

## **Overview of USDO Standards & Considerations for Cannabis**

### **How are cannabis businesses currently regulated under the city zoning code (USDO)?**

The Unified Sustainable Development Ordinance (USDO) provides a definition for both Marijuana dispensaries and Controlled substance dispensaries. Per the definitions (found below) marijuana dispensaries are classified under the definition of a Controlled substance dispensary, which is also how the use is listed in the [Permitted Use Table](#).

The USDO does not provide a definition or classification for on-site consumption lounges. A determination will need to be made as to whether consumption facilities are allowed under an existing use designation or legislative action will be required to create a new use category and assign district allowances.

### **Where are they currently permitted?**

Controlled substance dispensaries are conditionally permitted (CUP) in the following zoning districts:

MU-CH (Mixed-Use, Community Highway)

MU-CI (Mixed-Use, Campus Institutional)

MU-FW (Mixed-Use, Form-Based Warehouse)

MU-FC (Mixed-Use, Form-Based Central Avenue)

Controlled substance dispensaries are permitted as-of-right in the following zoning districts:

I-1 (Light Industrial)

I-2 (General Industrial)

### **Current USDO Definitions (375-602)**

#### **CONTROLLED SUBSTANCE DISPENSARY**

A business that is registered to operate in the State of New York that sells or otherwise distributed drugs, goods, or materials that are listed as controlled substances under the Federal Controlled Substances Act or the New York State Public Health Law<sup>[1]</sup> to persons, and under conditions, authorized by the State of New York. This use includes a marijuana dispensary and a methadone dispensary

## RETAIL

A use that meets the definition of convenience retail, general retail, specialty retail, supermarket, but not including a marijuana dispensary or methadone dispensary.

## RETAIL, GENERAL

Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods, including auction houses, that do not meet the definition of any other retail use, a restaurant use, or any other use listed in Table 375.302.1 (Permitted Use Table).

## MARIJUANA DISPENSARY

A business that is registered or licensed in the State of New York that sells or otherwise distributes marijuana.

## MARIJUANA MANUFACTURING FACILITY

Includes, but is not limited to, cultivation, harvesting, extraction or other processing, packaging, and labeling of marijuana products.

## Use Specific Standards

### **Controlled substance dispensary.**

- A. Marijuana dispensary.
  - 1. No person or entity shall produce, grow, or sell medical marijuana or hold itself out as a New York State registered or licensed organization unless they are in compliance with New York State Public Health Law Article 33 or the New York State Cannabis Law and are registered or licensed as required by such laws, or are performing activities expressly exempt by such laws.

### **Marijuana manufacturing facility.**

- A. No person or entity shall produce, grow, or sell medical marijuana or hold itself out as a New York State registered organization unless it has complied with Article 33 of the New York Public Health Law and this USDO, and is registered by the New York State Department of Health.
- B. A registered organization shall only manufacture approved medical marijuana products in accordance with Article 33 of the Public Health Law.
- C. A registered organization shall only manufacture approved medical marijuana products in an indoor, enclosed, secure facility.
- D. A registered organization shall not dispense approved medical marijuana products from the same location where the marijuana is grown or manufactured.
- E. All marijuana manufacturing facilities shall have a security system to prevent and detect diversion, theft, or loss of marijuana and/or medical marijuana products, using commercial grade equipment.
- F. Marijuana manufacturing facilities shall be restricted to only a single external sign with only black and white colors that shall not be illuminated at any time.

## **Conditional Use Permit Standards** (Required for marijuana dispensary in 4 zoning districts)

Review standards. An application for a conditional use permit shall be approved only if it is determined that it:

- (i) Is consistent with any provisions of this USDO and the Albany City Code;
- (ii) Would not result in a random pattern of development with little relationship to existing or planned development;
- (iii) Would not cause negative fiscal or environmental impacts on adjacent properties and the surrounding neighborhood;
- (iv) Is consistent with the purposes and objective of the zoning district and character of the neighborhood in which it is located and the specific use standards applicable to the use;
- (v) Would not result in harmful cumulative effects or impacts of aggregate similar conditional uses;
- (vi) Would not place excessive burden on public improvements, facilities, services, or utilities; and
- (vii) Will provide a necessary and desirable service that is in the interest of the public convenience and will contribute to the general welfare of the surrounding neighborhood or community.

## **Questions and General Considerations:**

Questions:

What method(s) do we want to use in order to regulate cannabis dispensaries and on-site consumption lounges?

- Use existing review standards and regulations within the USDO
- Add use-specific standards/requirements for particular cannabis related businesses
- Require Conditional Use Permits through the Planning Board
- **Align with regulations and standards for general retail**
- Separate review standards or application
- Amend USDO to make such uses permitted as-of-right but add use specific standards that would always apply

How do we want to regulate where we want to allow certain cannabis related businesses?

- Same as existing areas where controlled substance dispensaries (marijuana dispensaries) are currently allowed
- **Expand or restrict the number of zoning districts where dispensaries or on-site consumption would be allowed**
- Create an overlay district that allows cannabis businesses in more narrowly defined areas

Other items to consider:

- Hours of operation – Consider for delivery also
- Minimum distance regulation between two of the same cannabis related uses (Ex: cannot establish a cannabis dispensary within 1,000ft of another dispensary)
- Allowing or prohibiting drive-through services or sales
- Parking requirements (controlled substance dispensary has a min of 1/300 sq.ft net leasable area. Ex: 2,000 Sq.ft NLA = 7 parking spaces)
- Signage regulations, however, they cannot be specific to a particular use

### **Types of Licenses under OCM**

- Cultivator
- Processor
- Distributor
- Dispensary
- On-Site Consumption
- Delivery
- Nursery
- Microbusiness (includes all phases from seed to sale)
- Cooperative (includes all phases except dispensing)

The MRTA delegates to local municipalities the ability to regulate time, place and manner of the operation of retail dispensaries and onsite consumption sites (“retail establishments”), as long as such regulation does not render the business unreasonably impracticable. The OCM has issued guidance providing that municipalities may pass laws pertaining to the local zoning and location of licensees, hours of operations and adherence to local building codes. Municipalities may not require local licenses for cannabis businesses.

# The Role of the USDO

The **Unified Sustainable Development Ordinance** (USDO) is the City's primary tool that oversees land-use management and related policies. Important for the regulation of "time, place and manner".

**Definitions:** The USDO provides important definitions for uses and terms that to help distinguish between similar use types and provides context and clarity.

**Permitted Use Table:** Indicates the permitted and conditional land uses in each zoning district, including a controlled substance dispensary.

**Use-Specific Standards:** Specific requirements, standards, regulations, or exemptions related to a particular use, such as a Marijuana Manufacturing Facility or a Controlled Substance Dispensary.

**Development Standards:** Regulations regarding dimensional requirements, parking, landscaping and screening, building and streetscape design, lighting, and signage among other standards.

**Procedures:** The USDO outlines the necessary procedures and potential development applications based on whether or not a proposal or project meets certain criteria that requires additional review. (Ex: Construction of a new building or a large addition that may need Planning Board approval)

# Permitted / Conditionally Permitted by Location

The prevailing regulations were developed in response to the legalization of medical marijuana in 2014. When the USDO was updated in December 2021, the existing allowances were broadened to be inclusive of recreational dispensaries.

Based on the USDO, Controlled substance dispensaries (inclusive of cannabis) are a permitted use in the I-1 and I-2 zoning districts, and a conditionally permitted use in the MU-CH, MU-CI, MU-FW, and MU-FC zoning districts.

Table 375.302.1

Permitted Use Table

P=Permitted Use | C=Conditional Use | A=Accessory Use | T=Temporary Use

	Residential						Mixed-Use										Special Purpose			Use-Specific Standard in Article III	
Zoning District	R-1L	R-1M	R-2	R-T	R-M	R-V	MU-NE	MU-NC	MU-CU	MU-CH	MU-DT	MU-CI	MU-FW	MU-FC	MU-FS	MU-FM	I-1	I-2	LC		
LAND USE CATEGORY																					
Retail																					
Controlled substance dispensary										C		C	C	C			P	P		§ 375-303(4)(f)(iv)	

\*A blank cell in the Permitted Use Table indicates that the use is not permitted in that zoning district

# USDO Conditional Use Permit

- A conditional use permit is subject to review and determination by the Planning Board.
- A set of review standards from the USDO (375-505(6)(c)) is applied by the Planning Board in its consideration to grant or deny an application.
- The review standards address community character, environmental and fiscal impacts, development patterns, potential burdens on public facilities, consistency with the USDO, cumulative effects of similar conditional uses, and that the use will not be a detriment to the general welfare of the community.
- The location and intended purpose of a specific zoning district plays a large role in determining the appropriateness of a conditional use permit, among other approvals.

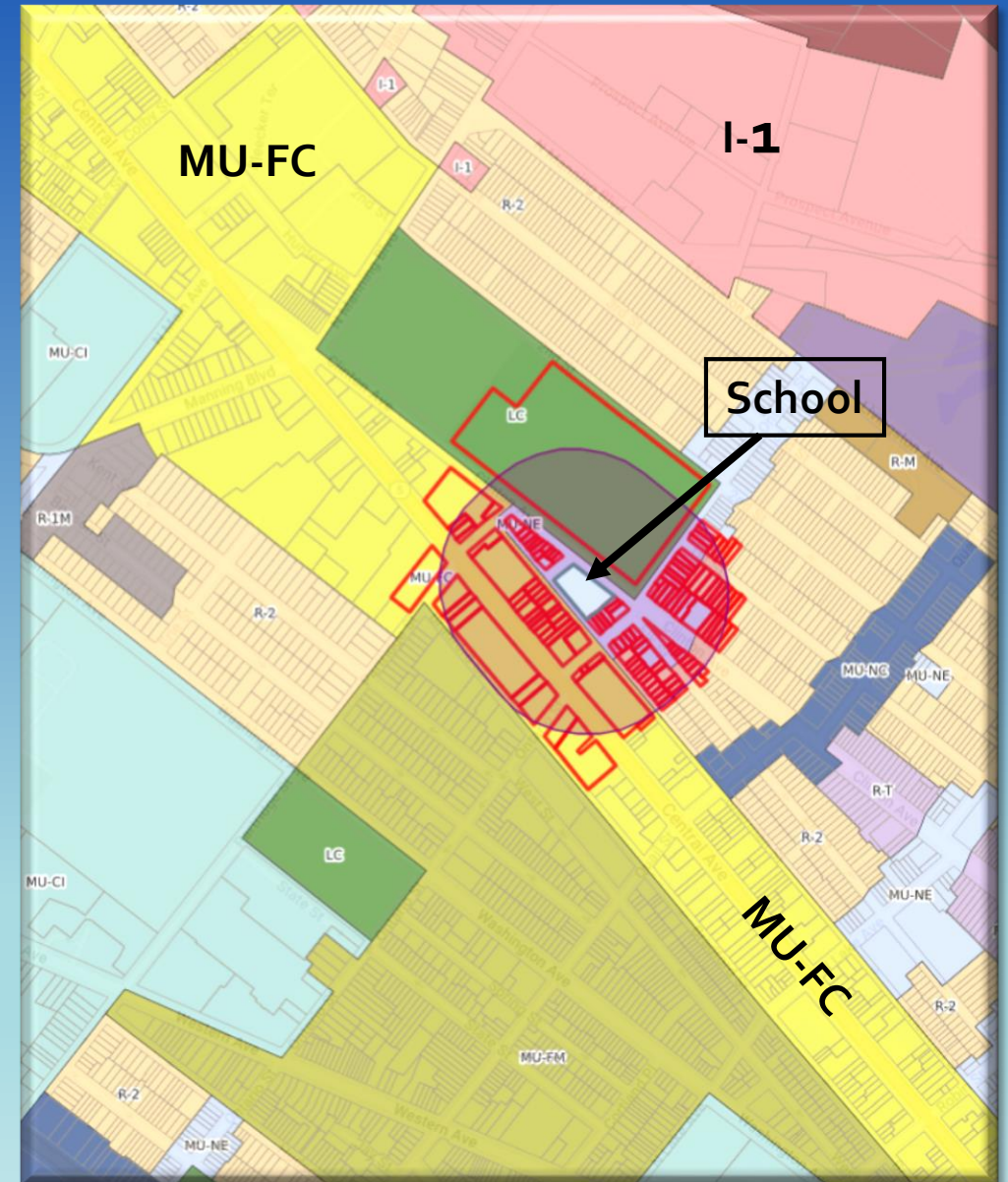


# Location Example

Zoning map shows the MU-FC (Mixed-Use Form-Based Central Ave) zoning district in **yellow**, where a controlled substance dispensary is a conditionally permitted use.

The I-1 (Light Industrial) zoning district can be seen in the top right corner of the map in light **red**. This zoning district permits a controlled substance dispensary as-of-right.

In the middle of the map is a school along with a 500ft boundary around it. The highlighted parcels would be ineligible for a license under NYS law.





# USDO Considerations

- Legislative action by the common council would be required to amend the USDO to allow medical or recreational dispensaries in areas where they are not currently permitted. Currently not permitted in 6 out of 10 mixed-use zoning districts.
- Consideration of allowing such uses as permitted (as-of-right) vs conditionally permitted.
- Potential to add language under the use-specific standards, which may be more appropriate than requiring a conditional use permit.
- Additionally, the USDO does not address cannabis lounges and a determination will need to be made as to whether consumption facilities are allowed under an existing use designation or legislative action will be required to create a new use category and assign district allowances.

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LAND USE CATEGORY																				
Hospital						C	C	C	C	C	C	C	C	C	C	C	C			§ 375-303(3)(g)
Natural area or preserve																			P	§ 375-303(3)(h)
Park or playground	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	§ 375-303(3)(i)
Police or fire station	C	C	C	C	C	C	P	P	P	P	P	P	P	P	P	P	P	P	C	§ 375-303(3)(j)
Public utility or services, major																	C	P		§ 375-303(3)(k)
Public utility or services, minor	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	§ 375-303(3)(l)
Religious institution	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	C		§ 375-303(3)(m)
School	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C				§ 375-303(3)(n)
Stadium or arena									C <sup>(2)</sup>	C	C	A	C	C	C	A	C	C		§ 375-303(3)(o)
Towers	A	A	A	A	A	A	A	A	A	C	A	A	A	A	A	A	C	C		§ 375-303(3)(p)
COMMERCIAL USES																				
Agriculture and Animal-Related																				
Agriculture, urban	C	C	P	P	A	A	A	A	A	A	A	P	A	A	A	A	A			§ 375-303(4)(a)(i)
Plant nursery										C		A					P	P	C	§ 375-303(4)(a)(ii)
Veterinarian or kennel										P	A	A	P	P	P		P	P		§ 375-303(4)(a)(iii)
Food and Beverage Service																				
Bar or tavern								C	P	P	P	C	P	P	P	C <sup>(6)</sup>	P			§ 375-303(4)(b)(i)
Restaurant			C <sup>(1)</sup>	C <sup>(1)</sup>	C <sup>(1)</sup>		C	P <sup>(5)</sup>	P	P	P	P	P	P	P	P <sup>(6)(7)</sup>	P			§ 375-303(4)(b)(ii)
Guest Accommodations																				
Bed-and-breakfast	C	C	C	C	P	C	C	P <sup>(5)</sup>	P	P	P	P	P	P	P	P <sup>(6)(7)</sup>				§ 375-303(4)(c)(i)
Hotel								C	P	P	P	C	P	P	P	P <sup>(6)(7)</sup>				§ 375-303(4)(c)(ii)
Office and Services																				
Beauty salon, spa or barbershop			P <sup>(1)</sup>	P <sup>(1)</sup>	P <sup>(1)</sup>		P <sup>(4)</sup>	P <sup>(5)</sup>	P	P	P	P	P	P	P	P <sup>(6)(7)</sup>	P	P		§ 375-303(4)(d)(i)

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Use-Specific Standard in Article III																			
LAND USE CATEGORY																			
Blood plasma center <sup>[9]</sup>										C		C					C	C	
Funeral home								C	C	P	C						P		
Laboratory or research facility									C	C	C	C	C	C	C	C <sup>[6]</sup>	P	P	
Medical clinic								C	P	P	P	P	P	P	P	P <sup>[6][7]</sup>	P	A	
Office, general			C <sup>[1]</sup>	C <sup>[1]</sup>	C <sup>[1]</sup>		C <sup>[4]</sup>	P <sup>[5]</sup>	P	P	P	P	P	P	P	P <sup>[6][7]</sup>	P	A	
Personal or business service			C <sup>[1]</sup>	C <sup>[1]</sup>	C <sup>[1]</sup>		C	P <sup>[5]</sup>	P	P	P	P	P	P	P	P <sup>[6][7]</sup>	P	P	
Professional office			P <sup>[1]</sup>	P <sup>[1]</sup>	P <sup>[1]</sup>		P <sup>[4]</sup>	P <sup>[5]</sup>	P	P	P	P	P	P	P	P <sup>[6][7]</sup>	P	A	
Trade school								C	P	P	P	P	P	P	P	P <sup>[6][7]</sup>	P	P	
Recreation and Entertainment																			
Adult entertainment <sup>[10]</sup>																		P	
Indoor recreation or entertainment							C	P <sup>[5]</sup>	P	P	P	P	P	P	P	P <sup>[6][7]</sup>			
Outdoor recreation or entertainment										P	C	P	C	C	C	C <sup>[6]</sup>	C	C	C
Retail																			
Adult retail <sup>[10]</sup>										C							C	P	
Convenience retail <sup>[11]</sup>								P <sup>[5]</sup>	P	P	P	P	P	P	P	P <sup>[6][7]</sup>	P		
General retail							C	P <sup>[5]</sup>	P	P	P	P	P	P	P	P <sup>[6][7]</sup>	A	A	
Controlled substance dispensary										C		C	C	C			P	P	
Specialty retail			P <sup>[1]</sup>	P <sup>[1]</sup>	P <sup>[1]</sup>		P <sup>[4]</sup>	P <sup>[5]</sup>	P	P	P	P	P	P	P	P <sup>[6][7]</sup>	A		
Supermarket									P	P	P	C	P	P	P	P <sup>[6][7]</sup>	P		
Vehicles and Equipment																			
Automobile wash										C		C					C	P	

# USDO Further Considerations

- Mindful of the MRTA's requirements of local municipalities, so that dispensaries and or on-site consumption is not regulated in such a manner that makes their operation unreasonably impracticable as determined by the Cannabis Control Board (CCB).
- Similar uses:
  - Bar or Tavern – Permitted in 6 mixed-use districts & conditionally permitted in 3 mixed-use districts.
  - General Retail – Permitted in 9 mixed-use districts & conditionally permitted in 1 mixed-use district.