



City of Malden
Massachusetts

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

November 10, 2022

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

**Re: Amendments of §§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, Title 12, Code of City of Malden
SPGA for Marijuana Establishments
City Council Paper #286/2022**

Dear Councilors:

On November 9, 2022, the Planning Board and City Council Ordinance Committee jointly held a public hearing regarding the above-referenced amendments.

As a result of the public hearing, on November 9, 2022, a majority of the Planning Board, namely, five of those nine members present, decided to recommend to the City Council the following:

1. Approval of the amendments as proposed.

For your reference, enclosed please find the Planning Report & Recommendation Supplement dated October 12, 2022 with attachments presented at the public hearing.

Finally, please be advised, that, if the City Council fails to act on the amendments 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 February 7, 2023.**

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

Sincerely,

Michelle A. Romero
City Planner

Enclosures

CC: Mayor Gary Christenson
John McNaught, Acting City Solicitor

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