

City of Malden Massachusetts

INSPECTIONAL SERVICES
215 Pleasant Street, 3rd Floor
Malden, Massachusetts 02148
(781) 397-7000 ext. 2044

July 27, 2023

Malden City Council
Malden City Hall
215 Pleasant Street
Malden, MA 02148

**Re: Amendment of Title 12.12.030 & 12.12.150, Code of City of Malden
Use Regulations for Drive-thrus
To Prohibit in Neighborhood Business & Central Business zoning districts
City Council Paper #227/2023**

Dear Councilors:

On July 17, 2023, the Planning Board and City Council Ordinance Committee jointly held a public hearing regarding the above-referenced proposed amendment.

After the public hearing, on July 17, 2023, a majority of the Planning Board, namely, all nine members present, decided to recommend to the City Council **approval in part and disapproval in part** of the amendment as proposed, as follows:

1. Approval of the amendment of §§12.12.030 & 12.12.150 regarding the Neighborhood Business zoning district.
2. Disapproval of the amendment of §§12.12.030 & 12.12.150 regarding the Central Business zoning district.

For your reference, enclosed please find the Planning Report & Recommendation dated July 17, 2023, with attachments, which was presented at the public hearing.

Finally, please be advised, that, if the City Council fails to act on the amendment within ninety (90) days of the date the public hearing closed, a new duly advertised public hearing must be held. Accordingly, **the final date for action is October 15, 2023.**

I am available to discuss and answer any questions regarding the Planning Board's recommendation. Please do not hesitate to contact me. Thank you.

Sincerely,

Michelle A. Romero
City Planner

Enclosure

CC: Carol Ann Desiderio, City Clerk
Mayor Gary Christenson
Alicia McNeil, Acting City Solicitor

PLANNING REPORT & RECOMMENDATION

To: Malden Planning Board
From: Malden City Planner
Date: July 17, 2023
Subject: Amendments of §§12.12.030 & 12.12.150, Title 12, Code of City of Malden (*§ references*)
 Use Regulations for Drive-thrus (CCP 227/2023)

PROCEDURAL: The petition was filed by the City Council (§12.32.050) by sponsors Ward 4 Ryan Councilor O’Malley, Ward 3 Councilor Amanda Linehan and Councilor-at-Large Carey McDonald. For full text of amendment, see attached City Council Paper 227/2022.

SUMMARY of PROPOSED AMENDMENT: The proposal is to prohibit drive-thrus in the Neighborhood Business and Central Business zoning districts. The following amendments are proposed:

1. §12.12.030 (Table of Use Regulations).

Use	A	B	C	RO	BN	BC	BH	I1	I2
Drive-thrus	No	No	No	No	SP No	SP No	SP	SP	SP

2. §12.12.150 (Use Regulations).

“Drive-thru, accessory to a principal restaurant, general office, convenience store, or supermarket use, may be allowed in a ~~Neighborhood Business (BN), Central Business (BC),~~ Highway Business (BH) or Industrial (I1 or I2) district, only by special permit granted by the Planning Board in conformance with the following requirements:”

CURRENT ZONING:

A. Definition (§12.32.060.B). The amendments propose no changes to the existing definition:

“Drive-thru: A facility where food, goods or services are purchased or obtained from a building or structure on the same lot via a window or similar opening in the building or structure and accessed while in a vehicle. A drive-thru is accessory to the principal use of the building or structure and operated in conjunction with same.”

B. Use Regulations (§12.12.030). Drive-thrus are allowed by special permit in the Neighborhood Business, Central Business, Highway Business, Industrial 1 and 2 zoning districts. (See attached zoning map).

C. Required findings to grant a special permit (§12.12.150). No changes are proposed to existing required findings:

1. 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.
2. 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.

3. Submission of a traffic impact study prepared by a person or firm who is a member of the Institute of Transportation Engineers (ITE) and has documented experience and qualifications in traffic planning and traffic engineering. Meeting with the planning Staff prior to beginning the study is required. The traffic impact study must demonstrate, at a minimum:
 - a. convenience and safety of vehicular and pedestrian movement within the site, to and from the site, and the convenient and safe location of driveway openings in relation to traffic on-site and offsite and adjacent streets;
 - b. adequacy, maneuverability and arrangement of parking and loading spaces;
 - c. safety and maneuverability of drive-thru lane(s).
 4. The Planning Board must find that the traffic generated by the drive-thru will not adversely impact any of the surrounding streets or create a traffic or safety hazard.
 5. There must be adequate protection against the creation and spread of litter and debris.
 6. There must be adequate landscaping and screening with regard to abutting properties.
 7. There must be adequate protection of adjacent premises against detrimental impacts of sound and lighting.
 8. The Planning Board must find that the drive-thru is in the interest of the common good.
- D. Parking requirements (§12.20.020.D). Current requirements were established in 1985 (CCP 387A/1985); amended (to add “drive-thrus”) in 2004 (CCP 132/2004); and the amendments propose no changes to the existing requirements:

“All drive-up windows, drive-thrus and similar facilities shall be provided with an exclusive line-up area a minimum of eight and one-half (8 1/2) feet in width by ninety (90) feet in length.”

SUMMARY HISTORY of Drive-Thru Regulations.

- From 1977-2004, drive-thrus were unregulated as a separate use, allowed by-right in all zoning districts as accessory to principal uses, and subject only to parking requirements (§12.20.020.D above).
- Special permit use regulations and definition for drive-thrus were established in 2004 (CCP 132/2004).
- From 2008-2010, drive-thrus were regulated by Site Plan Review (CCP 342/2008).
- In 2010, current special permit regulations were reestablished (CCP 252/2010).

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 (June 30, 2023).

Note 1: Per 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 the notice of public hearing (date above).

Note 2: An application for a fast-food restaurant with drive-thru at 1100 Main Street (Permit Application #CMID-050466-2022) was filed prior to the first publication of the hearing notice and is in the processing stage. The property is located in the Highway Business zoning district, which is not the subject of these amendments (CCP 227/2023); however, the property is the subject of a proposed amendment to reclassify the property to the Neighborhood Business zoning district (CCP 197/2023: public hearing scheduled for July 17, 2023; same first date of publication of public hearing notice).

EXISTING Drive-thrus. Most existing drive-thrus in the City predate the special permit use regulations. The following drive-thrus were allowed under current use regulations:

Property	Principal Use (Occupant)	Zoning District	Zoning Relief (for drive-thru)
51 Commercial St.	General office (M&T Bank)	Industrial 1	SP #07-07
180 Eastern Ave.	General office (Eagle Bank)	Central Business	SP #08-03 (<i>not exercised</i>)
275 Centre Street	Fast-food restaurant (Wendy's)	Central Business	SP #08-04 (<i>not exercised</i>)
575 Broadway	Retail sales (CVS Pharmacy)	Highway Business	SPA 2009 (modified SP #16-19)
1080 Eastern Ave.	Retail sales (CVS Pharmacy)	Industrial 1	SP #11-04
155 Beach Street	Restaurant (Dunkin Donuts)	Neighborhood Business	SP #12-06
185 Centre Street	Retail sales (Walgreens Pharmacy)	Central Business	SP #13-05
99 Charles Street	Supermarket (Stop & Shop)	Industrial 1	SP #13-12
32-54 Ferry Street	Retail sales (CVS Pharmacy)	Central Business	SP #14-15
114 Broadway	Fast-food restaurant (McDonald's)	Highway Business	SP #17-11 (orig. by-right 1994)
75 Broadway	Fast-food restaurant (KFC)	Highway Business	SP #21-09 (orig. by right 2004)

Note 3: The car wash at 62-80 Broadway was permitted as a retail services use, not a drive-thru (Permit Application # CMID 035116-2020).

EFFECTIVE DATE: The effective date of an amendment 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 July 17, 2023, the final date for action is October 15, 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 amendment is not supported by any known substantive planning objectives, community need or general welfare.

Drive-thrus are an appropriate and important option for various businesses. Existing special permit use regulations properly regulate drive-thrus in all business and industrial zoning districts where currently allowed.

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

1. Disapproval of the proposed amendments of Section 12.12.030 and Section 12.12.150.



City of Malden

Malden City Hall
215 Pleasant Street
Malden, MA 02148

Master

File Number: 227-23

File ID: 227-23

Type: Ordinance

Status: In Committee

Version: 1

Reference:

In Control: Rules & Ordinance
Committee

Department: City Council

File Created: 05/24/2023

File Name:

Final Action:

Title: Be it ordained by the Malden City Council that the Code of the City of Malden (MCC) Title 12, Chapter 12 be amended as follows:
12.12.030 USE REGULATIONS be amended by striking "SP" in the Drive Thru category and replacing it with "No" in the Neighborhood Business (BN) and Central Business (BC) columns.
12.12.150 DRIVE-THRU be amended by striking "Neighborhood Business (BN), Central Business (BC)," in the first paragraph.

Internal Notes:

Agenda Date: 05/30/2023

Agenda Number:

Sponsors: Ryan O'Malley, Amanda Linehan and Carey McDonald

Enactment Date:

Attachments:

Enactment Number:

Contact:

Hearing Date:

Drafter:

Effective Date:

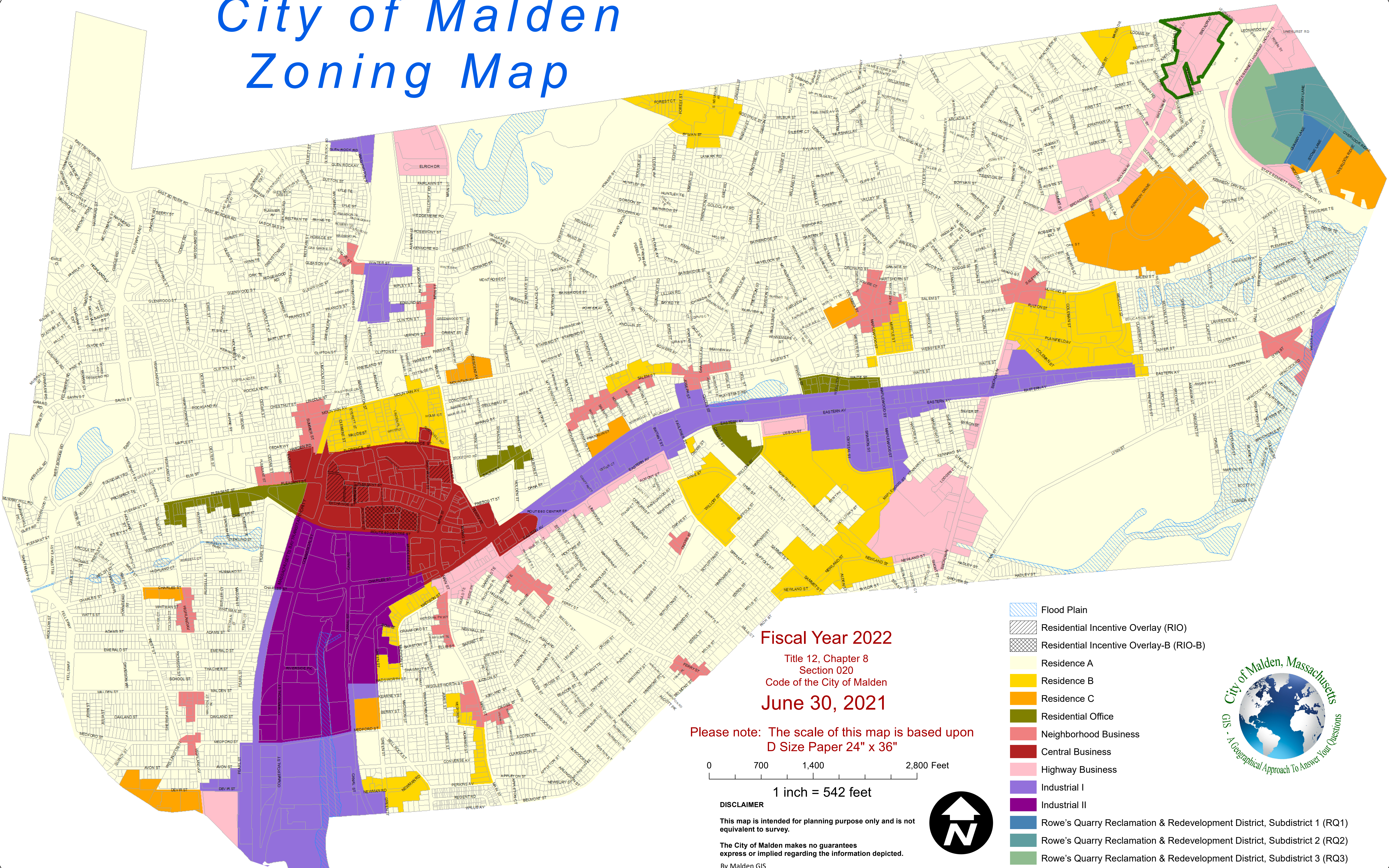
Related Files:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council	05/30/2023	referred	Rules & Ordinance Committee			Pass
Action Text: A motion was made by Councillor O'Malley, seconded by Councillor Winslow, that the Ordinance be referred to a joint session of the Planning Board with Rules & Ordinance Committee. The motion carried by a unanimous vote.							

Text of Legislative File 227-23

City of Malden Zoning Map



Fiscal Year 2022

Title 12, Chapter 8
Section 020

Code of the City of Malden

June 30, 2021

Please note: The scale of this map is based upon
D Size Paper 24" x 36"

0 700 1,400 2,800 Feet

1 inch = 542 feet

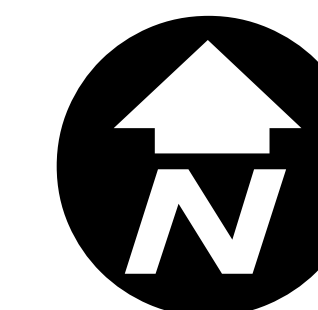
DISCLAIMER

This map is intended for planning purpose only and is not equivalent to survey.

The City of Malden makes no guarantees express or implied regarding the information depicted.

By Malden GIS
Steven L. Fama, Manager of GIS Operations Date: 2/3/2022

Document Path: K:\projects\MaldenMA\InhouseMXDs\Zoning\Zoning_Master_02_02_2022.mxd



- Flood Plain
- Residential Incentive Overlay (RIO)
- Residential Incentive Overlay-B (RIO-B)
- Residence A
- Residence B
- Residence C
- Residential Office
- Neighborhood Business
- Central Business
- Highway Business
- Industrial I
- Industrial II
- Rowe's Quarry Reclamation & Redevelopment District, Subdistrict 1 (RQ1)
- Rowe's Quarry Reclamation & Redevelopment District, Subdistrict 2 (RQ2)
- Rowe's Quarry Reclamation & Redevelopment District, Subdistrict 3 (RQ3)
- Marijuana Establishment Overlay District

