

Solicitor Fallon's Draft Ordinance with SPW Inserts

12.18.18 Proposed Amendment

Motion to Amend Papers 273-18

and Place Papers 274-18 and 313-18 on file.

Licensing of Marijuana Establishments

ORDER: TO AMEND CHAPTER 7, REVISED ORDINANCES OF 1991,
BY ADDING THE FOLLOWING LANGUAGE:

SECTION 6.49: LICENSING OF MARIJUANA ESTABLISHMENTS IN THE CITY OF MALDEN

Section 6.49.1. PURPOSE AND INTENT.

This ordinance sets forth the local licensing process applicable to any Marijuana Establishment intending to operate and/or which is granted a license to operate within the City of. This licensing process is established to regulate sales, cultivation, testing, manufacture, research and transportation of marijuana within the City of Malden, in accordance with the provisions of MGL c. 94G and the provisions of 935 CMR 500, and specifically those provisions conferring authorizations, approvals and enforcement upon the local licensing authority for the City of Malden. The purpose of this ordinance is to establish the local licensing authority and local licensing process to ensure safety, compliance and to minimize adverse impact Marijuana Establishments have on adjacent properties and residents of the City of Malden. This Ordinance shall not be construed to supersede any Massachusetts or federal laws or regulations governing the sale and distribution of narcotic drugs.

Section 6.49.2. DEFINITIONS.

"Applicant" shall refer to any person or party, individual, corporation, company, or other entity seeking to operate a Marijuana Establishment in the City of Malden.

"Application Packet of Intent" shall refer to the documentation and information requested and required to be filed with the Malden Marijuana Licensing Board in accordance with the provisions of this ordinance and consistent with the requirements of 935 CMR 500.101(1)(a) in order for the Malden Marijuana Licensing Board to provide comprehensive consideration.

"Marijuana Establishment" shall refer to any licensed operator engaged in retail sales of marijuana, marijuana cultivators, independent marijuana testing laboratories, marijuana product manufacturing, research facilities and marijuana transporters, marijuana retailer collocated with a medical dispensary, all as defined by the Massachusetts Cannabis Control Commission at 935 CMR 500.002.

"Malden Marijuana Licensing Board" shall refer to the City of Malden local licensing authority responsible for reviewing applicants and applicant packets, and determining approvals, denials, terms and conditions, and annual license renewal applications, and enforcing the provisions of this ordinance and any Rules and Regulations of the Malden Marijuana Licensing Board may from time to time enact, adopt and amend. 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.

“Licensee” shall refer to a Marijuana Establishment which meets all City of Malden licensing requirements, obligations, permitting and approvals in order to operate within the City of Malden, and has also met all licensing requirements, obligations and approvals and obtained a properly issued license from the Massachusetts Cannabis Control Commission confirming the Marijuana Establishment meets all applicable statutory and regulatory requirements to operate a Marijuana Establishment.

“Prospective Licensee” shall refer to any prospective Marijuana Establishment seeking to locate a Marijuana Establishment in the City of Malden that is currently seeking licensing with the Massachusetts Cannabis Control Commission or has been granted provisional license by the Massachusetts Cannabis Control Commission.

“Special Permit” shall refer to the zoning special permit required to be issued to a Marijuana Establishment in accordance with Chapter 12 of the Revised Ordinances of 1991, as further amended by City Council Paper 283 of 2018.

6.49.3. MALDEN MARIJUANA LICENSING BOARD.

A. Malden Marijuana Licensing Board Established. There shall be established a Malden Marijuana Licensing Board, which shall serve as the local licensing authority for Marijuana Establishments within the City of Malden. The Malden Marijuana Licensing Board shall have jurisdiction to review, determine, approve or deny initial applications, renew, rescind, revoke, suspend, and enforce 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. Appointment and Confirmation. The Malden Marijuana Licensing Board shall consist of 3 members, and members shall be appointed by the Mayor and subject to confirmation of appointment by the City Council, with appointed members including: one member with experience in the health or substance abuse field, who may also be a member of the Malden Board of Health; one member with a legal or investigative background, who may also be a member of the Malden Liquor Licensing Board; and one member with business or financial experience in reviewing financial, management and operation information similar to that submitted in Marijuana Establishment License applications. Members shall be residents of the City for at least two years immediately preceding their appointment.

C. Vacancy. An immediate vacancy in an appointment shall occur if any of the following occurs: a Member becomes involved either directly or indirectly with the sale of marijuana or ownership in a marijuana establishment; a Member fails to attend three (3) consecutive regularly scheduled meetings or hearings of the Malden Marijuana Licensing Board. Immediate vacancy shall occur if any Member no longer resides in Malden. Vacancies to fulfill the unexpired term of any Member vacating the MMLC shall be appointed by the Mayor subject to Council confirmation.

D. Term of Appointment. Term of members first appointed shall commence on the date of their appointment and be arranged as to expire at the end of three years, two years, and one year, from the first Monday in March in the year of their appointment, the date of expiration to be specified in

their respective appointments, and thereafter, members shall be appointed for a three year term, from the first Monday of March of the year in which each initial member's term expires.

E. Designation of Members. One member shall serve as Chair of the MMLB and preside over hearings. The Chair shall be elected annually by the Members. One member shall serve as Clerk of the MMLB. The Clerk shall be elected annually by the Members. Members serving shall receive such stipend and/or salaries as the City Council establishes subject to the approval of the Mayor, and a budget for the reasonable and appropriate expenses of the Board shall be as established by the City Council subject to the approval of the Mayor.

F. Qualifications and Eligibility.

1. Members shall be twenty-one years of age or older.
2. No individual who has been convicted of a felony and/or who has been convicted distribution of controlled substances to a minor in any jurisdiction shall be eligible for appointment.
3. No individual who has been convicted of a felony or misdemeanor, or who has pled guilty, nolo contendere, or admission to sufficient facts, or has obtained a continued without a finding disposition, as to any felony or misdemeanor charge, shall be eligible for appointment.
4. Members shall not be employed by, be hired by, own or otherwise benefit directly or indirectly from the growing, distribution or sale of marijuana.

G. Duties.

The Malden Marijuana Licensing Board shall conduct review of applicants for provisional approval to operate a Marijuana Establishment in the City of Malden, including reviewing the management and operating structure of the proposed Marijuana Establishment and shall issue a final local license to operate once all necessary local permit and approvals have been obtained.

The Malden Marijuana Licensing Board upon organizing and when new Malden Marijuana Retail Licenses become available shall work with the Mayor's Office and the City Clerk to make potential applicants aware of the opportunity to apply for Malden Marijuana Retail Licenses and shall wait at least sixty (60) days after notice published on the City's website before scheduling any hearings on new license applications.

6.49.4. APPLICATION AND DETERMINATION PROCESS.

Applicants must hold meetings, apply for and obtain all necessary local permits, licenses and approvals to operate a Marijuana Establishment including:

1. Publish and Hold a Preliminary Community Outreach Meeting;
2. Submit an Application of Intent and Obtain a use permit under Malden's Zoning Ordinances;
3. Obtain provisional and final local licenses to operate a Marijuana Establishment from the Malden Marijuana Licensing Board; and
4. Enter into a Community Host Agreement approved by the City Council and executed by the Mayor;
5. Obtain all applicable and required permits from the Malden Permits, Inspections and Planning Department.

All Prospective Licensees and Licensees shall comply with all requirements in order to obtain approval by the Malden Marijuana Licensing Board, whether or not any particular requirement has been waived by the Massachusetts Cannabis Control Commission.

6.49.4.A. PRELIMINARY COMMUNITY OUTREACH MEETING.

Prospective Licensees shall comply with Community Outreach Meetings specified in 935 CMR 500.101(1)(a).9 and the City of Malden Zoning Code, 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

6.49.4. B. APPLICATION FOR USE PERMIT/APPLICATION OF INTENT PACKET.

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 along with a draft Application of Intent package consistent with the requirements of 935 CMR 500.101(1)(a) that includes information required by subsections 1, 2, 3, 5, 6 and 7 thereof.

The applicant shall also promptly notify the City Clerk, City Council President, and Mayor 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.
2. The name and address of each property owner.
3. A statement under pains and penalties disclosing the name and address of any person, party and/or entity, individual, corporation with any financial and/or beneficial interest in the proposed marijuana establishment.
4. Evidence of the Applicant’s authorization to use the site for the proposed marijuana establishment, such as evidence of ownership, an executed deed, a lease, or draft lease or landlord’s letter of authorization.
5. A statement under pains and penalties of perjury disclosing the name and addresses of any person, party and/or entity, individual, corporation, and/or entity owners, shareholders, partners, members, managers, directors, officers, directors, trustees, investors and other individuals with beneficial and/or financial interest in or too the proposed marijuana license.
6. 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 of marijuana or marijuana infused products, on-site sales, off-site deliveries, distribution of educational materials, and other programs or activities.
7. 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.

8. Architectural drawings of all exterior building facades and all proposed signage, specifying materials and colors to be used.
9. Proposed security measures for the Marijuana Establishment, including lighting, fencing, video monitoring, gates and alarms, etc., to ensure the safety of persons and to protect the premises from theft.
10. 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.
11. Any other information requested by the City Council and/or Malden Marijuana Licensing Board that will allow fair and full consideration of the special permit request.
12. A \$750.00 non-refundable special permit application fee.
13. The Applicant shall provide notice of filing and submit five copies of the application packet to the City Clerk.

B. The City Clerk will distribute a set of the Use Permit Application Materials to the Planning Board, Police Chief, Health Director and Building Commissioner for review.

C. The City Clerk will provide notice of receipt of a completed application to the City Engineer, Fire Chief, Conservation Commission, City Solicitor and Mayor.

D. All Departments shall report their comments, conditions, remedial measures and recommendations, in writing to the City Council within 30 days, unless additional time is requested or required.

E. The Council President will schedule the necessary public hearing on the use permit.

6.49.4.C. LICENSE APPLICATION TO THE MALDEN MARIJUANA LICENSING BOARD.

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

- (i) a cover letter or application form promulgated by the Malden Marijuana Licensing Board,
- (ii) a completed Application of Intent, Background Check and Operations and Management Profile Packets and additional information submitted to the Massachusetts Marijuana Commission under 950 CMR 500.101 and any preliminary license to operate such Commission.
- (iii) a non-refundable license application fee of \$200.00; and
- (iv) all other documents requested by the Malden Marijuana Licensing Board.

B. An Applicant shall comply with all rules and regulations promulgated by the Malden Marijuana Licensing Board.

C. Upon receipt of a completed application, the Malden Marijuana Licensing Board shall distribute the application materials to the Police Chief, Mayor, City Treasurer, Health Director, notify the City Council and schedule a public hearing on an application. The Clerk shall distribute the application materials and Department comments to the Malden Marijuana Licensing Board at least two weeks in advance of the scheduled public hearing

D. The Malden Marijuana Licensing Board will vote to approve a provisional license or deny an application within thirty (30) days of the public hearing.

E. Standards and Considerations for Review of Applications.

When issuing a provisional license the Malden Marijuana Licensing Board shall consider the results of the background checks, the operational and the financial viability of a Prospective Licensee's business plan.

When issuing a final license, the Malden Marijuana Licensing Board shall consider the goal of ensuring that the needs of the citizens of the City of Malden are met and that public safety and quality of life are not impacted and whether the application meets all regulatory requirements.

F. Provisional Approval. Upon approval of provisional licenses, the Malden Marijuana Licensing Board will transmit copies of all approved provisional licensees to the Community Host Agreement Negotiating Committee.

G. Final Approval. Upon final approval, the Licensee shall submit payment of a non-refundable annual license fee in the amount of \$3500. No license shall be approved for any Prospective Licensee unless the Massachusetts Cannabis Commission issues a valid final license to the Applicant, and all other state and local approvals have been obtained, and the Applicant provides a \$3500 annual license fee.

5. Community Host Agreement.

Any Marijuana Establishment shall be required to enter a Community Host Agreement with the City of Malden, which upon execution shall be incorporated into the application packet under consideration by the Malden Marijuana Licensing Board and any final license issued the MMLB. The Community Host Agreement shall be negotiated on behalf of the City of Malden by a Committee consisting of: the City Solicitor, a Malden City Councillor-at-Large, the Malden City Council President, a Ward Councillor, the Mayor or Mayor's designee, which can include the Mayor's Business Development Coordinator, and the Controller.

The Community Host Agreement Negotiating Committee shall be responsible for preparing the standard terms and conditions of a Draft Community Host Agreement offered to provisional licensees, developing criteria used to select between multiple provisional licensees and making recommendations to the Mayor on which provisional licensees to enter into a tentative Community Host Agreement. Selection criteria shall include consideration of a licensees level of investment and employment in Malden and may also consider, but not be limited to, the share of ownership held by Malden residents, the distribution of locations across the City and any leadership rating for the Prospective Licensee developed by the Massachusetts Cannabis Control Commission under 935 CMR 500.40.

The Mayor shall submit recommendations for final licensees and tentative Community Host Agreements to the City Council for review and approval. Such submissions shall include the findings and conditions approving the use permit.

6. Final Approval by the Malden City Council.

Once final licensee recommendations and tentative Community Host Agreements have been submitted to the Council by the Mayor, the City Council must make the following written findings in order to issue final approval:

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.
7. All other Conditions the which may be imposed 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

6.49.5. ANNUAL LICENSE RENEWAL PROCESS.

In order to continue to operate in the City of Malden, each licensed Marijuana Establishment shall as a condition of its license file an application for renewal annually with the Malden Marijuana Licensing Board, together with the following:

- (i) annual report, with copy of said documentation provided by the Licensee to the Board of Health, the Building Commissioner, the Police Department, and the City Clerk;
- (ii) annual renewal determination received from Commonwealth of Massachusetts Cannabis Control Commission demonstrating continued compliance with 105 CMR 725.000;
- (iv) annual certification of compliance with conditions of the Special Permit; and
- (v) a \$3500 annual renewal fee.

The Malden Marijuana Licensing Board shall review completed applications for renewal within thirty days. No license shall be renewed for operation if a Marijuana Establishment fails to timely submit a completed application including all requisite documentation.

6.49.6. FAILURE TO OPERATE/CEASING TO CONDUCT BUSINESS. A Marijuana Establishment shall notify the Malden Marijuana Licensing Board no more than one business day after a Marijuana Establishment ceases to operate; when any Massachusetts registration or license is revoked, void, suspended fails of renewal, or is deemed no longer suitable to operate a marijuana Establishment by the Massachusetts Cannabis Control Commission. Failure to Operate or Cease to Conduct Business shall not alleviate a Marijuana Establishment from compliance with its financial obligations under a Community Host Agreement.

6.49.7. ENFORCEMENT AND COMPLIANCE REQUIREMENTS.

6.49.7.A. Local Requirements. All Licensees and Prospective Licensees shall be required to comply with the procedures and provisions set forth herein, including those as amended from time to time hereafter. If approved by the Malden Marijuana Licensing Board to operate a Marijuana Establishment within the City of Malden, all Licensees shall be required to comply with annual renewal provisions set forth herein. All Licensees shall be required to comply with any procedures, rules, regulations and conditions issued by the Malden Marijuana Licensing Board, and all other code, regulatory, and/or permitting requirements applicable to the Marijuana Establishment including any conditions issued by the Malden Licensing Board or other City of Malden permit granting authority.

6.49.7.B. Commonwealth of Massachusetts Requirements. All Licensees shall be required to comply with the provisions set forth in MGL c. 94G and 935.000, including those as amended from time to time hereafter. All Licensees shall be required to comply with any procedures, rules, regulations and conditions issued by the Massachusetts Cannabis Control Commission.