

PAPER ___-22:

Order: That Title 12 of the Code of the City of Malden be amended for purposes of amending special permit use regulations for marijuana establishments and updating other existing use regulations to reflect current protocol and administration of zoning ordinances to render the language in the ordinances consistent with current interpretation and application.

PROPOSED MARIJUANA ESTABLISHMENT ZONING AMENDMENTS:

Section 12.12.190.A amended to state the following: “A. For construction of new buildings, compliance with the dimensional controls, parking requirements, and buffer zones of this Ordinance. A variance shall be required to grant relief from any noncompliance with dimensional controls, parking requirements, and buffer zones of this Ordinance.”

Section 12.12.190. B amended to state the following: “B. For Marijuana Establishment use of a building lawfully existing or begun prior to the first publication of notice of the public hearing on this Ordinance, or for alteration, conversion or other change to a Marijuana Establishment use lawfully existing or begun prior to the first publication of notice of the public hearing on any amendment to this Ordinance, the City Council must find that any creation or increase in violations of dimensional controls, parking requirements, and/or buffer zones will not be more detrimental to the neighborhood; and if the City Council makes the finding that any creation or increase in violations of dimensional controls, parking requirements, and/or buffer zones will not be more detrimental to the neighborhood, then any new or increased violations of dimensional controls, parking requirements or buffer zones may be allowed by the special permit granted by the City Council and shall not require a variance.”

Section 12.12.190.E amended to state the following: “E. A Marijuana Establishment may be accessory only to another type of Marijuana Establishment at the same property and shall be prohibited as an accessory use to any other use.”

Section 12.12.190.H.2 amended to state the following: “H.2. The Marijuana Establishment shall design and implement a Security Plan approved by the Malden Police Chief and Malden Cannabis Licensing and Enforcement Commission.”

Section 12.190.H.9. amended to state the following: “H. 9. Prior to issuance of any building permit or occupancy permit pursuant to a special permit granted hereunder, the Marijuana Establishment shall submit copies of the following licenses and approvals:

- A. A fully executed Community Host Agreement with the City of Malden, as defined herein this Ordinance;
- B. Any required license and/or approvals issued by the Malden Cannabis Licensing and Enforcement Commission;
- C. Any required license and/or approvals issued by the Malden Board of Health, and
- D. For Marijuana Retailers with Delivery, demonstrate compliance with consumer pre-verification requirements as required by 935 CMR 500.140 (2) (d).

12.12.32.060: amend definition of **Marijuana Establishment** to state: “**Marijuana Establishment** to state: “Marijuana Establishment: A Marijuana Cultivator, Independent Marijuana Testing Laboratory, Marijuana Product Manufacturer, Marijuana Research Facility, Marijuana Retailer or Marijuana Transporter. Marijuana Establishment is specifically and expressly defined to exclude a Marijuana Social Consumption Establishment, Medical Marijuana Treatment Center, and any other type of licensed Marijuana-related businesses. A Marijuana Establishment may not be classified as any other use in this Ordinance. A Marijuana Establishment may be accessory only to another type of Marijuana Establishment at the same property and shall be prohibited as an accessory use to any other use. Any Marijuana Establishment use, whether principal or accessory, shall require a special permit in accordance with MCC 12.12.020 and other applicable provisions of this Ordinance.”

12.12.32.060: amend definition of **Marijuana Retailer** to state: “**Marijuana Retailer:** An entity licensed by the Commission to purchase Marijuana and Marijuana Products from Marijuana Establishments and to sell Marijuana and Marijuana Products to Marijuana Establishments and/or to consumers, and which may also be licensed by the Malden Cannabis Enforcement Commission to deliver Marijuana Products to consumers. A Marijuana Retailer that engages in deliveries and/or has entered into Delivery Agreements with Delivery Licensees licensed by the Cannabis Control Commission, for the purpose of transacting home deliveries to Consumers, shall establish a Pre-verification process for Consumers who intend to place orders for delivery with the Marijuana Establishment pursuant to 935 CMR 500.140 (2)(d)”.

12.12.32.060: amend definition of **Marijuana Transporter** to state: “**Marijuana Transporter:** An entity which transports Marijuana and/or Marijuana Products to, from and/or between Marijuana Establishments, however, expressly excluding transportation, deliveries or other form of transfer to consumers, which are expressly prohibited, including but not limited to home deliveries or transportation, deliveries or other form of transfer to, from and/or between any other property except a Marijuana Establishment. Marijuana Courier as may be defined by this ordinance is specifically excluded from the definition of Marijuana Transporter.”

ADDITIONAL PROPOSED ZONING AMENDMENTS:

The following additional amendments are necessary in order to update and ensure consistency with the current process by which zoning ordinances are applied:

To further amend Title 12, Code of City of Malden:

Section 12.12.010.A.1 amended to state the following: “1. For construction of new buildings, compliance with the dimensional controls and parking requirements of this Ordinance. A variance shall be required to grant relief from any noncompliance with dimensional controls and parking requirements of this Ordinance.”

Section 12.12.010.A.2 amended to state the following: “For the addition of a residential use to a lawfully existing building, or for alteration, conversion or other change to a residential use, which was lawfully existing or begun prior to the first publication of notice of the public hearing on this amendment, the Planning Board must make a finding that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood; and if the Planning Board makes the finding that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood, then any new or increased violations of dimensional controls or parking requirements may be allowed by special permit and shall not require a variance.”

Section 12.12.010.B.1 amended to state the following: “1. For construction of new buildings, compliance with the dimensional controls and parking requirements of this Ordinance. A variance shall be required to grant relief from any noncompliance with dimensional controls and parking requirements of this Ordinance.”

Section 12.12.010.B.2 amended to state the following: “For addition of the use to a lawfully existing building, or for alteration, conversion or other change to a use, which was lawfully existing or begun prior to the first publication of notice of the public hearing on this amendment, the Planning Board must make a finding that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood; and if the Planning Board makes the finding that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood, then any new or increased violations of dimensional controls or parking requirements may be allowed by special permit and shall not require a variance.”

Section 12.12.010.C.1 amended to state the following: “1. For construction of a new building or structure, compliance with the dimensional controls and parking requirements of this Ordinance. A variance shall be required to grant relief from any noncompliance with dimensional controls and parking requirements of this Ordinance.”

Section 12.12.010.C.2 amended to state the following: “2. For any extension, addition, structural change and/or alteration to an existing building, structure or site, which was lawfully existing or begun prior to the first publication of notice of the public hearing on this amendment, the special permit granting authority must find that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood; and if the special permit granting authority makes the finding that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood, then any new or increased violations of dimensional controls or parking requirements may be allowed by special permit and shall not require a variance.”

Section 12.12.060.A amended to state the following: “A. For construction of new buildings, compliance with the dimensional controls and parking requirements of this Ordinance. A variance shall be required to grant relief from any noncompliance with dimensional controls and parking requirements of this Ordinance.”

Section 12.12.060.B amended to state the following: “B. For the addition of a restaurant use to a building, or for alteration, conversion or other change to a restaurant use, which was lawfully existing or begun prior to the first publication of notice of the public hearing on this amendment, the Planning Board must find that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood; and if the Planning Board makes the finding that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood, then any new or increased violations of dimensional controls or parking requirements may be allowed by special permit and shall not require a variance.”

Section 12.12.070.A amended to state the following: “A. For construction of new buildings, compliance with the dimensional controls and parking requirements of this Ordinance. A variance shall be required to grant relief from any noncompliance with dimensional controls and parking requirements of this Ordinance.”

Section 12.12.070.B amended to state the following: “B. For the addition of a restaurant use to a building, or for alteration, conversion or other change to a restaurant use, which was lawfully existing or begun prior to the first publication of notice of the public hearing on this amendment, the Planning Board must find that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood; and if the Planning Board makes the finding that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood, then any new or increased violations of dimensional controls or parking requirements may be allowed by special permit and shall not require a variance.”

Section 12.12.150.A amended to state the following: “A. For construction of new buildings, compliance with the dimensional controls and parking requirements of this Ordinance for the principal use to which the drive-thru is accessory and compliance with the parking requirements for drive-thrus. A variance shall be required to grant relief from any noncompliance with dimensional controls and parking requirements of this Ordinance.”

Section 12.12.150.B amended to state the following: “B. For the addition of a drive-thru to a building, or for alteration, conversion or other change to a drive-thru use, which was lawfully existing or begun prior to the first publication of notice of the public hearing on this amendment, the Planning Board must find that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood; and if the Planning Board makes the finding that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood, then any new or increased violations of dimensional controls or parking requirements may be allowed by special permit and shall not require a variance.”

Section 12.12.160.A amended to state the following: “A. For construction of new buildings, compliance with the dimensional controls and parking requirements of this Ordinance for the principal use to which the drive-thru is accessory and compliance with the parking requirements for drive-thrus. A variance shall be required to grant relief from any noncompliance with dimensional controls and parking requirements of this Ordinance.”

Section 12.12.160.B amended to state the following: “B. For addition of a gasoline filling and service station to an existing building, or, for alteration, conversion or other change to a gasoline filling and service station lawfully existing or begun prior to the first publication of notice of the public hearing on this amendment, the Planning Board must find that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood; and if the Planning Board makes the finding that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood, then any new or increased violations of dimensional controls or parking requirements may be allowed by special permit and shall not require a variance.”