

103-BB



DOCUMENT 103-BB

CITY OF HAVERHILL

In Municipal Council January 15 2019

~~ORDERED:~~

MUNICIPAL ORDINANCE

CHAPTER 255

**AN ORDINANCE RELATING TO ADULT USE
OF MARIJUANA AND MARIJUANA ESTABLISHMENTS**

IT ORDAINED by the City Council of the City of Haverhill that Chapter 255, of the Code of the City of Haverhill, as amended, being and is hereby further amended by deleting Article XIX in its entirety and inserting in its place the following:

Article XIX – Licensed Marijuana Establishments Overlay Zone

A. Purposes.

1. To provide for the placement of adult use marijuana establishments in appropriate places and under specific conditions in accordance with the provisions of Massachusetts General Law Chapter 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed.
2. To minimize any adverse impacts of adult use marijuana establishments on adjacent properties, dense or concentrated residential areas, school and other places where children congregate, and other sensitive land uses.
3. To regulate the siting, design, placement, access, security, safety, monitoring, modification and discontinuance of adult use marijuana establishments.
4. To provide applicants, owners and operators with clear guidance regarding adult use marijuana establishments siting, design, placement, access, security, safety, monitoring, modification and discontinuance.

B. Definitions.

1. Craft Marijuana Cooperative: A marijuana cultivator comprised of residents of the commonwealth organized as a limited liability company or limited liability partnership under the laws of the commonwealth, or an appropriate business structure

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as determined by the Cannabis Control Commission, and that is licensed to cultivate, obtain, manufacture, process package and brand marijuana and marijuana products to deliver marijuana or Marijuana Establishments but not to consumers.

2. Independent Testing Laboratory: A laboratory that is licensed by the commission and is: (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the commission; (ii) independent financially from any medical marijuana treatment center or any license or marijuana establishment for which it conducts a test; and (iii) qualified to test marijuana in compliance with 935 CMR 500.160 and M.G.L. c.94C, S34.
3. Licensed Marijuana Establishment (LME): A marijuana cultivator, testing laboratory, marijuana product manufacturer, marijuana retailer, or any other type of licensed marijuana-related business.
4. Marijuana Cultivator: An entity licensed to cultivate, process, and package marijuana; to deliver marijuana to marijuana establishments; and to transfer marijuana to other marijuana establishments but not consumers.
5. Marijuana Product Manufacturer: An entity licensed to obtain, manufacture, process, and package marijuana and marijuana products; to deliver marijuana and marijuana products to marijuana establishments, and to transfer marijuana and marijuana products to other marijuana establishments but not consumers.
6. Marijuana Micro-Business: A marijuana establishment that is licensed to act as a: licensed marijuana cultivator in an area less than 5,000 square feet; licensed marijuana product manufacturer, and licensed marijuana delivery service in compliance with the operating procedures for each such license.
7. Marijuana Products: Products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms or marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.
8. Marijuana Research Facility: An entity licensed to engage in research projects by the Cannabis Control Commission.
9. Marijuana Retailer: An entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell, or otherwise transfer marijuana and marijuana products to marijuana establishments and to

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consumers. Marijuana retailers may be in the form of a storefront or a social consumption establishment.

- 10. **Social Consumption Establishment:** A marijuana retailer licensed to purchase marijuana and marijuana products from marijuana establishments and to sell marijuana and marijuana products on its premises only to consumers or allow consumers to consume marijuana and marijuana products on its premises only.

C. Applicability.

- 1. No adult use marijuana establishment shall be permitted except in compliance with the provisions of this section.
- 2. If any provision of this section or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this section, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this section are severable.

D. Designated Locations of Marijuana Establishments.

- 1. *Eligible Zones:* Certain groups of LME’s shall be eligible for different zoning areas designated in the attached City Engineer’s Map entitled “Licensed Marijuana Establishments Overlay Zone with Street Index” dated December 7, 2018, and as amended from time to time. This map is hereby made a part of the Zoning Ordinance and is on file in the office of the City Clerk. Those zones shall be as follows:

<u>District Full Name</u>	<u>Short Name</u>
Licensed Marijuana Establishments – No Exclusions	LME-NE
Licensed Marijuana Establishments – No Retail Sales	LME-NR
Licensed Marijuana Establishments – Retail Sales Only	LME-RO
Medical Marijuana Overlay District – No Exclusions	MMOD

- 2. *Buffer Zone:* No LME outside the Waterfront District Area (WDA) shall be located within 500 feet of the following pre-existing structures or uses: any school attended by children under the age of 18, licensed childcare facility, municipally owned and operated park or recreational facilities (not including bikeways, boardwalks, pedestrian paths, or other facilities primarily used for non-vehicular modes of travel), churches or places of worship, libraries, playground or play field, or youth center.
- 3. *Notification:* Applicants seeking to establish an LME within the Waterfront District Area (WDA) must notify adjacent property owners, as well as any pre-existing licensed childcare facility for children under the age of 18, church or place of worship, or youth center, within 300 feet of the proposed site of the initial application for a special permit.

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4. No LME shall be located within on-half (1/2) mile of another licensed LME. The City Council may modify or waive this requirement.

E. Designated Number of Marijuana Establishments.

1. The total number of all Marijuana Retailers or Social Consumption Establishments may not exceed twenty (20%) of the number of licensed package and liquor stores within the City.
2. In the event that the number of licensed packaged liquor stores within the City decreases, an Marijuana Retailer or Social Consumption Establishment, if then exceeding twenty (20%) as noted in Subsection E,1 may remain in operation.
3. There shall be no restrictions on the number of any particular type of establishment permitted within the City, other than as regulated in Subsection E,1.

F. Special Permit Required.

1. No LME shall be operated or expanded without first obtaining a Special Permit from the City of Haverhill Special Permit Granting Authority in accordance with Chapter 255-80.
 - a. The Special Permit Granting Authority for any LME shall be the City Council.
 - b. A special permit shall only be valid for use by the Applicant and will become null and void upon the sale or transfer of the license of a LME or change in the location of the business.
 - c. In the event that the Commonwealth's licensing authority suspends the license or registration of a marijuana establishment, the Special Permit shall be so suspended by the City until the matter is resolved to the satisfaction of said licensing authority.
 - d. The special permit shall be considered null and void if meaningful construction and operation has not begun on within 1 year of obtaining said permit, as determined by the Building Inspector.

G. Site Plan Review.

1. Applications to operate or expand an LME shall be subjected to Site Review in accordance with the City of Haverhill Code, Chapter 255-68. The Site Plan shall be submitted in conjunction with the Special Permit application and joined to the final approval for the Special Permit.

H. General Requirements.

1. *Outside Storage:* No outside storage of marijuana, marijuana products, related supplies, or educational materials is permitted.

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2. *Visibility of activities:* All activities of any LME shall be conducted indoors.
3. *Paraphernalia:* Devices, contrivances, instruments, and paraphernalia for inhaling or otherwise consuming marijuana, including, but not limited to, rolling papers and related tools, water pipes, and vaporizers may be lawfully sold at a marijuana retailer. No retail marijuana, marijuana products, or paraphernalia shall be displayed or kept in a retail marijuana store so as to be visible from outside of the license premises.
4. *Hours of Operation:* In no event shall marijuana retailers, social consumption establishments, or microbusinesses be open and/or operating and dispensing product between the hours of 9:00pm and 9:00am and not opening before 12:00pm/noon on Sundays.
5. *On-Site Consumption of Marijuana:* The use, consumption, ingestion or inhalation of marijuana or marijuana products shall only be permitted at social consumption establishments and research facilities, within the confines of the building. On-site consumption is prohibited on or within the premises of any other LME.
6. *Sale of Alcohol:* LME's are prohibited from selling alcoholic beverages.

I. Design Requirements.

1. The following are required for all proposed operations of an LME, consistent with Subsection D:
 - a. *Permanent Location:* Each LME and any part of its operation, including but not limited to, cultivation, processing, packaging, and sales, shall be operated from a fixed location within a fully enclosed building. No marijuana establishment shall be permitted to operate from a moveable, mobile, or transitory location.
 - b. *Lighting:* Outdoor light levels shall exceed one (1) foot-candle along property lines, nor ten (10) foot-candles for any location on the property. Any light poles, new or existing, may not exceed eighteen (18) feet in overall height. All outdoor light fixtures must be shielded and aimed down in order to prevent light trespass onto adjacent properties. The Special Permit Granting Authority may modify this requirement if, upon recommendation by the Police Chief, it is required for adequate safety and security.
 - c. *Landscaping:* The proposed site shall provide landscaping to harmonize the LME with abutting uses. Landscaping shall be provided as per the requirements listed in Code Article VI, 255-24 & 25. Trees and shrubs may be clustered. Landscaping must consist of native, non-invasive plant species. The City Council may modify or waive this requirement.
 - d. *Drive-Through Facilities:* LME's are prohibited from installing an on-site drive through facility.
 - e. *Fencing:* Fencing may be required if determined necessary by the City Council. The location, height and type of fencing may be determined by the City Council as a condition of the Special Permit approval. In no instance shall barbed-wire fencing be permitted.

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- f. *Waste Disposal:* There shall be no outdoor storage of waste, including dumpsters, for any marijuana retailer. All waste generated shall be secured indoors, to be serviced by a professional janitorial company, or medical waste company.
- g. *Ventilation:* All LME's must ventilate in a manner so as that no pesticides, insecticides, or other chemicals or products used in cultivation or processing are dispersed into the outside atmosphere. Ventilation must also ensure that no odor from marijuana processing or consumption can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the LME or at any adjoining use or property.

J. Filing Requirements.

- 1. Applications to permit an LME must be submitted to the City Council, or their designee(s). Such applications for LME's shall include the following:
 - a. *Site Plan:* A site plan shall be submitted that includes all information required per Code Chapter 255-80 (c), and must also include the following.
 - i. The names, mailing addresses, phone numbers, email addresses, and signatures of the applicant, owner, and operator.
 - ii. Physical address (if one exists), and the map, lot, and block number of the proposed site.
 - b. *Security Plan:* A security plan shall be submitted, to ensure the safety of employees, patrons, and the public to protect the premises from theft or other criminal activity. The security plan shall be reviewed and approved by the local Police Chief, or their designee. The plan must include the following: An interior floorplan (including secured areas, windows, doors, etc...), exterior lighting, fencing (if any), gates (if any), alarms, and any other security measures requested by the Police Chief.
 - c. *Traffic Study:* The City Council may require a traffic study that includes an analysis of traffic generation, circulation, and off-street parking demand to determine sufficient parking and optimum configuration for site ingress and egress.
 - d. *State License:* A copy of the license or registration as an LME from the Massachusetts Cannabis Control Commission or documentation that demonstrates that said facility and its owner/operators qualify and are eligible to receive a Certification of Registration and meet all of the requirements of an LME in accordance with the regulations adopted by the Commission, as amended.
 - e. *Proof of Site Control:* Evidence that the Applicant has site control and the right to use the site for an LME in the form of a deed, valid lease, or purchase & sale agreement or a notarized statement from the property owner certifying the Applicant has firm site control.

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- f. *Odor Control:* The odor control plan proposed adequately provides for the ongoing safe operation of the establishment and minimizes any adverse impacts to abutting properties from odor-emitting activities to be conducted on-site.
 - g. *10 Percent Contribution:* A list shall be submitted that lists all persons or entities contributing 10% or more of the initial capital to operate the LME, including capital in the form of land or buildings.

K. Discontinuance of Use.

1. Any LME under this Section shall be required to remove all material, plants, equipment, and other paraphernalia in compliance with regulations established by the Cannabis Control Commission within thirty (30) days after the expiration or voiding of its license.
2. The City Council may require the Marijuana Establishment to fund an escrow account in an amount sufficient to adequately support the dismantling and winding down of the Marijuana Establishment within sixty (60) days of final approval of the Special Permit.

L. No City Liability, Indemnification.

1. The Applicant and all licensees waive and release the City, its elected officials, employees, and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of the LME owners, operators, employees, clients, or customers for a violation of state or federal laws, rules, or regulations.
2. The Applicant, in receiving approvals issued pursuant to this chapter, and all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the City, its elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever, arising out of or in any manner connected with the operation of the LME that is subject of the approval/license.

M. Annual Inspection

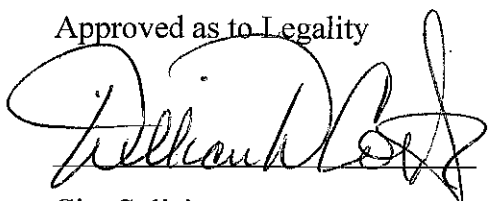
1. Any operating LME within the City shall be inspected annually by the Building Inspector, or their designee, to ensure compliance with this Section, and with any conditions imposed by the City Council as a condition of the Special Permit approval.
2. The first annual inspection shall be more than one (1) year after beginning operation, but before two (2) years of beginning operation.

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N. Other Laws Remain Applicable.

1. At all times while a permit is in effect the licensee shall possess all required licenses.
2. To the extent that the state has adopted or adopts in the future any additional or stricter law or regulation governing the cultivation, manufacturing, testing or retail of marijuana or marijuana products, the additional or stricter regulation shall control the LME in the City. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this chapter, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.
3. Any LME may be required to demonstrate, upon demand by law enforcement officers of the City of Haverhill and/or the local licensing authority, the source and quantity of any marijuana found upon the license premises are in full compliance with any applicable state law or regulation.
4. The issuance of any license pursuant to this chapter shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution, or use of marijuana.
5. Prior to the issuance of a Special Permit, the LME must have entered into a Host Community Agreement (HCA) with the City. If, upon review by the City Council, the LME is found to not be fully in compliance with the HCA, the Special Permit and/or the local license may be suspended or rescinded."

Approved as to Legality



City Solicitor

PLACED ON FILE for at least 10 days and REFER TO PLANNING BOARD JANUARY 9 2019

TO COME BACK TO CITY COUNCIL: JANUARY 15 2019

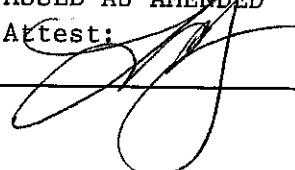
Attest:

Acting City Clerk

IN CITY COUNCIL: January 15 2019

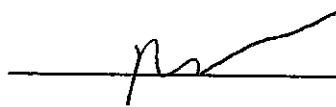
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Attest:

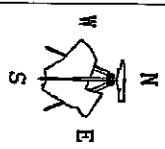


Acting City Clerk

APPROVED:

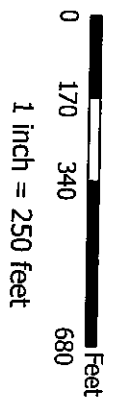


Mayor



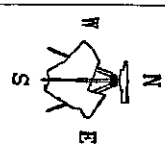
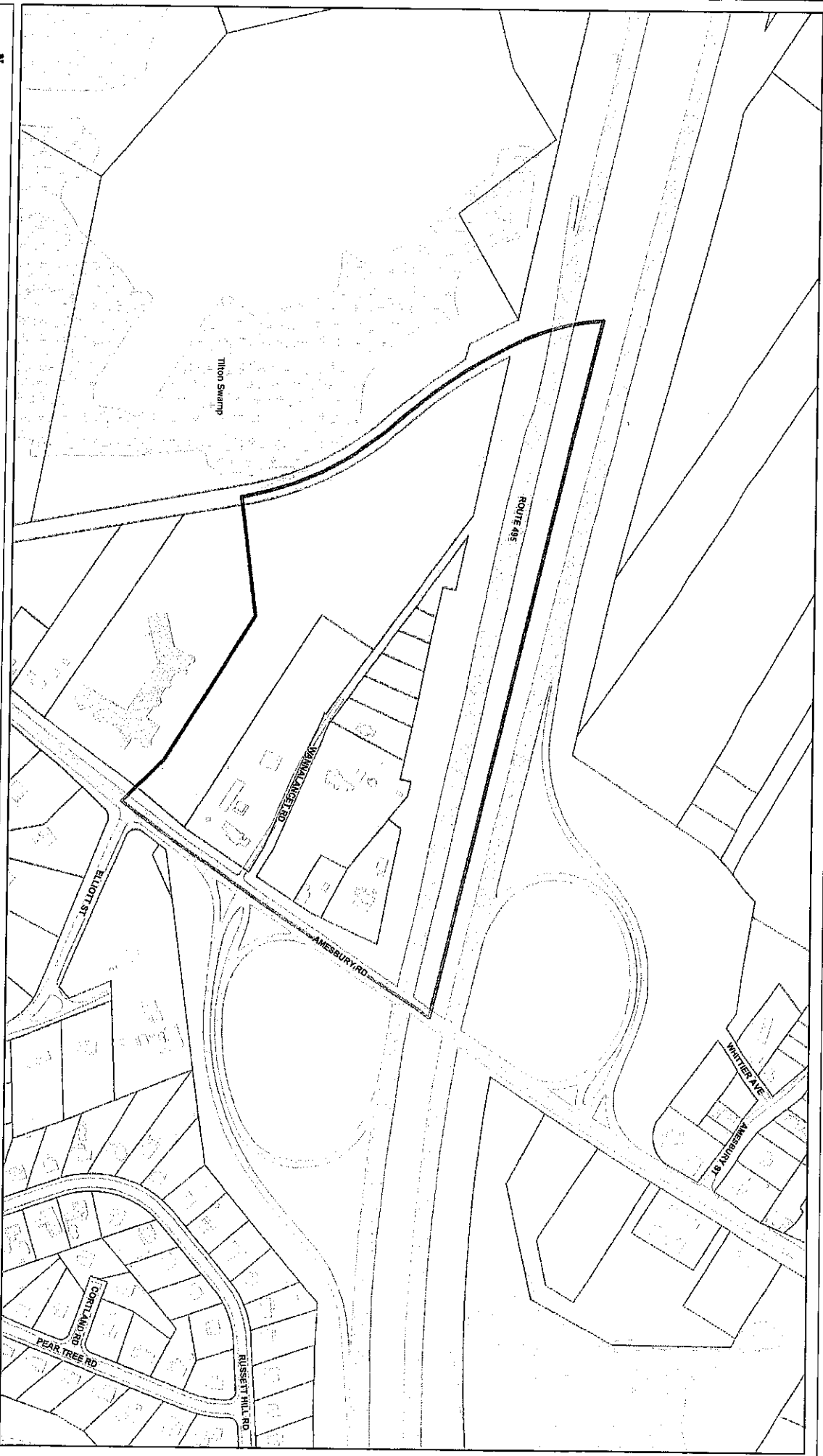
City Of Haverhill, MA
 Engineering --- Division
 Date produced: 11/28/2018

Amesbury Road East Area - ME-NE Zone



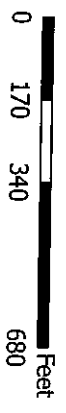
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Amesbury Road West Area - ME-NE Zone



1 inch = 250 feet

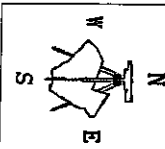
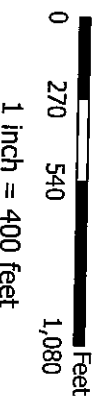
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 The City engineer's decisions are hereby made from use of this map.





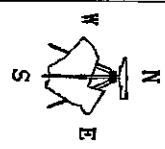
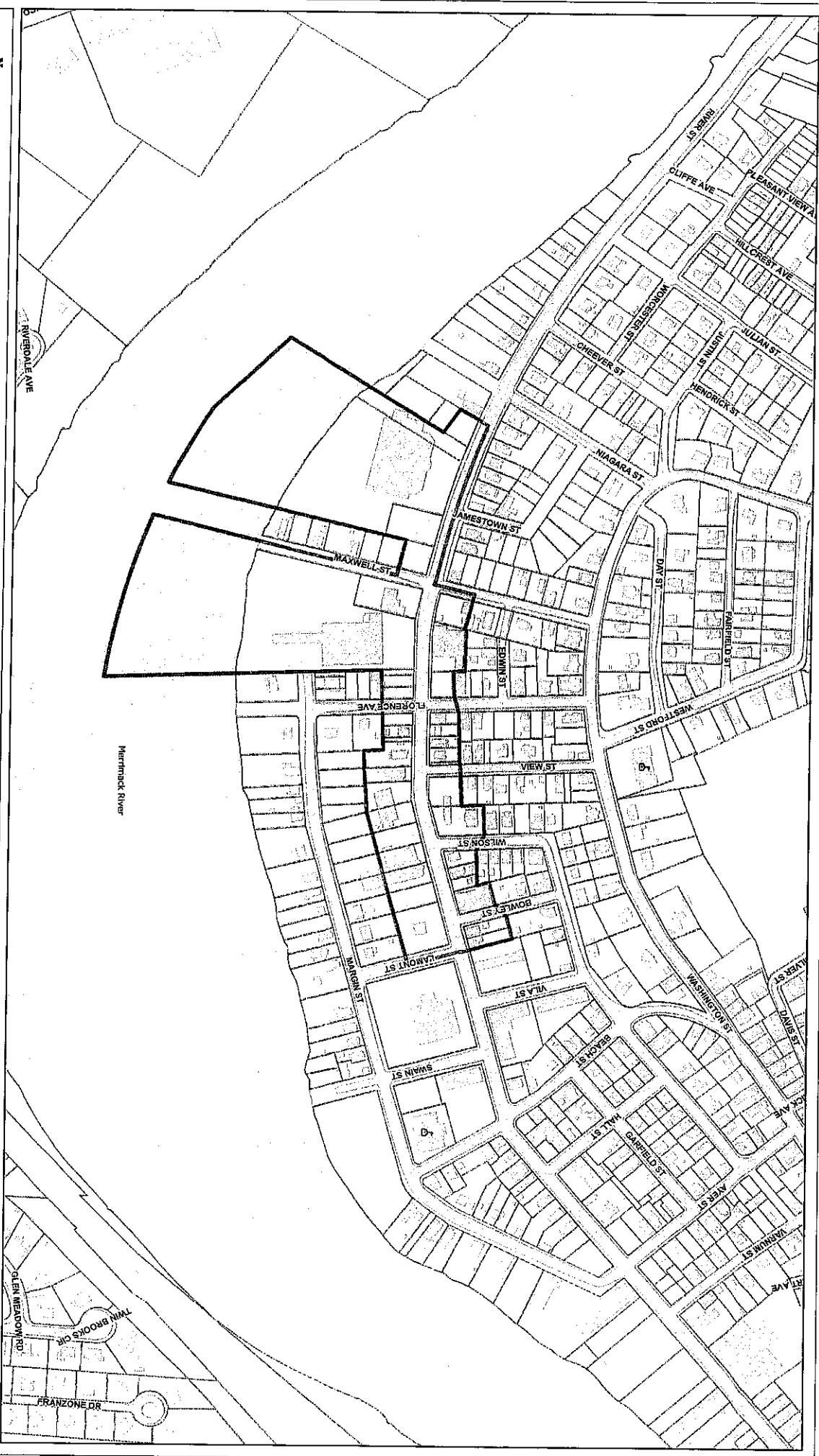
Broadway Area (North Side) - MMOD-NE Zone

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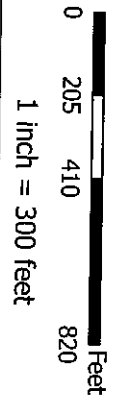
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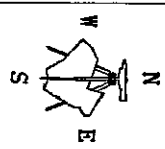
River Street Area - ME-NE Zone



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South Main Street Area - ME-NR Zone

0 270 540 1,080 Feet

1 inch = 400 feet

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Knipe Road Area - ME-RO Zone

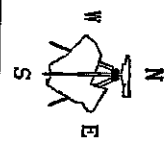
0 205 410 820 Feet

1 inch = 300 feet

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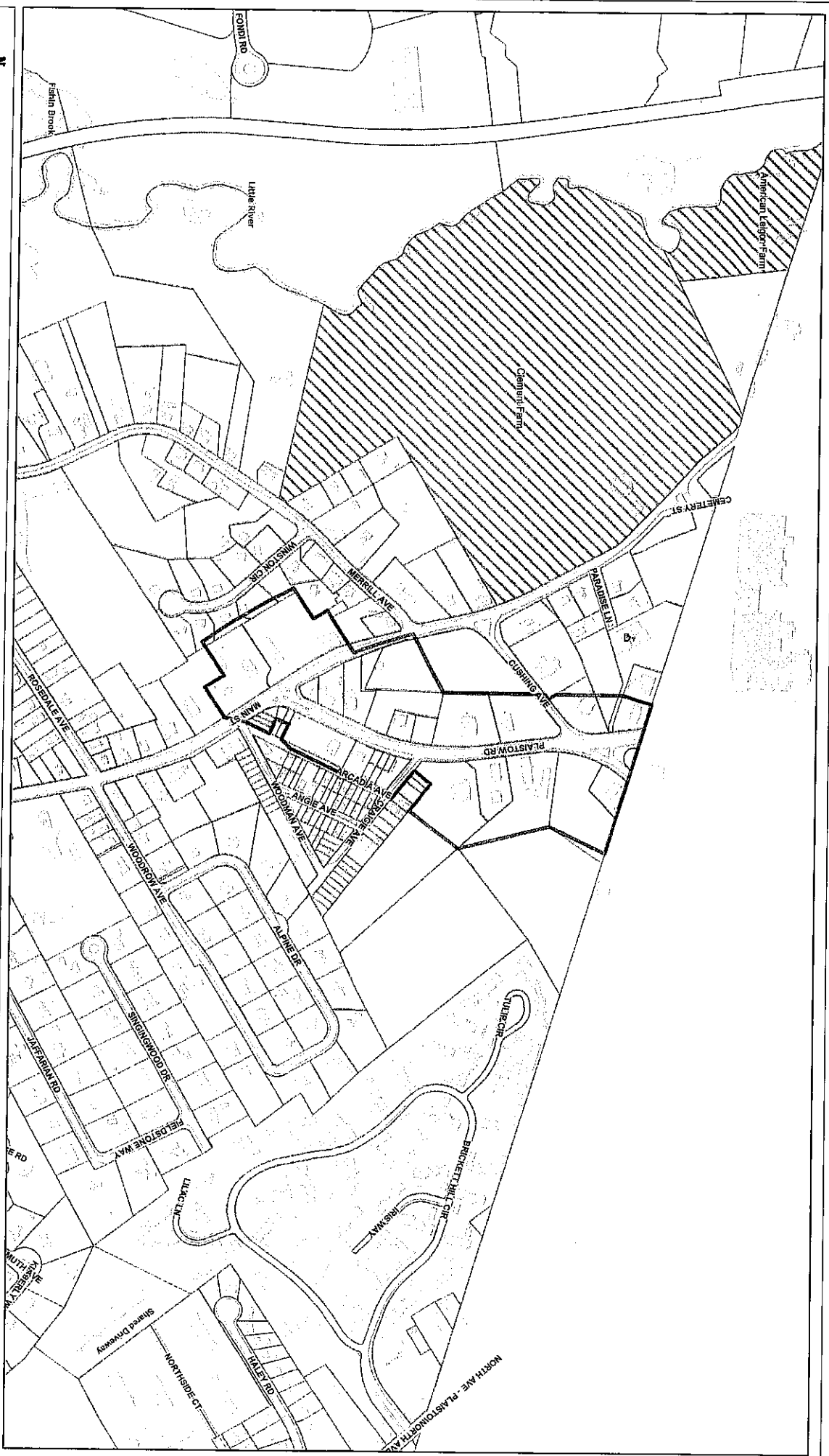
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Plaistow Road Area - ME-RO Zone

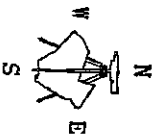
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1 inch = 400 feet



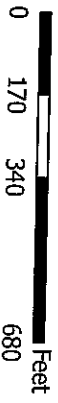
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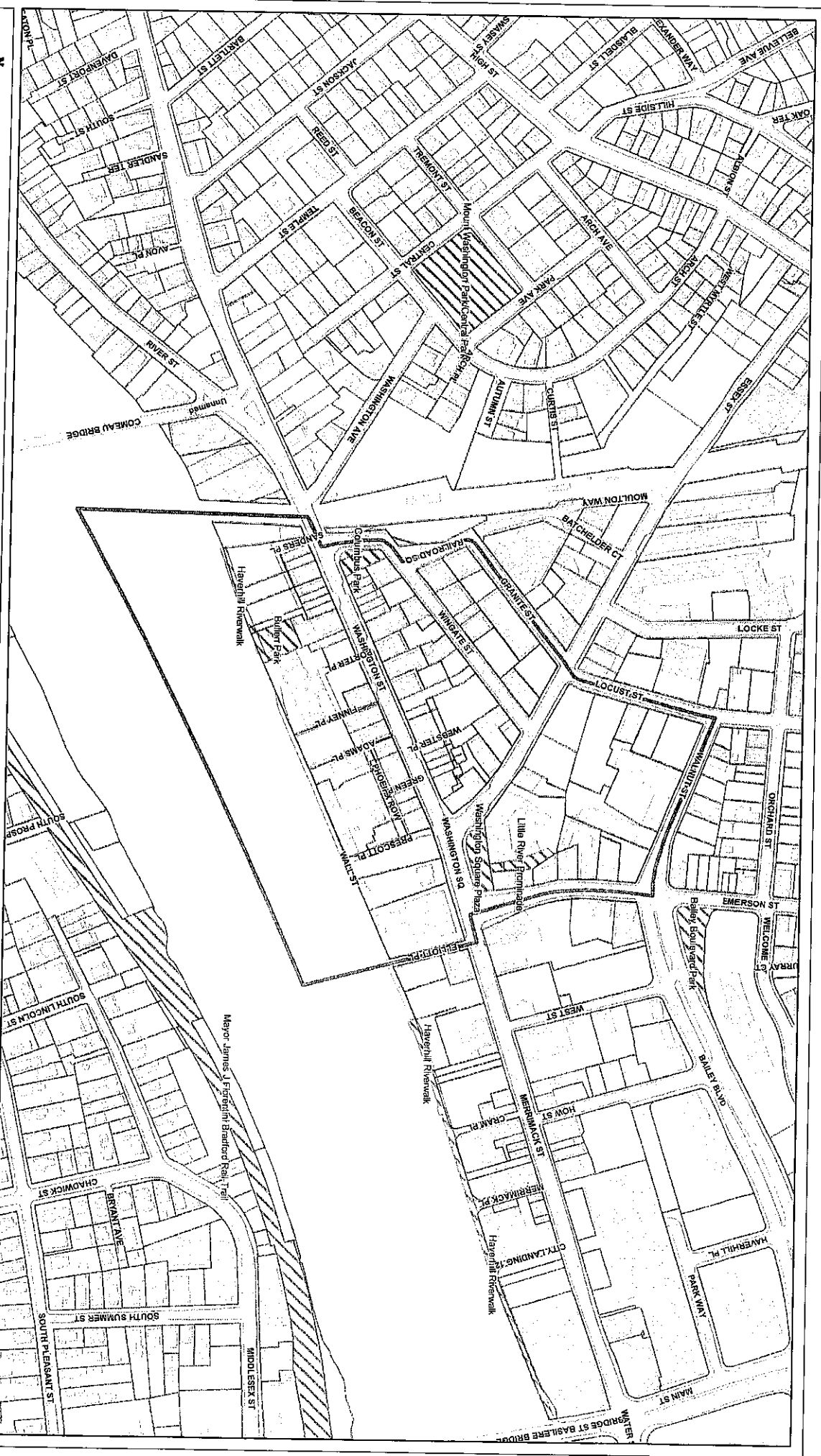


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Waterfront District Area-WDA - ME-RO Zone



1 inch = 250 feet



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