

PLANNING REPORT & RECOMMENDATION *Supplement*

To: Malden Planning Board
From: Malden City Planner
Date: October 12, 2022 (*tabled on August 16, 2022*)
Subject: Amendments of Title 12, Code of City of Malden (MCC) (*all \$references herein*)
Use Regulations for Marijuana Establishments (CCP 286/2022)

PROCEDURAL: This supplements the Planning Report & Recommendation dated August 16, 2022 and incorporates and repeats relevant information for convenient reference.

The petition was filed by the City Council (§12.32.050) by sponsors City Councilor-at-Large Craig Spadafora and Ward 8 City Councilor Jadeane Sica. For full text of amendments, see attached City Council Paper 286/2022.

At the request of the sponsors, on August 16, 2022, the Planning Board opened and immediately tabled the joint public hearing, without taking any public testimony.

Note 1: A similar amendment proposed in 2020 by Councilors-at-Large Craig Spadafora and Stephen Winslow, and Ward 8 Councilor Jadeane Sica was not referred for public hearing (CCP 394/2020).

CURRENT ZONING: Current zoning for Marijuana Establishments (Title 12.12.190, MCC) was ordained on September 24, 2018 (CCP 283/2018). State law authorizes local control for the City to enact zoning regulations (M.G.L. c. 40A) and to adopt ordinances that impose reasonable safeguards on the operation of marijuana establishments and govern their time, place and manner (M.G.L. c. 94G).

Note 2: Malden also regulates Marijuana Establishments through its licensing ordinance, administered by the City's Cannabis Licensing & Enforcement Commission (CLEC) (Title 6.08.070, MCC).

Provisions of the current zoning ordinance relevant to these amendments:

- A. A special permit is required for any Marijuana Establishment (ME) (§§12.12030 and 12.12.190).
- B. The special permit granting authority (SPGA) is the City Council (§12.12.190).
- C. Use categories of ME: marijuana retailer, marijuana cultivator, independent marijuana testing laboratory, marijuana product manufacturer, marijuana research facility, marijuana transporter (§§12.12.030 and 12.32.060).
- D. The City Council is the SPGA for the following:
 - Multifamily Dwellings, 6-7 stories (§12.12.010)
 - All Structures More than Six Stories (§12.12.100)
 - Marijuana Establishments (§12.12.190)
 - Reduced parking requirements for residential uses in the CBD (§12.20.020.H.3)
 - Multifamily Dwellings, 8-10 stories in the RQRRD Subdistricts 1 & 2 (§12.28.140)
- E. The Planning Board is the SPGA for the following:
 - All residential, institutional, business, industrial and other uses allowed by special permit (except multifamily dwellings 6-7 stories; structures more than 6 stories; marijuana establishments; and multifamily dwellings, 8-10 stories in RQRRD) (§§12.12.010 & 12.12.030/Table of Use Regulations, attached)
 - Development in the Floodplain Districts (§12.12.110)
 - Inclusionary Zoning developments (§12.12.300)
 - Reconstruction, extension, structural change, alteration and conversion (change of use) of preexisting nonconforming uses and properties (§12.28.010).
 - Ledge removal and Alteration of Grade (§12.28.130)

SUMMARY of PROPOSED AMENDMENTS:

§§12.12.010.A, 12.12.190, 12.12.190.B, 12.12.190.G, 12.12.190.G.4, 12.12.190.H and 12.28.010.E.

The proposed amendment would change the special permit granting authority (SPGA) for all Marijuana Establishments from the City Council to the Planning Board.

Purpose and Intent. As stated in the paper, the amendments are proposed:

“in the interest of promoting a fair and transparent marijuana licensing process, free from political influence and the potential for state ethic violations.”

APPLICATION and EXEMPTIONS: The amendments will apply to new construction and new use/occupancy of existing buildings, unless exempt by M.G.L. c. 40A, §6; §12.28.010; the express language of the amendment; or the subject of a building permit or special permit issued before the first publication of notice of the public hearing (July 29, 2022).

The following projects are exempt from the proposed amendments, given issuance of a building permit and/or special permit before the date of first publication of the public hearing notice:

1. 323 Commercial Street (permit application CMID-032303-2020/special permit granted October 13, 2020; permit application CMID-039258-2021/building permit issued 10/21/21; permit COO-046158-2022/temporary occupancy permit issued 6/30/22).
2. 7 Linehurst Road (permit application CMID-032442-2020/special permit granted October 27, 2020; permit applications CMID-038167-2021, 039978-2021/building permits issued 7/19/21 & 10/25/21).
3. 36 Charles Street (permit application CMID-040598-2021/special permit granted April 26, 2022).

***Note 3:** Per state statute, applications for permits in the processing stage when publication occurs are not protected; historically, the City interprets, in consideration of a pending petitioner’s good faith reliance on current regulations, that proposed amendments do not apply to applications filed prior to the first publication of notice of public hearing. There are no complete applications in the processing stage.*

EFFECTIVE DATE: The effective date is the date of the City Council’s vote to ordain the amendment (§12.32.050.F). The Council must act on the amendment within ninety (90) days after the public hearing closes, otherwise, a new duly advertised public hearing must be held (§12.32.050.D); accordingly, if the public hearing closes on October 12, 2022, the final date for action is January 10, 2023.

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.*

The proposed amendments are administrative and procedural in nature.

The proposed amendments will ensure there is consistent application of the special permit regulations for all business and industrial uses, by the same SPGA, the Planning Board, the City’s special permit granting authority with the most experience and expertise; the Board receives technical support from full-time professional staff, and special permits are the only form of zoning relief this Board decides.

The impact of a pending proposed amendment re: buffer zones should also be considered (CCP 315/2022); one part of this proposed amendment, specifically, re: §12.12.190B, would change the matters under the control of the SPGA to include buffer zones and allow the SPGA to reduce buffers zones.

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

1. Approval of the amendments of Sections 12.12.010.A, 12.12.190 (first paragraph), 12.12.190.B, 12.12.190.G, 12.12.190.G.4, 12.12.190.H and 12.28.010.E.



Legislation Details (With Text)

File #: 286-22 **Version:** 1 **Name:**

Type: Order **Status:** Reported from Committee

File created: 6/2/2022 **In control:** City Council

On agenda: 6/7/2022 **Final action:**

Title: Order: That in the interest of promoting a fair and transparent marijuana licensing process, free from political influence and the potential for state ethics violations, that the Code of the City of Malden be amended to change the Special Permit granting authority for Marijuana Establishments from the Malden City Council to the Malden Planning Board, including amending the following Sections:

-Section 6.08.070.B. Definition of Special Permit, by deleting "as further amended by City Council Paper 283 of 2018.";

-Section 6.08.070.D.2.b, by deleting "City Council" where mentioned and replacing with "Planning Board";

-Section 12.12.010.A, first paragraph, first phrase, by striking "City Council" and replacing with "Planning Board", as follows: "Except for Marijuana Retailer, Marijuana Cultivator, Independent Marijuana Testing Laboratory, Marijuana Product Manufacturer, Marijuana Research Facility and Marijuana Transporter, where a special permit shall be required by the Planning Board in accordance with MCC 12.12.020;"

-Section 12.12.190, first paragraph, by striking "City Council" and replacing with "Planning Board" as follows: "A Marijuana Establishment, as defined by this Ordinance to expressly only include Marijuana Retailer, Marijuana Cultivator, Independent Marijuana Testing Laboratory, Marijuana Product Manufacturer, Marijuana Research Facility and Marijuana Transporter, may be allowed only in the Highway Business, Industrial 1 and Industrial 2 zoning districts or the Marijuana Establishment Overlay District, only by special permit granted by the Planning Board and only in conformance with the following controls and requirements:"

-Section 12.12.190.B, Section 12.12.190.G, Section 12.12.190.G.4, Section 12.12.190H, by deleting "City Council" where written and replacing with "Planning Board";

-Section 12.28.010.E, by deleting "City Council" where mentioned and replacing with "Planning Board"

Sponsors: Jadeane Sica, Craig Spadafora

Indexes:

Code sections:

Attachments:

| Date | Ver. | Action By | Action | Result |
|-----------|------|-----------------------------|----------|--------|
| 6/21/2022 | 1 | City Council | referred | Pass |
| 6/14/2022 | 1 | Rules & Ordinance Committee | | |

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-Section 12.28.010.E, by deleting “City Council” where mentioned and replacing with “Planning Board”

12.12.030 USE REGULATIONS

Uses of land, buildings and structures shall be regulated throughout the City of Malden as herein set forth:

| Use | A | B | C | RO | BN | BC | BH | I1 | I2 | ME OVERLAY DISTRICT |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|---------------------|
| Agriculture | Yes | Yes | Yes | No | No | No | No | No | No | - |
| Residential | | | | | | | | | | - |
| Dwelling, Single Family | Yes | Yes | Yes | Yes | Yes | No | No | No | No | - |
| Dwelling, Two Family | No | Yes | Yes | Yes | Yes | No | No | No | No | - |
| Dwelling, Three & Four Family | No | SP | SP | SP | SP | No | SP | No | No | - |
| Dwelling, Town or Row | No | SP | SP | SP | SP | SP | SP | No | No | - |
| Dwelling, Multi-family, up to 3 stories inclusive | No | SP | SP | SP | SP | SP | SP | No | No | - |
| Dwelling, Multi-family, more than three stories but not exceeding 6 stories | No | No | No | No | No | SP | No | No | No | - |
| Dwelling, Multi-family, more than six (6) stories but not exceeding seven (7) stories | No | No | No | No | No | SP | No | No | No | - |
| Dwelling, Group | Yes | No | Yes | Yes | Yes | Yes | No | No | No | - |
| Rooming House | No | No | SP | No | No | No | No | No | No | - |
| Manufactured Home | SP* | SP* | SP* | SP* | SP* | SP* | SP* | SP* | SP* | - |
| Planned Unit Development | No | No | SP | SP | No | No | No | No | No | - |
| Dwelling, Cohousing | No | No | No | SP | No | No | No | No | No | - |
| Short Term Rentals | No | No | No | No | No | No | No | No | No | |
| Institutional Use | | | | | | | | | | |
| Club or Lodge | No | No | No | Yes | No | Yes | Yes | Yes | Yes | - |
| Day Care Centers | Yes | No | Yes | Yes | SP | Yes | Yes | Yes | Yes | - |
| Hospitals | SP | SP | SP | Yes | Yes | Yes | Yes | No | No | - |
| Non-Profit School | Yes | Yes | Yes | Yes | Yes | Yes | Yes | No | No | - |
| Religious Facilities | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | - |
| Business Uses | | | | | | | | | | - |
| Business School | No | No | No | Yes | SP | Yes | SP | SP | SP | - |
| Funeral Home | SP | SP | SP | Yes | Yes | Yes | Yes | No | No | - |
| Gasoline Filling & Service Station | No | No | No | No | SP | No | SP | SP | SP | - |
| Greenhouse | No | No | No | No | Yes | No | Yes | No | No | - |
| Motel - Hotel | No | No | No | No | No | SP | SP | SP | SP | - |
| Nursing or Convalescent Home | No | Yes | Yes | Yes | Yes | SP | Yes | No | No | - |
| Medical Center | No | No | No | SP | SP | SP | SP | SP | SP | - |
| Offices, General | No | No | No | Yes | Yes | Yes | Yes | Yes | Yes | - |
| Recreation, Gainful Business | No | No | No | No | Yes | Yes | Yes | Yes | Yes | - |
| Recreation, Gainful Business, Secondary to Principal Club/Lodge | No | No | No | SP | No | SP | SP | SP | SP | - |
| Restaurant, "Fast Food" Service, that does not take call-ahead orders and is in excess of 1000 sq. ft. gross floor area | No | No | No | No | No | SP | SP | SP | SP | - |
| Restaurant, All Other | No | No | No | No | SP | Yes | SP | SP | SP | - |
| Retail Sales | | | | | | | | | | - |
| Less than 5,000 sq. feet gross floor area | No | No | No | No | Yes | Yes | Yes | Yes | Yes | - |
| 5,000 Sq. Feet or more gross floor area | No | No | No | No | SP | SP | SP | SP | SP | - |

| | | | | | | | | | | |
|---|----|----|----|-----|-----|-----|-----|-----|-----|----|
| Retail Sales, only in conjunction with On Site Manufacturing, Warehousing, Wholesaling & Distribution | No | No | No | No | No | No | No | Yes | Yes | - |
| Retail Services | No | No | No | Yes | Yes | Yes | Yes | Yes | Yes | - |
| Adult Bookstore | No | No | No | No | No | No | No | SP | SP | - |
| Adult Motion Picture Theater | No | No | No | No | No | No | No | SP | SP | - |
| Planned Development | No | No | No | No | No | No | SP | No | No | - |
| Adult Club | No | No | No | No | No | No | No | SP | SP | - |
| Body Art | No | No | No | No | SP | No | No | SP | SP | - |
| Drive Thru | No | No | No | No | SP | SP | SP | SP | SP | - |
| Convenience Store | No | No | SP | No | SP | Yes | SP | SP | SP | - |
| Supermarket | No | No | No | No | SP | Yes | SP | SP | SP | - |
| Substance Abuse Treatment Center | No | No | No | No | No | No | SP | SP | SP | - |
| Licensed Massage Therapy Salon | No | No | No | SP | SP | SP | SP | SP | SP | - |
| Medical Marijuana Treatment Center | No | No | No | No | No | No | No | SP | SP | - |
| Adult Day Health Center | No | No | No | No | No | No | SP | SP | SP | - |
| Kennel | No | No | No | No | SP | SP | SP | SP | SP | - |
| Marijuana Retailer | No | No | No | No | No | No | SP | SP | SP | SP |
| Industrial Uses | | | | | | | | | | |
| Building Construction & Contracting | No | No | No | No | No | No | Yes | Yes | Yes | - |
| Manufacturing and Repair | No | No | No | No | No | No | Yes | Yes | Yes | - |
| Marina | No | No | No | No | No | No | No | Yes | Yes | - |
| Motor Vehicle Repair Shop | No | No | No | No | No | No | No | Yes | Yes | - |
| Warehouse | No | No | No | No | No | No | SP | SP | SP | - |
| Wholesale and Distribution | No | No | No | No | No | No | No | SP | SP | - |
| Self-Storage Facilities | No | No | No | No | No | No | No | SP | SP | - |
| Research and Development | No | No | No | No | No | SP | SP | Yes | Yes | - |
| Towing | No | No | No | No | No | No | SP | SP | SP | - |
| Light Manufacturing | No | No | No | No | SP | SP | SP | Yes | Yes | - |
| Asphalt, Brick, Concrete & Soil Recycling | No | No | No | No | No | No | No | SP | SP | - |
| Marijuana Cultivator | No | No | No | No | No | No | SP | SP | SP | SP |
| Independent Marijuana Testing Laboratory | No | No | No | No | No | No | SP | SP | SP | SP |
| Marijuana Product Manufacturer | No | No | No | No | No | No | SP | SP | SP | SP |
| Marijuana Research Facility | No | No | No | No | No | No | SP | SP | SP | SP |
| Marijuana Transporter | No | No | No | No | No | No | SP | SP | SP | SP |
| Other Uses | | | | | | | | | | |
| Fill | SP | SP | SP | SP | SP | SP | SP | SP | SP | - |
| Parking Facilities, Offsite | SP | SP | SP | SP | SP | SP | SP | SP | SP | - |
| Flood Plain - All Uses | SP | SP | SP | SP | SP | SP | SP | SP | SP | - |
| Artist Live/Work Space | No | No | No | No | No | Yes | No | No | No | - |
| Public Service Corporation | No | No | No | No | Yes | Yes | Yes | Yes | Yes | - |
| Marijuana Social Consumption Establishment | No | No | No | No | No | No | No | No | No | - |

* In the event of a situation as described in MCC 12.12.040 Paragraph A, the Building Inspector, at his discretion, may issue a temporary unrenovable occupancy permit not to exceed sixty (60) days, providing a Special Permit is applied for prior to issuance of said temporary occupancy permit.

** For accessory uses, see MCC 12.16.070 Paragraph G

HISTORY

Amended by Ord. [261-20B Attachment](#) on 4/27/2021

Amended by Ord. [Paper 383-21 Title 12, Chapter 12](#) on 12/7/2021