILL No. 2017-008

An Ordinance to Amend Section XI.01.1 of the Amesbury Zoning Bylaw.

Summary: This ordinance seeks to amend the Medical Marijuana Overlay District to provide for the safe off-site delivery of marijuana to Qualifying Patients who may lack adequate access to transportation.

Be it Ordered by the City Council of the City of Amesbury assembled, and by the authority of the same as follows:

That Section XI.01.1 of the Amesbury Zoning Bylaw is hereby amended by deleting the following language from the definition of "Cultivation Site" within subsection 3.01:

"or make off-site deliveries to registered Qualifying Patients as defined in 105 CMR 725 or their Personal Caregivers from this site."

MEDICAL MARIJUANA DISTRICTS - ZONING MAP AMENDMENTS

Section XI.01.1 MEDICAL MARIJUANA OVERLAY DISTRICT

1.01 Purpose: The purpose of the Medical Marijuana Overlay District is to provide for the limited establishment of Registered Marijuana Dispensaries in as much:

- a) As they are authorized pursuant to state regulations set forth at 105 CMR 725.000 and M.G.L. Chapter 369 of the Acts of 2012, Implementation of an Act for the Humanitarian Medical Use of Marijuana,
- b) As nothing in that Act or its implementing regulations at 105 CMR 725 supersedes Massachusetts law prohibiting the possession, cultivation, transport, distribution, or sale of Marijuana for nonmedical purposes,
- c) That the state regulation at 105 CMR 725.600 allows for lawful local oversight and regulation, including fee requirements,
- d) To reduce the challenging threats to public health and safety found to have been presented by Registered Marijuana Dispensaries and similar clinics in other jurisdictions,
- e) To prevent the illegal sale and use of marijuana to protect the public welfare, health and safety of the residents of Amesbury,
- f) That Registered Marijuana Dispensaries shall be limited in number and strictly regulated by the Massachusetts Department of Public Health, these zoning regulations provide for the placement of RMDs in locations suitable for lawful medical marijuana facilities,
- g) To minimize the adverse impacts of RMDs on adjacent properties, residential neighborhoods, historic districts, schools, playgrounds and other locations where minors congregate by regulating the siting, design, placement, security and removal of RMDs, and
- h) Where they may be readily monitored by law enforcement for health and public safety purposes.

2.01 Establishment. The Medical Marijuana Overlay District, hereinafter referred to as "MMOD," is hereby established as an overlay district superimposed over the underlying zoning districts shown on the official Zoning Map as Industrial (I) and Light Industrial (IL) as set forth on the map entitled "Medical Marijuana Overlay District." This map is hereby made part of the Zoning Bylaw and the Overlay District Zoning Map and is on file in the Office of the City Clerk.

3.01 Definitions. For the purpose of this regulation, the following words shall have the following meanings. Where not expressly defined in the Zoning Bylaws, terms used herein shall be interpreted as defined in the Humanitarian Medical Use of Marijuana Act, M.G.L. c.94C, App §1-1, et seq. and the Department of Public Health Regulations promulgated thereunder, 105 CMR 725.001, et seq., and otherwise by their plain language:

105 CMR 725.000: State Regulations, as amended from time to time and promulgated by Massachusetts Department of Public Health by which it shall approve, register and control the establishment of Registered Marijuana Dispensaries in Massachusetts.

Applicant: The individual or a non-profit entity that has received a provisional or final certification of registration from Massachusetts Department of Public Health to operate a Registered Marijuana Dispensary and is submitting the application to the Planning Board.

Business Agent: An individual who has been designated by the owner or operator of any Registered Marijuana Dispensary (RMD) to be the manager or otherwise in charge of said RMD.

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Cultivation Site: A Registered Marijuana Dispensary (RMD) that exclusively cultivates marijuana pursuant to 105 CMR 725.105(B)(1)(c) such that all phases of cultivation take place in designated, locked, limited access areas that are monitored by a surveillance system, the specific detailed requirements of such system being as stated in 105 CMR 725.110(D)(1)(d) through (i). It may also process (including development of related products such as edible Marijuana Infused Products, tinctures, aerosols, oils, or ointments), transport and distribute to other RMDs that dispense marijuana. All portions of the RMD shall be non-mobile and shall not have on-site retail sales or make off-site deliveries to registered Qualifying Patients as defined in 105 CMR 725 or their Personal Caregivers from this site. Any accessory retail sales at such locations may only be allowed by special permit issued by the Planning Board pursuant to the provisions of Section XI.01.1.

Department or MDPH: Massachusetts Department of Public Health.

Dispensary Agent: A board member, director, employee, executive, manager, or volunteer of a Registered Marijuana Dispensary, who is at least 21 years of age and who has received approval from the state under 105 CMR 725.030. Employee includes a consultant or contractor who provides on-site services to a RMD related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of marijuana pursuant to 105 CMR 725.000.

Hardship Cultivation Registration: A registration issued to a registered Qualifying Patient under the requirements of 105 CMR 725.035.

Host Community Agreement: An agreement entered into by the City of Amesbury and the non-profit entity registered with MDPH to operate a Registered Marijuana Dispensary in Amesbury.

License: A license issued by the City of Amesbury to be renewed annually, that permits a Registered Marijuana Dispensary to operate at a permanent non-mobile location in the City of Amesbury.

License Holder: Any person or entity engaged in the operation of a RMD or sale of marijuana and who applies for and receives a License or any person who is required to apply for a License pursuant to local regulations, or his or her business agent.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces rolled marijuana products solely for the individual's own personal consumption or use) that is capable of making rolled marijuana products. RYO machines located in private homes used solely for personal consumption are not Non-Residential RYO machines.

Permit: A special permit and/or site plan approval granted by the Planning Board.

Permit Holder: Any person or entity that has been granted a special permit and/or site plan approval by the Planning Board.

Protected Uses: These are facilities in which children and minors commonly congregate. Such a facility includes dance schools, gymnastic schools and similar facilities if children commonly congregate there in a structured manner. It includes facilities where services or programs targeting children or youth take place. It includes a private home housing a family day care center, but not a private home where children happen to live. It includes a city park if the park includes play structures intended for children to use. It includes public or private outdoor recreational facilities where

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programs targeting children or youth take place. When conducting this analysis, the Board shall consider whether minors congregate at a site according to schedule, how often they congregate, and whether the purpose of congregating is an activity designed for or targeted to children.

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

Self-Service Display: Any display from which customers may select a marijuana product without assistance from a Dispensary Agent or store personnel.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes marijuana products.

4.01.1 *Allowed Uses.*

a. Notwithstanding the use limitations of the underlying zoning district or any other overlay zoning district, a Registered Marijuana Dispensary as defined herein shall be allowed within the Medical Marijuana Overlay District upon the granting of a special permit and site plan approval by the Planning Board, subject to the requirements set forth in this Section.

b. A RMD location that has been registered with MDPH only as a cultivation site shall be allowed by Site Plan Approval by the Planning Board subject to the requirements set forth in this Section.

4.01.2 *Prohibited Uses:* At any RMD, the sale of marijuana from self-service displays, vending machines or Non-Residential Roll-Your-Own machines shall be prohibited.

5.01 *Dimensional Requirements*

Except where it is explicitly stated otherwise in this Section, a Registered Marijuana Dispensary shall conform to the dimensional requirements applicable to non-residential uses within the base and overlay zoning districts.

6.01 *Eligibility*

6.01.1 *Building.* A Registered Marijuana Dispensary, including all cultivation sites, as defined herein shall be located only in a permanent building and not within any mobile facility. All sales shall be conducted either within the building or by home deliveries to qualified patients pursuant to applicable state and local regulations.

6.01.2 *Location.*

1. The site is located at least five hundred (500) feet distant from the following protected uses (*facilities in which children/minors commonly congregate*):

1. school, including a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university;
2. Child Care Facility, including daycare center, preschool or afterschool facility,
3. Library,

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4. Playground,
5. Public Park,
6. Youth center,
7. Public swimming pool,
8. Indoor/Outdoor recreation facilities where organized sports are held or
9. Any similar protected use determined by the Planning Board to be a facility in which minors and youth commonly congregate.

2. The distance under this section is measured in a straight line from the nearest point of the property line of the protected uses identified above to the nearest point of the principal or primary structure in which the proposed RMD is located.

3. If it is determined by the Planning Board that the proposed Site Plan provides sufficient buffers from such protected uses such that its users will not be adversely impacted by the operation of the Registered Marijuana Dispensary, the distance requirement from these protected uses may be reduced up to twenty five percent (25%) but only if:

- a) the applicant demonstrates that the RMD would otherwise be effectively prohibited within the municipality; and
- b) The applicant has entered into a Host Community Agreement (HCA) with the City to further demonstrate that the RMD will employ stringent security measures to prevent diversion of medical marijuana to minors and others who are not qualifying patients pursuant to 105 CMR 725.004

7.01 Application Requirements.

7.01.1 Application: An application for a proposed RMD shall be filed with the Planning Board in accordance with the procedures outlined in Section XI.01.1 of this Bylaw and accompanied with the appropriate fees as outlined in Planning Board schedule of application fees for all projects.

7.01.2.a Special Permit Procedure: The special permit shall conform to this title and to M.G.L. Chapter 40A, Section 9, and to regulations which the Planning Board shall adopt from time to time for carrying out its requirements under this title. An application for special permit under this Section shall be submitted and administered in accordance with the provisions of Section X.J of the Amesbury Zoning Bylaw.

7.01.2.b Site Plan Review (SPR) Procedure: An application for Site Plan Review shall be submitted and administered in accordance with the provisions of Section XI.C of the Amesbury Zoning Bylaw. Site Plan Approval for a RMD shall be subject to the requirements indicated herein and shall be in addition to the provisions of Section XI.C

7.01.3 Materials for Review: In addition to the materials required under Section XI.C.4, an application to the Planning Board shall include, at a minimum, the following information:

- (a) **Description of Activities:** A narrative providing information about the type and scale of all activities that will take place on the proposed site, the square footage available and that describes the functional areas of the RMD, including but not limited to cultivating and processing of marijuana or marijuana infused products (MIPs), on-site sales, off-site deliveries, distribution of educational materials, and other programs or activities.

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(b) Service Area: A map and narrative describing the area proposed to be served by the Registered Marijuana Dispensary and the anticipated number of clients that will be served within that area. This description shall indicate where any other Registered Marijuana Dispensaries exist or have been proposed within the expected service area.

(c) Transportation Analysis: A quantitative analysis, prepared by a qualified transportation specialist acceptable to the Planning Board, modeling the expected origin and frequency of client and employee trips to the site, the expected modes of transportation used by clients and employees, and the frequency and scale of deliveries to and from the site.

(d) Context Map: A map depicting all properties and land uses within a one thousand-foot (1,000') radius (minimum) of the project site, whether such uses are located in Amesbury or within surrounding communities, including but not limited to, all protected uses such as educational uses, city parks, playgrounds, daycare, preschool and afterschool programs.

(e) Site Plan: A plan or plans depicting all proposed development on the property, including the dimensions of the building, the layout of automobile and bicycle parking, the location of pedestrian, bicycle and vehicular points of access and egress, the location and design of all loading, refuse and service facilities, the location, type and direction of all outdoor lighting on the site, and landscape design including landscape buffers along abutting properties and public ways.

(f) Building Elevations and Signage: For all new buildings, architectural drawings of all exterior building facades and all proposed signage, specifying materials and colors to be used. Perspective drawings and illustrations of the site from public ways and abutting properties are recommended but not required. For existing buildings and structures, any changes to the exterior of the building shall be shown along with location of proposed entrances, loading areas and signage.

(g) Registration Materials: Copies of registration materials issued by the Massachusetts Department of Public Health and any materials submitted to the Massachusetts Department of Public Health for the purpose of seeking registration, to confirm that all information provided to the Planning Board is consistent with the information provided to the Massachusetts Department of Public Health. This information shall include, but not limited to:

1. A copy of its registration as an RMD from the Massachusetts Department of Public Health ("DPH");
2. a description of the security measures, including employee security policies, approved by DPH for the RMD;
3. a copy of the emergency procedures approved by DPH for the RMD;
4. a copy of the policies and procedures for patient or personal caregiver home delivery approved by DPH for the RMD;
5. a copy of the policies and procedures for the transfer, acquisition, or sale of marijuana between RMDs approved by DPH;
6. a copy of proposed waste disposal procedures; and
7. a description of any waivers from DPH regulations issued for the RMD.

8.01 Design and Performance Standards

8.01.1 For the purposes of this Bylaw, the provisions of Section XI.C.8 shall apply unless noted otherwise in this Section.

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8.01.2 *Signage.* One building mounted sign not to exceed twenty (20) square feet shall be allowed for any one location. No other signage identifying the activity or products associated with the RMD shall be allowed. The Planning Board may impose additional restrictions on signage as appropriate to mitigate any aesthetic impacts.

8.01.3 *Public Safety.* A detailed RMD facility operations plan, including but not limited to, fire protection, waste disposal, security and hours of operation shall be provided with sufficient information to the satisfaction of the Police and Fire Department. Upon review by local public safety and law enforcement officials, additional information may be required from the applicant. The Planning Board may require safety measures in addition to the minimum requirements stated in MDPH regulations.

9.01 *Special Permit Criteria.* In granting a special permit for a Registered Marijuana Dispensary, in addition to the general criteria for issuance of a special permit as set forth in Section X.J of the Amesbury Zoning Bylaw, the Planning Board shall find that the following criteria are met:

(a) The Registered Marijuana Dispensary is located to serve a regional need for reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by other Registered Marijuana Dispensaries, it has been so established by the Massachusetts Department of Public Health through its policies regulating medical marijuana.

(c) The site is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site using all modes of transportation, including drivers, pedestrians, bicyclists and public transportation users.

(d) Traffic generated by client trips, employee trips, and deliveries to and from the Registered Marijuana Dispensary shall not create a substantial adverse impact on nearby residential Uses.

(e) Loading, refuse and service areas are designed to be secure and shielded from abutting uses.

(f) The building and site have been designed to be compatible with other buildings in the area and to mitigate any negative aesthetic impacts that might result from required security measures and restrictions on visibility into the building's interior.

10.01 *Conditions of Approval.* The SPGA shall impose conditions reasonably appropriate to improve site design, traffic flow, public safety, protect water quality, air quality, and significant environmental resources, preserve the character of the surrounding area and otherwise serve the purpose of this section. In addition to any specific conditions applicable to the applicant's RMD, the SPGA shall include the following conditions in any permit granted under this Bylaw:

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

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10.01.2 *Limitation of Approval.* A special permit and/or site plan approval authorizing the establishment of a Registered Marijuana Dispensary shall be valid only for the registered entity to which the special permit and/or site plan approval was issued, and only for the site on which the Registered Marijuana Dispensary has been authorized by special permit and/or site plan approval. If the registration for a Registered Marijuana Dispensary has not been renewed or has been revoked, transferred to another controlling entity, or relocated to a different site within the Medical Marijuana Overlay District, a new special permit and/or site plan approval shall be required prior to issuance of a Certificate of Occupancy. A copy of the current and valid MDPH registration and any renewals thereafter shall be submitted to the Zoning Compliance Officer and shall always be available at the operations site.

10.01.3 *Operations and Security Measures.* The following requirements shall be conditions of approval and the permit holder agrees to comply with the provisions as a condition of operating a RMD:

- (a) Duress alarm, panic alarm, or holdup alarm must be connected to local public safety or law enforcement – 105CMR 725.110(D)(1)(c)
- (b) Hours of operation, including dispatch of home deliveries– 105CMR 725.105(A)(3)(a)
- (c) Diverted marijuana shall be reported to law enforcement officials – 105CMR 725.110(A)(15)(a)
- (d) Access to surveillance areas is limited to persons that are essential to surveillance operations, including law enforcement authorities acting within their lawful jurisdiction –105CMR 725.110(D)(4)
- (e) Regarding transportation of marijuana, any unusual discrepancy in weight or inventory must be reported by the RMD to local law enforcement within 24 hours – 105CMR 725.110(E)(2)(c)
- (f) Each dispensary agent shall carry his or her Department-issued registration card at all times when transporting marijuana and shall produce it to the Department’s authorized representative or law enforcement official upon request – 105CMR 725.110(E)(9)
- (g) A RMD shall report to local law enforcement any vehicle accidents, diversions, losses, or other reportable incidents pursuant to 105CMR 725.110(F), that occur during transport, within 24 hours – 105CMR 725.110(E)(10)
- (h) A RMD shall report to local law enforcement within 24 hours –105CMR 725.110(F)(1):
 1. Discrepancies identified during inventory, diversion, theft, loss, and any criminal action involving the RMD or a dispensary agent;
 2. Any suspicious act involving the sale, cultivation, distribution, processing, or production of marijuana by any person;
 3. Unauthorized destruction of marijuana;
 4. Any loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or dispensary agents;
 5. An alarm activation or other event that requires response by public safety personnel;
 6. The failure of any security alarm system due to loss of electrical power or mechanical malfunction that is expected to last longer than eight hours; and
 7. Any other breach of security.
- (i) Information held by the Department about applicants for registration as a qualifying patient, personal caregiver, or dispensary agent, and registered qualifying patients, personal caregivers, and dispensary agents may be released by the MDPH to law enforcement personnel for the sole purpose of verifying a cardholder’s registration and certification - 105CMR 725.200(B)(4).

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- (j) The permit holder shall file a copy of any summary cease and desist order, cease and desist order, quarantine order, summary suspension order, order limiting sales, notice of hearing, or final action issued by MDPH or the Division of Administrative Law Appeals, as applicable, regarding the RMD with the Zoning Enforcement Officer and SPGA within 48 hours of receipt by the RMD.
- (k) The permit holder shall provide to the Zoning Enforcement Officer and the Chief of Police, Department, the name, telephone number and electronic mail address of a contact person in the event that such person needs to be contacted after regular business hours to address an urgent issue. Such contact information shall be kept updated by the permit holder.
- (l) The permit holder shall enter into a Host Community Agreement (HCA) with the City of Amesbury. The HCA shall address any known and additional impact of the RMD on the City's public safety and infrastructure, and any other stipulations as deemed necessary by the Mayor of the City of Amesbury, including a Community Impact Fee.

10.01.4 *Validity of Permits and Cessation of Operations.* The validity of permits granted to operate a RMD shall be as follows:

- (a) The special Permit shall lapse within three years of its issuance. The use at the address listed on the permit shall no longer be allowed under the zoning bylaw. The entity may bring the project under compliance upon renewal or re-issuance of the permit to operate a RMD. An application to renew the special permit must be submitted at least 120 days prior to the expiration of the special permit.
- (b) The special permit or a site plan approval shall be limited to the permit holder and shall lapse if the permit holder ceases operating the RMD. Any changes to the scope and scale of operations or other material facts stated on the initial application to register the RMD with MPDH, or renewal of registration thereafter, shall be submitted to the PGA and local Licensing Authority. If the PGA determines that those are substantial changes to the original approval, an application for major modification of the current permit shall be submitted by the permit holder for review and approval.
- (c) The special permit or a site plan approval shall lapse upon the expiration or termination of the permit holder's registration by MDPH.
- (d) The permit holder shall notify the Zoning Enforcement Officer and PGA in writing within 48 hours of the cessation of operation of the RMD or the expiration or termination of the permit holder's registration with MDPH.

11.01 *Prohibition Against Nuisances:* No use shall be allowed in the MMOD which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

12.01 *Severability:* The provisions of this Bylaw are severable. If any provision, paragraph, sentence, or clause of this Bylaw or the application

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thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Bylaw.

**Medical Marijuana Overlay District
Amesbury, MA**

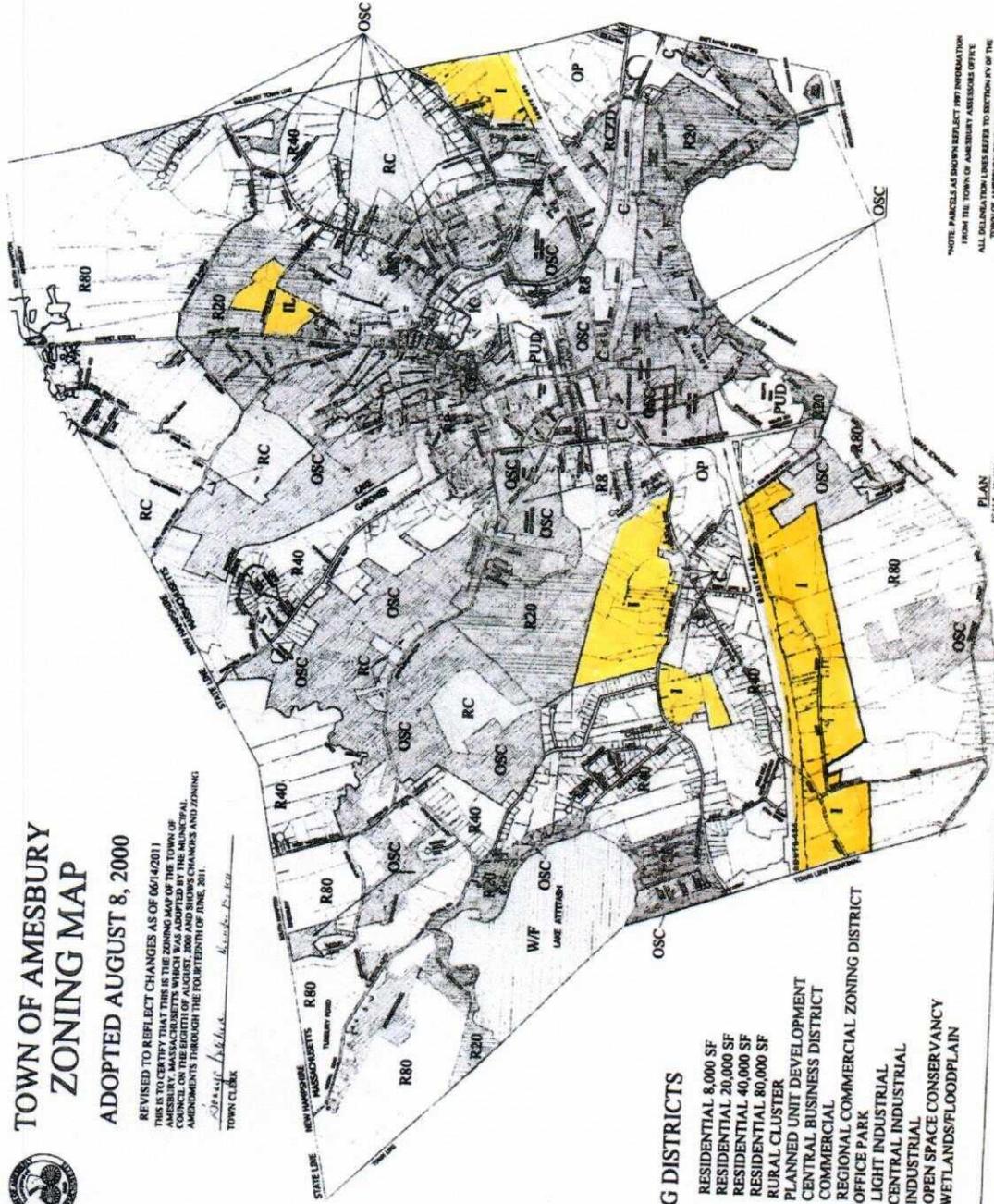


**TOWN OF AMESBURY
ZONING MAP**

ADOPTED AUGUST 8, 2000

REVISED TO REFLECT CHANGES AS OF 06/14/2011
THIS IS A COPY THAT THIS IS THE ZONING MAP OF THE TOWN OF
AMESBURY, MASSACHUSETTS. THIS MAP WAS ADOPTED BY THE MUNICIPAL
COUNCIL ON THE EIGHTH OF AUGUST, 2000. THIS MAP IS SUBJECT TO
AMENDMENTS THROUGH THE FOURTEENTH OF JUNE, 2011.

Stephanie A. McKee
TOWN CLERK



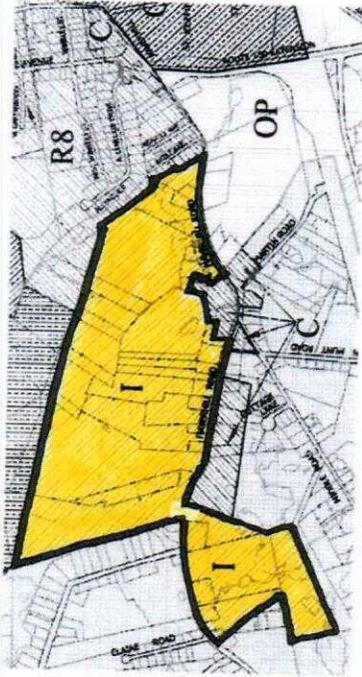
ZONING DISTRICTS

- R8 RESIDENTIAL 8,000 SF
- R20 RESIDENTIAL 20,000 SF
- R40 RESIDENTIAL 40,000 SF
- R80 RESIDENTIAL 80,000 SF
- RC RURAL CLUSTER
- PUD PLANNED UNIT DEVELOPMENT
- CBU CENTRAL BUSINESS DISTRICT
- C COMMERCIAL
- RCZD REGIONAL COMMERCIAL ZONING DISTRICT
- OP OFFICE PARK
- IL LIGHT INDUSTRIAL
- IC INDUSTRIAL
- I INDUSTRIAL
- OSC OPEN SPACE CONSERVANCY
- W/F WETLANDS/FLOODPLAIN

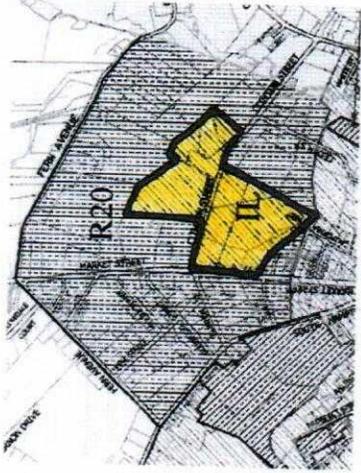
NOTE: PARCELS AS SHOWN REFLECT 1997 INFORMATION FROM THE TOWN OF AMESBURY AERIALS OFFICE. ALL DIMENSIONS ARE BASED TO SECTION PV OF THE TOWN OF AMESBURY ZONING MAP. ALL DISTANCES SHOULD BE FIELD MEASUREMENTS.

SCALE 1"=800'

**Medical Marijuana Overlay District
Amesbury, MA**



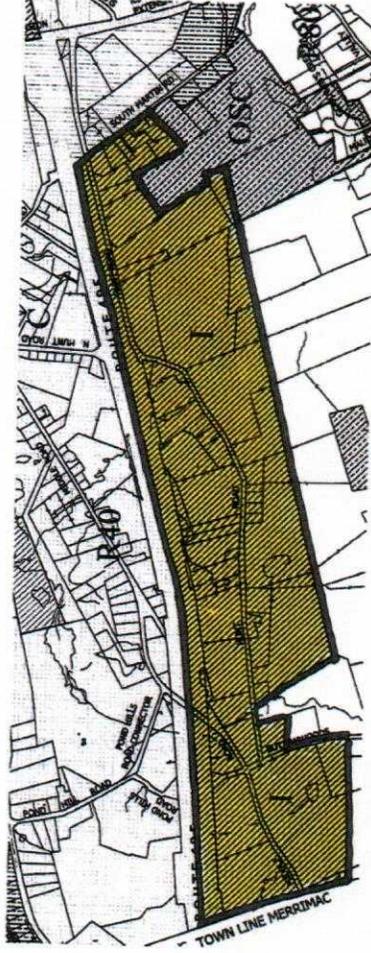
**INDUSTRIAL ZONING DISTRICT –
(Along Rt. 110)**



**LIGHT INDUSTRIAL ZONING DISTRICT –
(Along Market Street, Clinton Street)**



**INDUSTRIAL ZONING DISTRICT –
(Along Monroe Street and Rt. 495)**



**INDUSTRIAL ZONING DISTRICT –
(Along Hunt Road and Rt. 495)**