

PLANNING REPORT & RECOMMENDATION

To: Malden Planning Board
From: Malden City Planner
Date: November 19, 2020
Subject: Amendments of §§12.12.030 and 12.32.060, Ch.12, Rev. Ord. of 2020 (“MZO”) Short-Term Rental, Family and Rooming House (CCP 261/2020)

PROCEDURAL: This petition is made by the City Council (§12.32.050, MZO) and was filed by sponsor Councilor-at-Large Craig Spadafora, submitted for consideration by the Mayor. (For full text of amendments, see attached City Council Paper 261/2020 and accompanying correspondence from Mayor Christenson to City Council dated September 8, 2020).

Note 1: Amendments re: the definitions of “family” and “rooming house” were considered at public hearings held in June and October 2014 and February 2015 (CCP 273/2014) and expired without action.

SUMMARY of PROPOSED AMENDMENTS:

1) **“Short-Term Rental”.**

A. **Proposed Zoning:** The amendments propose

- A new residential use category, “Short-Term Rental.”
- Use regulations to prohibit this use in all zoning districts (§12.12.030, MZO).
- The following definition (§12.32.060, MZO):

*“**Short Term Rental:** An owner occupied, tenant occupied or non-owner occupied building, structure or property, or part thereof, which is not a licensed hotel, motel, or rooming or lodging house, or group dwelling which is used for any residential use on a short term basis, which is herein defined to be thirty (30) days or less, whether through a rental agreement, lease, license or any other type of agreement and whether as a principal use or an accessory use to any other use. Any variance of any language of this definition shall be deemed to be a use variance and is expressly prohibited.”*

The proposed amendment clarifies and updates the City zoning ordinance to be consistent with the Building Code.

B. **Current Zoning:** Short-term rentals are currently illegal in the City, per the state Building Code, and may be considered to be classified under the “motel-hotel” use category (§12.12, MZO).

2) **Definition of “Family.”**

A. **Proposed zoning.** The amendment proposes to change the current definition of “family” (§12.32.060, MZO) as follows:

*“**Family:** One or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons but not exceeding ~~two (2)~~ **four (4)** living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family.”*

The proposed amendment will not exempt a residential dwelling unit from being regulated and further restricted by other governing codes, namely, state Building Code, state Sanitary Code (Health Code), state Fire Code, which provide other requirements, such as ceiling height, minimum room size, natural light and ventilation, and minimum square footage per occupant.

B. **Current zoning.** The current definition was ordained in 1977 with the City’s adoption of M.G.L. Chapter 40A, and there have been no amendments ordained (See *Note 1* herein above).

The definition of “Family” is incorporated into the definition of “Dwelling Unit,” which is incorporated into the definitions of single-family dwelling, two family dwelling, three and four family dwelling, multifamily dwelling and town or row dwelling (§12.32.060.B, MZO):

- Dwelling Unit: One (1) or more rooms providing living facilities for one (1) family including equipment for both cooking and sanitation or provisions for the same within the building in which the dwelling unit is located.
- Dwelling, Single Family: A detached building used for, or occupied exclusively by, one (1) dwelling unit. Two (2) kitchens are prohibited in one dwelling unit in a single family dwelling.
- Dwelling, Two Family: A building used for, or occupied by, two (2) dwelling units. Two (2) kitchen are prohibited in either or both of the two (2) dwelling units in a two family dwelling.
- Dwelling, Three and Four Family: A building used, or occupied by, three (3) or four (4) dwelling units, but not to include town or row houses.
- Dwelling, Multifamily: A building used for, or occupied by, five (5) or more dwelling units.
- Dwelling, Town or Row: A single family attached unit with party walls.

Note 2: The current definition of “family” (§12.32.060.B, MZO) is taken verbatim from a U.S. Supreme Court case, Village of Belle Terre v. Boraas, 416 U.S. 1 (1974), which upheld the same definition in a New York municipal zoning ordinance, and which, to date, has not been overturned.

Note 3: The amendment does not propose to change the use regulations, dimensional controls or parking requirements for single family, two family, three family, four family or multifamily dwellings; or town or row dwellings (§§12.12, 12.16, 12.20, MZO).

Note 4: For purposes of counting the number of unrelated persons in a dwelling unit, the City’s historical and current protocol is to exclude minor children for which a resident adult is the caretaker (legally and/or financially responsible for the maintenance of the child/dren).

3) **Definition of “Rooming House.”**

A. **Proposed zoning.** The amendment proposes to change the current definition of “rooming house” (§12.32.060, MZO) as follows:

*“Rooming House: A building in which ~~three (3)~~ **five (5)** or more persons either individually or as families are housed for hire in individual rooms with or without meals and shall include lodging, boarding, and tourists houses.”*

The proposed amendment intends to update the City zoning ordinance to be consistent with state law, which defines a “lodging house” as “a house where lodgings are let to four or more persons not within second degree of kindred to the person conducting it” (M.G.L. c.140, §22).

The amendment proposes “five (5),” based on the presumption that if the “person conducting it” resides there, that person would be counted in the number of persons.

B. **Current zoning:** The current definition was ordained in 1977 with the City’s adoption of M.G.L. Chapter 40A and there have been no amendments ordained (See *Note 1* herein above).

Rooming houses are allowed by special permit in the Residence C zoning district and prohibited in all other districts (§§12.12.030, MZO). The five rooming/lodging houses in the City with a proper occupancy permit and the required license (issued by the City Council) are located in the Residence A zoning district and are considered preexisting nonconforming (§12.28.010.A, MZO).

Note 5: The amendment does not propose to change the use regulations, dimensional controls or parking requirements for rooming houses (§§12.12, 12.16, 12.20, MZO).

Note 6: The five locations are 116-118 Cedar Street (11 units); 155 Clifton Street (15 units); 98 Laurel Street (7 units); 52 Maple Street (9 units); and 115 Washington Street (14 units); the latter needs to renew its license.

APPLICATION and EXEMPTIONS: The amended ordinances will apply to new lots and new buildings and construction and use and occupancy of existing buildings on existing lots, unless exempt per M.G.L. c. 40A, §6: as a preexisting nonconforming use or building (per §12.28.010, MZO); the subject of a building or special permit issued before the first publication of notice of the public hearing (October 30, 2020); or land part of an approved and endorsed Approval Not Required or Definitive subdivision plan.

Note 7: The effective date is the date of City Council's vote to ordain the amendment (§12.32.050.F, MZO).

STANDARD of REVIEW: The Planning Board's review and recommendation of the proposed zoning changes should be directed by *substantive planning objectives, community need and general welfare.*

OTHER: Concerns re: Proposed Amendments to Definition of "Family" and "Rooming House":

- 1) How will the proposed amendments affect (reduce or increase) existing issues re:
 - overcrowding and over-occupancy of rooms and dwelling units
 - density (number of people living in one bedroom, in one dwelling unit and/or at one property)
 - neighborhood parking issues, on-street parking demands
 - occupancy of basements, attics, closets and other rooms, as bedrooms
 - rents
 - affordable housing supply
 - creation of additional housing
- 2) How much more housing may be created as a result of the amendments?
How many existing dwelling units currently have bedrooms in number and size, or other rooms with the capacity to be converted and used as bedrooms, large enough to accommodate four unrelated individuals?
- 3) What might be the impacts of the amendments on neighborhoods and City infrastructure?
Do four (or any number of) family members living together in one dwelling unit have different impacts than four unrelated individuals living together in one dwelling unit?

PLANNING RECOMMENDATION: (*Made prior to the public hearing*) That the Planning Board recommends to the City Council:

- 1) Approval of the amendments regarding "Short Term Rentals" as submitted; and
- 2) Provided that the above-referenced concerns are adequately addressed, approval of the amendment of the definition of "Family" as submitted; and approval of the amendment of the definition of "Rooming House," as submitted.