



City of Malden
Massachusetts

INSPECTIONAL SERVICES
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May 15, 2025

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

**Re: Amendments of §§12.08, 12.12, 12.32 Title 12, Code of City of Malden
Floodplains Districts, Use Regulations, Definitions
City Council Paper #172/2025**

Dear Councilors:

On May 14, 2025, the Planning Board and City Council Ordinance Committee jointly held a public hearing regarding the above-referenced proposed amendments.

After the public hearing, on May 14, 2025, a majority of the Planning Board, namely, all nine members present, decided to recommend the following to the City Council:

- I. Obtain review and approval of the proposed amendments by the City Solicitor.
- II. Obtain review and approval of the proposed amendments by the Building Commissioner.
- III. Approval of the proposed amendments, as submitted, subject to the above-referenced review and approval of the City Solicitor and Building Commissioner, and with the following revisions:
 - A. Add the following sentence to the end of all definitions that are the subject of proposed amendments in CCP 172/2025 (§12.32.060):
"This definition is only applicable to property in the Flood Plain District."

For your reference, enclosed please find the Planning Report & Recommendation dated May 14, 2025, which was presented at the public hearing.

Finally, please be advised that if the City Council fails to act on the amendments within 90 days after the public hearing, a new duly advertised public hearing must be held; and the final date for action is **August 12, 2025**.

Please do not hesitate to contact me with any questions. Thank you.

Sincerely,

Michelle A. Romero
City Planner

Enclosure
CC: Mayor Gary Christenson
Alicia McNeil, City Solicitor

PLANNING REPORT & RECOMMENDATION

To: Malden Planning Board
From: Malden City Planner
Date: May 14, 2025
Subject: Zoning Amendments – CCP 172/2025 – Floodplains Districts, Use Regulations, Definitions §§12.08, 12.12, 12.32 Title 12, Code of the City of Malden (*MCC- all § references herein*)

PETITION. The petition is made under §12.32.050; the City Council is petitioner; and Ward 6 Councilor Stephen Winslow is sponsor. For full text of proposed amendments, see attached petition (CCP 172/2025).

SUMMARY of PROPOSED AMENDMENTS. According to the petitioner and sponsor, the proposed amendments are “required by Federal Emergency Management Agency (FEMA)” for the property in the City’s Flood Plain Districts “to remain eligible for FEMA sponsored flood insurance programs.”

1. Establishment of Districts, Floodplains (§12.08.040). The proposed amendments:
 - A. Update date of Middlesex County Flood Insurance Rate Map panels for Malden to July 8, 2025.
 - B. Update date of Middlesex County Flood Insurance Study report to July 8, 2025.
 - C. Designate City Engineer as “official floodplain administrator for the City.”
 - D. Provide that a permit is required for all “proposed construction or other development” in the floodplain district.
 - E. Update requirements for Base Flood Elevation and Floodway Data in Zones A, A1-30 and AE.
 - F. Require building department review of base flood elevation and floodway data in “unnumbered A zones” as criteria for decision-making re: development.
 - G. Updates and elaborates on requirements for “Subdivision Proposals” (subdivisions of three or more lots or more than 15,000 SF, whichever is less):
 - Proponent to provide base flood elevation data/technical data for each developable parcel shown.
 - City review criteria: “assure proposals minimize flood damage, public utilities and facilities located and constructed to minimize flood damage, and adequate drainage is provided.”
 - H. Require the City to submit to FEMA any acquired, “technical data” that “changes the base flood elevations in the FEMA mapped Special Flood Hazard Areas.”
 - I. Establish requirements for siting of “Recreational vehicles” (per Definition, includes, “vehicle designed primarily...as temporary living quarters for recreational, camping, travel, or seasonal use.”
 - J. For variances of “building code floodplain standards,” establish requirements for City to:
 - obtain and maintain a record of the hearing of the State Building Code Appeals Board.
 - issue notice to property owner of increased flood insurance policy premiums and increased risks to life and property.
 - K. Establish requirements for variances of local floodplain ordinances to be the same as state law.
 - L. Add a provision re: “Abrogation.”
 - M. Add a provision re: “Disclaimer of Liability.”
 - N. Add a provision re: “Severability.”
2. Use Regulations, Floodplain Districts (§12.12.110). The proposed amendments update notice provisions to notify Department of Conservation and Recreation (change from Office of Water Resources).
3. Definitions (§12.32.060). The proposed amendments:
 - A. Amend the existing definition of the following:
 - Development
 - Floodway
 - Regulatory Floodway
 - Structure

B. Add a definition for the following:

- Functionally Dependent Use
- Highest Adjacent Grade
- Historic Structure
- New Construction
- Recreational Vehicle
- Special Flood Hazard Area
- Start of Construction
- Substantial Repair of a Foundation
- Violation

APPLICATION and EXEMPTIONS: The amendments will apply to new construction and new use/occupancy of existing buildings, unless exempt by City ordinance (§12.28.010); the express language of the amendment; state law (M.G.L. c. 40A, §6), which exempts the subject of a building permit or special permit issued before the first publication of notice of the public hearing (April 25, 2025); or the state Permit Extension Act (Section 280 of Chapter 238 of the Acts of 2024).

EFFECTIVE DATE: The effective date is the date of the City Council’s vote to ordain the amendments (§12.32.050.F) unless otherwise specified. The Council must act on the amendments 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 May 14, 2025, **the final date for action is August 12, 2025.**

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.*

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

- I. Obtain review and approval of the proposed amendments by the City Solicitor.
- II. Obtain review and approval of the proposed amendments by the Building Commissioner.
- III. Approval of the proposed amendments, as submitted, subject to the above-referenced review and approval of the City Solicitor and Building Commissioner, and with the following revisions:
 - A. Add the following sentence to the end of all definitions that are the subject of proposed amendments in CCP 172/2025 (§12.32.060):

“This definition is only applicable to property in the Flood Plain District.”



Legislation Details (With Text)

File #: 172-25 **Version:** 1 **Name:**

Type: Ordinance **Status:** Agenda Ready

File created: 4/1/2025 **In control:** Planning Board

On agenda: 4/8/2025 **Final action:**

Title: Be it ordained by the Malden City Council that the Code of the City of Malden (MCC) 12.08.040 FLOODPLAINS, 12.12.110 FLOODPLAIN DISTRICTS, 12.32.060 DEFINITIONS - ZONING are hereby amended to include new regulations, as required by FEMA, so that referenced areas will remain eligible for FEMA sponsored flood insurance programs.

Sponsors: Stephen Winslow, Ryan O'Malley

Indexes:

Code sections:

Attachments: 1. MCC Zoning Floodplains 2025 April 3 2025

Date	Ver.	Action By	Action	Result
4/8/2025	1	City Council		

Be it ordained by the Malden City Council that the Code of the City of Malden (MCC) 12.08.040 FLOODPLAINS, 12.12.110 FLOODPLAIN DISTRICTS, 12.32.060 DEFINITIONS - ZONING are hereby amended to include new regulations, as required by FEMA, so that referenced areas will remain eligible for FEMA sponsored flood insurance programs.

Current MCC Sections Regarding Floodplains

Additions highlighted in RED – Deletions to the side

12.08.040 FLOODPLAINS

1. Flood Plain District: The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the City of Malden designated as Zone A or AE, on the Middlesex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Middlesex County FIRM that are wholly or partially within the City of Malden are panel numbers 25017C0429FE, 25017C0433FE, 25017C0434FE, 25017C0437E25017C0437E, 25017C0441FE and 25017C0442FE dated June 4, 2010July 8, 2025. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Middlesex County Flood Insurance Study (FIS) report dated July 8, 2025June 4, 2010. The FIRM and FIS report are incorporated herein by reference and are on file with the City Clerk, Planning Board, Building Inspector, Conservation Commission and Assessor.

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2. The City of Malden hereby designates the City Engineer to be the official floodplain administrator for the City.

1.—The City of Malden requires a permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

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2-3. Base Flood Elevation and Floodway Data:

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1.—In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, Floodway Data In A and AE Zones, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

4. In Unnumbered A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in

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Zone A and as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

5. Subdivision Proposals

1. Base Flood Elevation Data In A Zones; base flood elevation data is required for subdivision proposals or other developments of 3 or more lots or more than 15,000 square feet, whichever is the less and the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.

2. All subdivision proposals and development proposals in the floodplain overlay district shall be reviewed to assure that: (a) Such proposals minimize flood damage, (b) Public utilities and facilities are located & constructed so as to minimize flood damage and (c) Adequate drainage is provided.

6. Requirement to submit new technical data

If the City acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town/City will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:

- NFIP State Coordinator c/o Massachusetts Department of Conservation and Recreation
- NFIP Program Specialist Federal Emergency Management Agency, Region I.

7. In A, A1-30, AH, AO, AE Zones, V1-30, VE, and V Zones, all recreational vehicles shall be: (i) placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or (ii) be on the site for less than 180 consecutive days or be fully licensed and highway ready.

8. Variances to building code floodplain standards

The City will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files.

The City shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.

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Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

9. Variances to local Zoning Bylaws related to community compliance with the National Flood Insurance Program (NFIP)

A variance from these floodplain bylaws must meet the requirements set out by State law, and may only be granted if: 1) Good and sufficient cause and exceptional non-financial hardship exist; 2) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and 3) the variance is the minimum action necessary to afford relief.

10. Abrogation and greater restriction section

The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes.

11. Disclaimer of Liability

The degree of flood protection required by this bylaw [ordinance] is considered reasonable but does not imply total flood protection.

12. Severability

If any section, provision or portion of this bylaw [ordinance] is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.

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12.12.110 FLOODPLAIN DISTRICTS

1. All development in the floodplain district, including structural and non-structural activities must be in compliance with all of the following:
 1. Mass. Gen. Laws ch 131 § 40;
 2. the Flood Resistant Construction sections of the Massachusetts State Building Code;
 3. the Wetlands Protection Regulations, Inland Wetlands, Restrictions, Coastal Wetlands Restrictions of DEP, the
2. Minimum Requirements for the Subsurface Disposal of Sanitary Sewage as promulgated by the Department of Environmental Protection.
3. No variances from the provisions and requirements of the above referenced regulations may be granted except in accordance with the variance procedures outlined therein.
 1. At the time of application, the petitioner shall submit five copies of all plans, including existing contour intervals of site and elevations of existing structures.
 2. The proposed use shall comply in all respects with the provisions of the underlying district.
 3. Along watercourses that have a designated Regulatory Floodway, encroachments which would result in any increase in flood levels within the community during the occurrence of the base flood discharge. In Zone A the Building Inspector shall obtain, review and reasonably utilize any floodway data available as criteria for requiring that development meet the floodway requirements of this section.
 4. The Board must find that the work is in the interest of the common good. The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided that they are permitted in the underlying district and do not require structures, fill, or storage of materials or equipment:
 1. Agricultural uses;
 2. Forestry and nursery uses;
 3. Outdoor recreational uses;
 4. Conservation of water, plants or wildlife;
 5. Wildlife management areas;
 6. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised in the premises.
 5. All applicable federal and state permits shall be obtained before any site work may be initiated. In a riverine situation, no site work may be initiated that will result in the alteration or relocation of a watercourse until the following have been notified:
 1. adjacent communities;
 2. the National Flood Insurance Plan Coordinator for the Massachusetts [Office of Water Resources; Department of Conservation and Recreation](#)
 3. the National Flood Insurance Plan Program Specialist for FEMA Region I

12.32.060 DEFINITIONS - ZONING

DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59]

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Floodway or Regulatory Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

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HIGHEST ADJACENT GRADE means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

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HISTORIC STRUCTURE means any structure that is:
(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
(1) By an approved state program as determined by the Secretary of the Interior or
(2) Directly by the Secretary of the Interior in states without approved programs.
[US Code of Federal Regulations, Title 44, Part 59]

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NEW CONSTRUCTION. Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. *New construction includes work*

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determined to be substantial improvement. [Referenced Standard ASCE 24-14]

RECREATIONAL VEHICLE means a vehicle which is:

- (a) Built on a single chassis;
 - (b) 400 square feet or less when measured at the largest horizontal projection;
 - (c) Designed to be self-propelled or permanently towable by a light duty truck; and
 - (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- [US Code of Federal Regulations, Title 44, Part 59]

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REGULATORY FLOODWAY - see FLOODWAY.

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SPECIAL FLOOD HAZARD AREA. The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. [Base Code, Chapter 2, Section 202]

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START OF CONSTRUCTION. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

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Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202]

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STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [US Code of Federal Regulations, Title 44, Part 59]

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SUBSTANTIAL REPAIR OF A FOUNDATION. When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]

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VARIANCE means a grant of relief by a community from the terms of a flood plain

management regulation. [US Code of Federal Regulations, Title 44, Part 59]
VIOLATION means the failure of a structure or other development to be fully compliant
with the community's flood plain management regulations. A structure or other
development without the elevation certificate, other certifications, or other evidence of
compliance required in §60.3 is presumed to be in violation until such time as that
documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

Zone A: the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, the best available federal, state, local and other data will be used.

Zone AE: the 100-year floodplain where the base flood elevation has been determined.

Zone X: areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard.