

City of Malden
Licensing of Marijuana Establishments
Draft Ordinance SPW 11.27.2018 Proposed Amendment
Consolidation of Papers 273-18, 274-18 and 313-18

ORDER: TO AMEND CHAPTER 7, REVISED ORDINANCES OF 1991, BY ADDING SECTION 6.49
REGARDING THE LICENSING OF MARIJUANA ESTABLISHMENTS

This ordinance applies to marijuana retail sales, marijuana cultivators, independent marijuana testing laboratories, marijuana product manufacturing, research facilities and marijuana transporters, all as defined by the Massachusetts Cannabis Commission at 935 CMR 500.000.

I. INTENT AND PURPOSE

- A. To regulate sales, cultivation, testing, manufacture, research and transportation of marijuana pursuant to state regulations as set forth in 935 CMR 500.000.
- B. To ensure safety and to minimize the adverse impact of these establishments on adjacent properties.
- C. Nothing in this section shall be construed to supersede any state or federal laws or regulations governing the sale and distribution of narcotic drugs.

II. OVERVIEW OF PROCESS TO OBTAIN A CITY OF MALDEN MARIJUANA ESTABLISHMENT LICENSE

- A. Malden's Marijuana Licensing procedures are intended to complement the procedures established by the Massachusetts Cannabis Commission.
- B. Applicants must hold meetings, apply for and obtain all necessary local permits, licenses and approvals to build and operate a Marijuana Establishment including:
 - 1. Holding a Preliminary Community Outreach Meeting
 - 2. Submitting an Application of Intent and Obtaining a use permit under Malden's Zoning Ordinances;
 - 3. Obtaining a local license to operate a Marijuana Establishment from the Malden Marijuana Licensing Board, and
 - 4. Entering into a Community Host Agreement approved by the City Council and executed by the Mayor.

III. NOTICE OF OPPORTUNITY TO OBTAIN A MARIJUANA RETAIL LICENSE

- A. Once this ordinance takes effect and from time to time as licenses are available, the City Clerk shall distribute notice of the opportunity for entities to apply for a Marijuana Retail License in Malden along with a date no sooner than ~~sixty~~ (60) days from the issuance of the notice when applications will be due.
- B. The City will timely review submitted applications and seek to select the qualified applications most beneficial to the interests of the City. The City has established that marijuana retail licenses be limited in number to no greater than 20% of package store liquor licenses allowed by state law in the City. ((Reference: Council Order 272-18, Passed June 12, 2018)). The City may decline to issue any licenses if applicants fail to meet qualifications or fail to offer sufficient community benefits.

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IV. PRELIMINARY COMMUNITY OUTREACH MEETING

- A. Potential applicants shall follow the procedures for a Community Outreach Meetings as specified in the Massachusetts's Cannabis Control Regulations at 935 CMR 500.101(1)(a).9 and the Malden Zoning Ordinance Chapter 12, Section 300.20 (i) (.5) which states: "No more than 60 days prior to filing a petition for a special permit, a proposed Marijuana Establishment shall coordinate and host with the Ward City Councilor for the Ward where the subject property is located a Community Outreach Meeting to present the proposal to the community, and notice of this meeting shall be in accordance with the notice provisions of this Ordinance."

V. APPLICATION FOR USE PERMIT / APPLICATION OF INTENT

- A. To become eligible to obtain a license, an applicant shall first file an application for a use permit under Malden's Zoning Ordinance to the Building Commissioner who will receive it on behalf of the City Council (see Rules of the Malden City Council For the Issuance of Special Permits) along with a draft Application of Intent package consistent with the requirements or 935 CMR 500.101(1)(a) that includes information required by subsections 1, 2, 3, 5, 6 and 7. The applicant shall also promptly notify the City Clerk and City Council President in writing that the application has been filed.

Applications for a use permit shall include the following:

1. The name and address of each owner of the establishment and property owner.

2. Evidence of the Applicant's right or intended right to use the site for the establishment, such as an executed or draft deed or lease.
3. If the Applicant is a business organization, a statement under oath disclosing all of its owners, shareholders, partners, members, managers, directors, officers, trustees or other similarly situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of the owners of such entities until the disclosure contains the names of individuals.
4. A narrative describing the type and scale of all activities that will take place on the proposed site, including, but not limited to cultivating and processing or marijuana or marijuana infused products, on-site sales, off-site deliveries, distribution of educational materials, and other programs or activities.
5. A floor plan of the proposed facility that identifies square footage available and describes the functional areas of the facility, including areas for any preparation of marijuana-infused products. A site plan depicting the proposed development on the property, including the dimensions of the building, the layout of parking, the location of pedestrian and vehicular points of access and egress, the location and design of all loading, refuse and service facilities, the location, type and direction of all outdoor lighting on the site and any landscape design.
6. Architectural drawings of all exterior building facades and all proposed signage, specifying materials and colors to be used.
7. Proposed security measures for the RMD, including lighting, fencing, video monitoring, gates and alarms, etc., to ensure the safety of persons and to protect the premises from theft.
8. Traffic impact analysis including modeling the expected origin and frequency of client and employee trips to the site, the expected modes of transportation used by clients and employees, and the frequency and scale of deliveries to and from the site.
9. Letters from the Police Department and Board of Health indicating that the application materials were reviewed and safety and security measures are adequate.
10. Any other information requested by the Planning Board that will allow fair and full consideration of the special permit request.
11. A ~~\$750.00~~ non-refundable special permit application fee.

B. The City Clerk will distribute a set of the application materials to the Planning Board, Police Chief, Health Director and Building Commissioner for review. The City Clerk will provide notice of receipt of an application to the City Engineer, Fire Chief, Conservation Commission, City Solicitor and Mayor. All departments shall

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report their comments, conditions, remedial measures and recommendations, in writing to the City Council within 30 days.

- C. The City Council will schedule a public hearing for a Special Use Permit under Malden's Zoning Ordinances.

D. General Requirements

The City Council's review of the Special Use Permit will establish whether a Marijuana Establishment is an allowable use at such location and meets the following general requirements:

1. Location and Operation

- a) The establishment shall be located in, and conduct all operations within, an enclosed, permanent building.
- b) All publicly accessible entrances shall be visible from a public way.
- c) Drive-through windows and/or any interactions or sales to customers within vehicles are prohibited.
- d) The establishment shall not be located inside a building containing residential dwelling units, including transient housing, group housing, hotels, motels, lodging houses, and/or dormitories.
- e) Establishment shall not be sited within the buffers zones for schools, residences, treatment centers, parks and other uses established under Malden's Zoning Ordinance.
- f) Hours of Operation of the Marijuana Establishment shall be set by the City Council, but in no event shall an establishment be open to the public, performing deliveries, and/or otherwise operating between the hours of 10:00 PM and 8:00 AM.
- g) There shall be no smoking, burning, or consumption of any product containing marijuana or marijuana-related products on the premises, including all buildings, accessory structures, parking lots or parking areas, walks and/or immediate surroundings located on the same lot/parcel as the facility.
- h) The Establishment shall be ventilated in such a manner that no pesticides, insecticides or other chemicals or products used in cultivation or processing are dispersed into the outside atmosphere, and so that no odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the facility or at any adjoining use or property.

2. Signage

All signs associated with facility shall comply with 105 CMR 725.000 Article VII, Signs, of this Zoning Ordinance.

- a) Signs shall only identify the establishment by its registered name.
- b) Signs shall not utilize graphics related to marijuana or paraphernalia on the exterior of the building.
- c) Signs shall not be illuminated after closing. Neon and flashing signage is prohibited.

3. Security

- a) The Establishment shall provide the Malden Police Department and Building Commissioner with the names, phone numbers and email addresses of all management staff and key holders to whom one can provide notice if there are operating problems associated with the establishment and update that list whenever there is any change in management staff or key holders.
- b) Solid waste dumpsters or other waste containers shall be locked and enclosed by a screening enclosure so as not to be accessible to the public.
- c) Landscaping elements must be non-obtrusive. The placement of landscaping elements must ensure landscaping elements including trees, bushes, and other foliage, do not allow for a person or persons to conceal themselves at night.
- d) The exterior grounds, including the parking lot and landscaped areas, shall be lighted in such a manner that all areas are clearly visible at all times during business hours.

E. The City Council may grant a special permit in the following zoning districts if such authority finds that:

1. The proposal will not be more detrimental to the neighborhood.
2. The proposal is not in conflict with surrounding land uses.
3. The proposal is in the best interest of common good.
4. The traffic and traffic patterns generated by the proposal will not adversely impact any of the surrounding streets or create a traffic or safety hazard. For purposes of determining traffic impact, the City Council employ an outside consultant, in accordance with M.G.L. c. 44, Section 53G, to perform an independent peer review analysis of traffic data submitted by the petitioner, the cost of which will be borne by the petitioner.

5. The proposal will not generate any noise, odor, fumes, vibration, heat or other conditions that any be noxious or cause a nuisance to the community, a danger to public health or impair public comfort and convenience.
6. The proposal is not detrimental to the health, safety or welfare of the neighborhood or the city.

The City Council shall not issue a Special Permit unless it finds that:

1. The Marijuana Establishment is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest;
2. The Marijuana Establishment meets all other applicable requirements of the Zoning Ordinance and the permitting requirements of all applicable agencies of the Commonwealth of Massachusetts and the City of Malden, and will otherwise comply with all applicable state and local laws and regulations;
3. The Marijuana Establishment provides a secure indoor waiting area for customers;
4. The establishment is designed to provide convenient , safe, and secure access and egress for customers and employees;
5. The issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods have been addressed.
6. That adequate security measures to ensure that no individual participants will pose a threat to the health or safety of other individuals, and that the storage and/or location of cultivation of marijuana is adequately secured in enclosed, locked facilities.

Conditions. The issuing authority may impose conditions reasonably appropriate to improve site design, traffic flow, public safety, air quality, and preserve the character of the surrounding area and otherwise serve the purpose of this Section

VI. MALDEN MARIJUANA ESTABLISHMENT LICENSE

- A. The City of Malden Marijuana Licensing Board shall serve as the licensing authority that reviews, issues, renews and enforces the provisions of Marijuana Establishment Licenses. Members of the Malden Marijuana Licensing Board shall not be employed by, be hired by, own or otherwise benefit directly or indirectly from the growing, distribution or sale of marijuana.

B. The City of Malden Marijuana Licensing Board shall be comprised of:

1. a person with experience in the health or substance abuse field, who may also be a member of the Malden Board of Health;
2. a person with a legal or investigative background, who may also be a member of the Malden Liquor Licensing Board and
3. a person with business or financial experience in reviewing financial, management and operation information similar to that submitted with a Malden Marijuana Establishment License application.

C. The Malden Marijuana Licensing Board shall be responsible for conducting a background check of the applicant and reviewing the management and operating structure of the proposed operation.

D. An application for a Malden Marijuana Establishment License shall include:

- (i) a cover letter or application form prepared by the Malden Marijuana Licensing Board,
- (ii) ~~a completed~~ Application of Intent (with the exception of subsection 9), Background Check and Operations and Management Profile Packets and additional information submitted to the Massachusetts Cannabis Commission under 950 CMR 500.101, and (iii) a license application fee of \$200.00

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E. The Malden Marijuana Licensing Board may issue preliminary, final and renewal licenses.

1. Preliminary licenses are issued upon completion of background and operations checks prior to the City Council's consideration of a Community Host agreement.
2. Final licenses are issued upon
 - a) The issuance of a special use permit, and
 - b) The City Council's approval and the Mayor's execution of the Community Host Agreement

Final licenses shall not take effect until:

- a) the Massachusetts Cannabis Commission issues a valid final license to the Applicant,
- b) the building inspector issues a Certificate of Occupancy,
- c) all other state and local approvals have been obtained, and
- d) the Applicant provides a \$2500 annual license fee.

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- E. The Malden Marijuana Licensing Board shall grant licenses with the goal of ensuring that the needs of the City of Malden are met in terms of community safety and quality of life.
- F. Annual Licensing. Each establishment licensed shall as a condition of its license file an annual report to the Malden Marijuana Licensing Board, the Board of Health, the Building Commissioner, the Police Department, and the City Clerk no later than January 31, providing a copy of all current applicable state licenses and/or demonstrate continued compliance with 105 CMR 725.000 as well as the conditions of the Special Permit, license and a ~~\$2500~~ annual re-licensing fee.

VII. COMMUNITY HOST AGREEMENT

- A. The Mayor and the City Solicitor, or a representative of each, the Ward Councillors of any Ward located within 500 feet of the proposed location of an Establishment and a City Councillor at Large appointed by the Council President shall serve as the negotiating team for a Community Host Agreement; provided that no member of the negotiating team shall be employed by, be hired by, own or otherwise benefit directly or indirectly from the growing, distribution or sale of marijuana.
- B. An applicant shall apply through the City Solicitor to begin the process of negotiating a Community Host Agreement;
- C. Draft Community Host Agreements shall be submitted to the City Council for review and approval. Such submissions shall include the findings and conditions approving the use permit.
- D. The City Council will review draft community host agreements and may choose the agreements it determines to be the most beneficial to the interests of the City or decline to enter into a community agreements that provide insufficient benefits and seek other applicants.

Potential benefits the Council may compare when reviewing multiple applicants include:

- The financial amount of funding for Community Benefits;
- Management and operating experience;
- Financial resources;
- Level of investment in Malden;
- Share of ownership held by Malden residents;
- Number of jobs created in Malden;
- The Distribution of retail establishments across the City; and

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- Any leadership rating developed by the Massachusetts Cannabis Control Commission under 935 CMR 500.040

VIII. LOCAL SALES TAX

The City of Malden has accepted the local sales tax option at three percent relating to tax on sale of marijuana by retailers to consumers. ([Reference: Council Order 248-18, Passed June 26, 2018](#))

IX.. ABANDONMENT OR DISCONTINUANCE OF USE.

1. A Special Permit granted under this section shall have a term limited to the duration of the Applicant's operation.
2. It shall be required to remove all material, plants, equipment and other paraphernalia:
 - a) If any required permit or license is revoked or suspended by the issuing authority;
 - b) Prior to surrendering its state license or permits; or
 - c) Within six months of ceasing operations; whichever comes first.

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