

PLANNING REPORT & RECOMMENDATION

To: Malden Planning Board
From: Malden City Planner
Date: June 19, 2018
Subject: Amendments of §§200, 300, 400, 500, 700 and 800.6, Ch.12, Rev. Ord. of 1991 (“MZO”) Zoning Map/Districts, Use Regulations, Dimensional Controls, Parking & Loading Regulations, Definitions for Marijuana Establishments (Adult Use, Recreational and Non-Medical Marijuana) CCP #283/2018 (As Amended by City Council on May 22, 2018)

PETITION: The petition to amend the zoning ordinances (MZO) is made by the City Council (§800.5, MZO), sponsored by Ward 1 Councilor Crowe, who also chaired an Ad-Hoc City Council Cannabis Review Committee.

SUMMARY of PROPOSED AMENDMENTS:

The amendments are intended to regulate use of property in the City for “Marijuana Establishments,” namely, those business, industrial and other uses that involve the retail sales, cultivation, independent laboratory testing, manufacturing, research, transportation and social consumption of adult use, recreational and non-medical marijuana.

All references herein to page numbers are to the attached CCP #283/2018 as Amended by City Council on May 22, 2018. For illustrative reference, the maps attached hereto depict the following:

1. Proposed Marijuana Establishment Overlay Zoning District.
2. Proposed Buffer Zones from the Ad-Hoc Cannabis Review Committee.
3. Propose Buffer Zones (250-foot Buffers).
4. Proposed Buffer Zones (500-Foot Buffers).

A. New Overlay District (§200.MZO). See Section 200.2 (page 1, CCP 283/2018).

The amendment proposes to create a new zoning district, an overlay zoning district, to be known as the Marijuana Establishment Overlay district, and to amend the zoning map to reflect the proposed district over seventeen (17) parcels, located along upper Broadway, north of Bayrd Street and Trueman Drive to the city line with Melrose; all parcels are located in the Highway Business zoning district; and are described below and on the attached map.

	Property Address	Parcel ID	Current Use (per Assessor's records/legal occupancy not verified with Bldg. Dept.)
1	616 Broadway	160 625 501	Retail Sales (Vehicles), Motor Vehicle Repair Shop
2	619 Broadway	183 573 351	Retail sales, retail services, restaurant
3	628 Broadway	160 625 510	Retail services, two-family residential
4	632 Broadway	160 625 509	Single-family dwelling
5	636 Broadway	160 625 508	Single-family dwelling
6	639 Broadway	183 573 355	Restaurant; building, construction & contracting; motor vehicle repair shop
7	644- 646 Broadway	160 625 505	Three-family dwelling
8	646 Broadway	160 625 507	Vacant land
9	649 Broadway	183 573 356	Offices
10	650 Broadway	160 625 506	Building, construction & contracting
11	665 Broadway	184 573 364	Recreation for gainful business
12	672 Broadway	160 623 316	Retail sales (Vehicles)
13	689 Broadway	184 573 385	Body Art
14	700 Broadway	160 623 314	Building, construction & contracting
15	701 Rear Broadway	184 573 366B	Public service corporation (utility)
16	703 Broadway	184 573 366A	Public service corporation (utility)
17	709 Broadway	184 573 367	Public service corporation (utility)

B. New Use Categories (§300, MZO). See Section 300.3 (page 1, CCP 283/2018).

The amendments establish the following new use categories, in accordance with those provided by state regulations (935 CMR 500): Independent Marijuana Testing Laboratory, Marijuana Cultivator, Marijuana Establishment, Marijuana Product Manufacturer, Marijuana Research Facility Marijuana Retailer, Marijuana Social Consumption Establishment, Marijuana Transporter.

C. Use Regulations (§300.3, MZO). See Section 300.3 (page 1, CCP 283/2018).

The amendments proposed to establish the following use regulations for the proposed new use categories, which include special permit regulations in the Highway Business, Industrial 1 and Industrial 2 zoning districts and proposed new Marijuana Establishment Overlay zoning district; and prohibitions in other zoning districts.

Section #	Use	A	B	C	RO	BN	BC	BH	I1	I2	Overlay District
	Business Uses										
300.3.4.29	Marijuana Retailer	No	No	No	No	No	No	SP	SP	SP	SP
	Industrial Uses										
300.3.5.12	Marijuana Cultivator	No	No	No	No	No	No	SP	SP	SP	SP
300.3.5.13	Independent Marijuana Testing Laboratory	No	No	No	No	No	No	SP	SP	SP	SP
300.3.5.13	Marijuana Product Manufacturer	No	No	No	No	No	No	SP	SP	SP	SP
300.3.5.14	Marijuana Research Facility	No	No	No	No	No	No	No	No	No	No
300.3.5.15	Marijuana Transporter	No	No	No	No	No	No	SP	SP	SP	SP
	Other Uses										
300.3.6.6	Marijuana Social Consumption Establishment	No	No	No	No	No	No	No	No	No	No

I. Special Permit Use Regulations (new §300.20, MZO). The proposed amendments establish special permit use regulations; all special permits require a public hearing of which notice has been given in accordance with local and state statutory provisions and at which the public is given the opportunity to comment:
See Section 300.20 (pages 2-4, CCP 283/2018).

1. Special permit granting authority: the City Council.
2. Required findings: must be made by City Council after to grant a special permit. See Section 300.20 (g).
 - The proposal will not be more detrimental to the neighborhood.
 - The proposal is not in conflict with surrounding land uses.
 - The proposal is in the interest of the common good.
 - 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; independent peer review of traffic impact study may be required, paid by petitioner.
 - The proposal will not generate any noise, odor, fumes, vibration, heat or other conditions that may be noxious or cause a nuisance to the community, a danger to public health, or impair public comfort and convenience.
 - The proposal is not detrimental to the health, safety or welfare of the neighborhood or the city.
3. New construction must comply with dimensional and parking requirements: or a variance may be sought.
4. Requirements for locations:
 - Compliance with buffer zones: See Section 300.20 (f) and attached maps.
 - o a range is proposed from schools, residences, parks/playground, religious facilities, daycares and substance abuse treatment centers.
 - o 50% reduction may be allowed (except for schools buffer zones).
 - must be in a permanent building.
 - may not be located in building containing residential units, including transient housing .
5. Required conditions: for any special granted. See Section 300.20 (h) i-x (page 3, CCP 283/2018).
 - special permit is non-transferable and non-assignable.
 - design and implement a Security Plan approved by the Malden Police Chief
 - consumption of Marijuana and/or Marijuana Products is prohibited at or within 500 feet of a Marijuana Establishment.
 - Smoking or burning of Marijuana and/or Marijuana Products is prohibited on the premises of a Marijuana Establishment.
 - Marijuana in any form, including plants, and Marijuana Products shall not be visible from outside of the building in which the Marijuana Establishment is located.
 - Any outside storage of any kind is prohibited.
 - Any outside display of any kind is prohibited.
 - Incorporate odor control technology and regulate emissions.

- Prior to issuance of any building permit or occupancy permit pursuant to a special permit, submit:
 - valid license issued by the Massachusetts Cannabis Control Commission
 - fully executed Community Host Agreement with the City of Malden
 - required license/approvals from Malden License Board
 - required license/approvals issued by Malden Board of Health.
- The expiration, termination or revocation of any required licenses is grounds for the immediate revocation of building permit and/or occupancy permit.

6. Filing requirements: See Section 300.20 (h)/to be renumbered (i) (pages 3-4, CCP 283/2018).

- Site plan, floor plans, elevations.
- documentation re: right to use property.
- Community Outreach Meeting: hosted with Ward City Councilor (max. 60 days prior to filing petition).

II. Accessory use regulations: See Section 300.20 (e) (page 2, CCP 283/2018).

- may be accessory to other types Marijuana Establishment uses.
- may not be accessory to any other use.

III. Preexisting nonconforming use regulations. See sections 300.20 (b), 700.1.3.2 (pages 2, 4, CCP 283/2018). Use of preexisting nonconforming property may be allowed by special permit in Highway Business, Industrial 1, Industrial 2 and proposed Overlay zoning districts.

C. Dimensional Controls (Intensity Regulations) (§400.1, MZO). The amendment establishes dimensional controls for the proposed new use categories. See Section 400.1 (page 5, CCP 283/2018).

D. Parking & Loading Regulations (§500.1, MZO). The amendment establishes parking and loading requirements for the proposed new use categories. See Section §500.1 (page 5, CCP 283/2018).

E. Definitions (§800.6). The amendment proposes the following:

- To establish definitions for the new use categories to be regulated: Independent Marijuana Testing Laboratory, Marijuana Cultivator, Marijuana Establishment, Marijuana Product Manufacturer, Marijuana Research Facility Marijuana Retailer, Marijuana Social Consumption Establishment, Marijuana Transporter.
- To establish definitions for related terms: Commission, Community Host Agreement, Marijuana, Marijuana for Medical Use, Marijuana Products.
- To modify existing definitions for existing uses categories to reflect the new use categories and ensure new uses are properly classified: Convenience Store, Retail Sales, Light Manufacturing, Medical Marijuana Treatment Centers, Research & Development and Warehouse.

F. Other. The amendment also proposes the following:

- To update existing provisions to allow personal growing of marijuana, in accordance with state law, and Marijuana Establishments, where allowed by special permit as proposed by CCP 283/2018. See Section 300.1.3 (page 4, CCP 283/2018).
- To update existing provisions regarding Home Occupations to exclude Marijuana Establishments. See Section 700.3.3 (pages4-5, CCP 283, 2018).

APPLICATION of AMENDMENT and EXEMPTIONS: The amendments will apply to new construction and new use/occupancy of existing buildings, unless exempt (“grandfathered in”) as a preexisting nonconforming use (per §700.1.1, MZO and M.G.L. c. 40A, §6); the subject of a building or special permit issued before the first publication of notice of the public hearing (ay 26, 2017); a permit subject to the State Permit Extension Act (§240, c. 240, Acts of 2010, extended by §§74 &75, c. 238, Acts of 2012); or the express language of the amendment.

Note 1: There are no preexisting nonconforming adult use/recreational marijuana uses in existence and no building permits or special permits issued before the first publication of hearing notice (June 1, 2018). Applications for permits in the processing stage when publication occurs are not protected; there are none.

The effective date of the amendment is the date of the City Council’s vote to ordain (§800.5.7, MZO). The final date for action by the Council is 90 days after the hearing closes, or a new public hearing is required (§800.5.5, MZO); accordingly, if the public hearing closes June 19, 2018, the final date for action is September 17, 2018.

RELATED BACKGROUND:

- Marijuana is a "Schedule 1 Controlled Substance" under Federal law (21 U.S. Code § 812), which provides: (A) The drug or other substance has a high potential for abuse; (B) The drug or other substance has no currently accepted medical use in treatment in the United States; and (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.
- Personal use of recreational marijuana was legalized under Massachusetts law (by voters/ Initiative Petition for Law, 2016 Ballot Question #4).
- Medical marijuana was legalized under Massachusetts law (by voters/Initiative Petition for Law, 2012 Ballot Question #3).
- Medical Marijuana Treatment Centers are regulated by special permit under the Malden zoning ordinance (§§300.3.4.26, & 800.6.2.51, MZO as ordained by CCP #399/2012 and amended by CC.P. #380/2013).
- State licensing regulations are contained in the 935 CMR 500.000, to be implemented by the state Cannabis Control Commission.
- Local licensing regulations are in the process of being drafted and adopted by the Malden City Council.

OTHER: For legal input and opinion regarding buffer zones and other questions, see memorandum dated June 19, 2018 from City Solicitor Kate Fallon. Proposed recommended revisions numbers 2, 3, 4, 11 (a), 11 (b) and 11 (d) are recommended by City Solicitor.

STANDARD of REVIEW: The Planning Board's review and recommendation of the proposed zoning changes are directed by *substantive planning objectives, community need and general welfare.*

PLANNING RECOMMENDATION: That the Planning Board recommends to the City Council approval of the amendments as submitted and with the following revisions:

1. Section 300.20 (f) .1 subsections i, iii, iv, v and vi.:
 - i. 250 feet of a Substance Abuse Treatment Center, as defined by this Ordinance;
 - iii. 250 feet of any residence;
 - iv. 250 of any park or playground;
 - v. 250 feet from a religious facility; and
 - vi. 250 feet of a daycare.And delete Section 300.20 (f).2 in its entirety.
2. Sections 300.1.3.2, 300.1.3.3 and 300.1.3.4: Revise first clause to read, "Except and only if allowed by special permit as provided by this Ordinance,"
3. Section 300.1.3.2: add "Except for personal growing of no more than six plants by an individual for personal use at his/her residence per M.G.L. c. 94G, §7(2) and provided no more than twelve plants are cultivated if more than one adult resides therein, and provided however, that property owner gives written consent."
4. Section 300.3: add column for "Marijuana Establishment Overlay district."
5. Section 300.20 (h) i: delete "unless there is an amendment of the special permit."
6. Section 300.20 (h).x: revise to read: "The expiration, termination or revocation for any reason of any licenses and approvals as required by this Ordinance and described herein above"
7. Section 300.20 (Filing Requirements): Renumber from "h" to "i"
8. Section 300.20 (i)5 (Filing Requirements): revise to read "shall coordinate and host"
9. Section 500.1.5.15: renumber Marijuana Transporter (from 500.1.5.14)
10. Section 700.1.3.2: revise to add "Marijuana Transporter"; and revise last clause to read, "whether or not there is extension or structural change."
11. Section 700.3.3: revise name, "Independent Marijuana Testing Laboratory"
12. Section 800.6 (Definitions):
 - a) Community Host Agreement: revise to delete "owner/operator of the;" revise "fees" to "fees/funds;" and to add the following language: "Community impact fees/funds hereunder are in addition to taxes collected by the City per M.G.L. c. 64N, §3."
 - b) Marijuana for Medical Use: add language "as regulated by Medical Marijuana Treatment Center per this Ordinance."
 - c) Marijuana Retailer: delete the following: "and deliver," "deliver" and "otherwise transfer."
 - d) Marijuana Transporter: add the following language: "to, from and/or between Marijuana Establishments, however, expressly excluding transportation, deliveries or other form of transfer to consumers, which are expressly prohibited, including but not limited to home deliveries or transportation, deliveries or other form of transfer to, from and/or between any other property except a Marijuana Establishment."
 - e) Medical Marijuana Treatment Centers: add language "Marijuana Establishments are specifically excluded."

To further amend Chapter 12, Revised Ordinances of 1991, as Amended, City of Malden, as follows:

1. ESTABLISHMENT OF DISTRICTS (SECTION 200)

I. To amend Section 200.1 (Establishment of Districts) to add the following (NEW):

Section 200.1.10: Marijuana Establishment Overlay District.

II. To amend Section 200.2 (Zoning Map) to add a Marijuana Establishment Overlay District over the following parcels:

	Property Address	Parcel ID
1	616 BROADWAY	160 625 501
2	619 BROADWAY	183 573 351
3	628 BROADWAY	160 625 510
4	632 BROADWAY	160 625 509
5	636 BROADWAY	160 625 508
6	639 BROADWAY	183 573 355
7	644 646 BROADWAY	160 625 505
8	646 BROADWAY	160 625 507
9	649 BROADWAY	183 573 356
10	650 BROADWAY	160 625 506
11	665 BROADWAY	184 573 364
12	672 BROADWAY	160 623 316
13	689 BROADWAY	184 573 385
14	700 BROADWAY	160 623 314
15	701 REAR BROADWAY	184 573 366B
16	703 BROADWAY	184 573 366A
17	709 BROADWAY	184 573 367

2. USE REGULATIONS (SECTION 300).

I. To amend Section 300.1.1 (Basically) to add the following:

“Except for Marijuana Retailer, Marijuana Cultivator, Independent Marijuana Testing Laboratory, Marijuana Product Manufacturer, and Marijuana Transporter, where a special permit shall be required by the City Council in accordance with Section 300.20; and”

II. To amend Section 300.3 (Table of Use Regulations) to add the following:

Section #	Use	A	B	C	RO	BN	BC	BH	I1	I2
	Business Uses									
300.3.4.29	Marijuana Retailer	No	No	No	No	No	No	SP	SP	SP
	Industrial Uses									
300.3.5.12	Marijuana Cultivator	No	No	No	No	No	No	SP	SP	SP
300.3.5.13	Independent Marijuana Testing Laboratory	No	No	No	No	No	No	SP	SP	SP
300.3.5.13	Marijuana Product Manufacturer	No	No	No	No	No	No	SP	SP	SP
300.3.5.14	Marijuana Research Facility	No	No	No	No	No	No	No	No	No
300.3.5.15	Marijuana Transporter	No	No	No	No	No	No	SP	SP	SP
	Other Uses									
300.3.6.6	Marijuana Social Consumption Establishment	No	No	No	No	No	No	No	No	No

III. To Add Section 300.20 (NEW).

A Marijuana Establishment, as defined by this Ordinance to expressly only include Marijuana Retailer, Marijuana Cultivator, Independent Marijuana Testing Laboratory, Marijuana Product Manufacturer and Marijuana Transporter, may be allowed only in the Business Highway, Industrial 1 and Industrial 2 zoning districts or the Marijuana Establishment Overlay District, only by special permit granted by the City Council and only in conformance with the following controls and requirements:

- a) For construction of new buildings, compliance with the dimensional controls and parking requirements of this Ordinance.
- b) For Marijuana Establishment use of a building lawfully existing or begun prior to the first publication of notice of the public hearing on this Ordinance, or alteration, conversion or other change to a Marijuana Establishment use lawfully existing or begun prior to the first publication of notice of the public hearing on any amendment to this Ordinance, the City Council must find that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood.
- c) A Marijuana Establishment shall be located in a permanent building and not within a mobile facility or movable structure.
- d) A Marijuana Establishment shall not be located inside a building containing residential units, including transient housing such as hotels, motels, dormitories.
- e) A Marijuana Establishment must be the principal use of the property and may be accessory only to another type of Marijuana Establishment at the same property and shall be prohibited as an accessory use to any other use.

- f) The location of a Marijuana Establishment shall comply with the following buffer zones:
 - .1 The location of a Marijuana Establishment shall comply with the following buffer zones, all distances as measured from the closest property line of the proposed Marijuana Establishment to the closest property line of a property that, as of the date of filing of the petition for a special permit for the Marijuana Establishment, is lawfully used for the following. No Marijuana Establishment shall be located within:

- i. 75 to 500 feet of a Substance Abuse Treatment Center, as defined by this Ordinance;
- ii. 500 feet of a public or private school providing education in kindergarten, or Grades 1-12;
- iii. 50 to 500 feet of any residence;
- iv. 75 to 500 feet of any park or playground;
- v. 75 to 500 feet from a religious facility; and
- vi. 0 to 500 feet of a daycare.

- .2 Except with respect to schools, the distance required under this section may be reduced by up to 50% upon determination by the City Council that the Marijuana Establishment would otherwise be effectively prohibited within the city.

- g) Required findings: For a special permit to be granted, the City Council must find:
 - .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 interest of the 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 and 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 may 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.

- h) Conditions to Special Permit. The City Council may impose any conditions it deems reasonable to regulate the use of a property for a Marijuana Establishment; and in addition and in all cases, any special permit granted hereunder shall be subject to the following conditions:
- i. The special permit is non-transferable and non-assignable unless there is an amendment of the special permit.
 - ii. The Marijuana Establishment shall design and implement a Security Plan approved by the Malden Police Chief, which shall include, without limitation: all security measures for the site and the transportation of Marijuana and Marijuana Products to and from off-site premises to ensure the safety of employees and the public and to protect the premises property from theft or other criminal activity; a detailed explanation of payment method, if applicable, acceptable at such establishment and the protection and security of such payments and, if applicable, cash on site; and the presence of a security guard on site at all hours of operation.
 - iii. Consumption of Marijuana and/or Marijuana Products is prohibited at or within 500 feet of a Marijuana Establishment.
 - iv. Smoking or burning of Marijuana and/or Marijuana Products is prohibited on the premises of a Marijuana Establishment.
 - v. Marijuana in any form, including plants, and Marijuana Products shall not be visible from outside of the building in which the Marijuana Establishment is located.
 - vi. Any outside storage of any kind is prohibited.
 - vii. Any outside display of any kind is prohibited.
 - viii. The Marijuana Establishment shall incorporate odor control technology and provisions, and ensure that emissions do not violate MGL Chapter 111, Section 31C, including but not limited to those specified for odors.
 - ix. Prior to issuance of any building permit or occupancy permit pursuant to a special permit granted hereunder, the Marijuana Establishment shall submit copies of the following licenses and approvals:
 - A. A valid license issued by the Massachusetts Cannabis Control Commission, as defined herein this Ordinance;
 - B. A fully executed Community Host Agreement with the City of Malden, as defined herein this Ordinance;
 - C. Any required license and/or approvals issued by the Malden License Board; and
 - D. Any required license and/or approvals issued by the Malden Board of Health.
 - x. The expiration, termination or revocation of any of the required licenses or approvals provided by the Ordinance shall be grounds for the immediate revocation of a building permit and/or occupancy permit.

h) Filing Requirements.

- .1 Site plan: (15 copies= 3 to scale size + 12 reduced/11"x17" size): to scale; dated; prepared, signed and stamped by a Registered or Professional Engineer or Surveyor; depicting lot boundaries and lot area, frontage and classification of street (public/private, width), footprint, lot coverage (SF), setbacks of existing & proposed building(s)/structure(s), parking layout (spaces, driveways, aisles), landscaping, screening, open space, snow storage and outside dumpster/trash storage.
- .2 Floor plan (15 copies= 3 to scale size + 12 reduced/11"x17" size): to scale; dated; prepared, signed and stamped by a Registered Architect; depicting entire building with total gross floor area, all separately occupied spaces with gross floor areas, subject premises with gross floor area, entrances/exits, windows, fixtures and interior walls.
- .3 Building Elevations and/or Pictorial Renderings (15 copies= 11"x17" size): to scale; dated; prepared by a Registered or Licensed Professional; depicting façade and views of building(s) and structure(s) on lot from all directions.
- .4 Written evidence of applicant's right to use the property for a Marijuana Establishment, such as a deed, lease, purchase and sale agreement or other legally binding document.
- .5 No more than 60 days prior to filing a petition for a special permit, a proposed Marijuana Establishment shall coordinate with the Ward City Councilor for the Ward where the subject property is located to host 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.

IV. To Amend Section 300.1.3 : to add the following language (NEW-italicized):

Section 300.1.3.2 *Except and only if allowed as provided by this Ordinance as a Marijuana Establishment, in accordance with Section 300.20 of this Ordinance*, the raising of marijuana for individual, personal, family, caregiver/caretaker, provider or any other medicinal purposes, accessory to any residential, institutional, business, industrial or other use.

Section 300.1.3.3 *Except and only if allowed as provided by this Ordinance as a Marijuana Establishment, in accordance with Section 300.20 of this Ordinance*, the sale, lease, rental, dispensing or any means of distribution of any accessories, supplies, equipment related to the growing, cultivation or processing of marijuana or products containing marijuana, as a principal use or use accessory to any existing or new residential, institutional, business, industrial or other use or use legally existing or begun prior to the first publication of notice of the public hearing on this amendment of the ordinance.

Section 300.1.3.4 *Marijuana Social Consumption Establishments are expressly prohibited anywhere in the City, including as an accessory use to any other use.*

3. GENERAL REGULATIONS (SECTION 700).

I. To Amend Section 700.1.3.2 (General Regulations, Nonconforming Uses, Lots, Buildings and Structures) to add the following:

"Except for Marijuana Retailer, Marijuana Cultivator, Marijuana Independent Testing Laboratory, and Marijuana Product Manufacturer, where a special permit shall be required by the City Council in accordance with Section 300.20, in all cases, with or without extension or structural change."

II. To Amend Section 700.3.3 (Home Occupations, Prohibited Occupations) to add the following to the list of occupations which shall be specifically prohibited:

Marijuana Establishment, Marijuana Retailer, Marijuana Cultivator, Marijuana Independent Testing Laboratory, Marijuana Product Manufacturer, Marijuana Research Facility, Marijuana Transporter, Marijuana Social Consumption Establishment.

4. DIMENSIONAL CONTROLS (SECTION 400).

To Amend Section 400.1 (Table of Intensity Regulations) to add the following (NEW):

Section	Use	Area (Sq. Ft.)	Frontage	Front	Side	Both Sides	Rear	Min. Usable Open	Coverage-Principal Building	Coverage-Accessory Building	Density (Sf/DU)	Max. Height
400.1.4.24	Marijuana Retailer	10,000	50'	10'	10'	20'	20'	---	50%	20%	--	30' and 2 stories
400.1.5.12	Marijuana Cultivator	20,000	100'	10'	15'	30'	20'	--	50%	20%	--	30' and 2 stories
400.1.5.13	Independent Marijuana Testing Laboratory	20,000	100'	10'	15'	30'	20'	--	50%	20%	--	30' and 2 stories
400.1.5.14	Marijuana Product Manufacturer	20,000	100'	10'	15'	30'	20'	--	50%	20%	--	30' and 2 stories
400.1.5.15	Marijuana Transporter	20,000	100'	10'	15'	30'	20'	--	50%	20%	--	30' and 2 stories

5. PARKING REQUIREMENTS (SECTION 500).

To amend Section 500.1 (Table of Offstreet Parking and Loading Regulations) to add the following (NEW):

Section #	Use	Minimum Number of Parking Spaces	Minimum Number of Loading Spaces	Minimum Number of Loading Spaces
500.1.4.28	Marijuana Retailer	4 per 1,000 sq ft of gross floor area	Section 500.3.5	Section 500.3.5
500.1.5.12	Marijuana Cultivator	1.2 per 1,000 sq ft of gross floor area	Section 500.3.5	Section 500.3.5
500.1.5.13	Independent Marijuana Testing Laboratory	1.2 per 1,000 sq ft of gross floor area	Section 500.3.5	Section 500.3.5
500.1.5.14	Marijuana Product Manufacturer	1.2 per 1,000 sq ft of gross floor area	Section 500.3.5	Section 500.3.5
500.1.5.14	Marijuana Transporter	1.2 per 1,000 sq ft of gross floor area	Section 500.3.5	Section 500.3.5

6. ADMINISTRATION (SECTION 800).

I. To Amend Section 800.6 (Definitions) to add the following definitions (NEW):

Commission: The Massachusetts Cannabis Control Commission, and any successor or other licensing entity or agency with jurisdiction over marijuana licensing in the Commonwealth of Massachusetts.

Community Host Agreement: The Agreement by and between the City of Malden and the proposed operator/owner of the Marijuana Establishment that identifies the fees that will be paid to the City by the proposed operator/owner of the Marijuana Establishment to be used by the City to mitigate the impacts to the community of the Marijuana Establishment.

Marijuana: In accordance with Chapter 94C of the Massachusetts General Laws, all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol; however, excluding, the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination. Marijuana also includes Marijuana Products. Marijuana is expressly defined to exclude Marijuana for Medical Use as defined herein this Ordinance.

Marijuana for Medical Use. Marijuana that is designed and restricted for use by, and for the benefit of, qualifying patients in the treatment of debilitating medical conditions in accordance with Chapter 369 of the Acts of 2012 and 105 CMR 725.000 Implementation of an Act for the Humanitarian Medical Use of Marijuana.

Independent Marijuana Testing Laboratory: A laboratory that is licensed by the Commission and is (i) accredited to the most current International Organization for Standardization 17025 by a third party accrediting body that is signatory to the International Laboratory Accreditation Cooperation mutual recognition arrangement or that is otherwise approved by the Commission; (ii) independent financially from any Medical Marijuana Treatment Center or any licensee or Marijuana Establishment for which it conducts a test; and (iii) qualified to test marijuana in compliance with regulations promulgated by the Commission.

Marijuana Cultivator: An entity licensed by the Commission to cultivate, process, and package Marijuana, to deliver Marijuana to Marijuana Establishments, and to transfer Marijuana to other Marijuana Establishments, but not to consumers.

Marijuana Establishment: A Marijuana Cultivator, Independent Marijuana Testing Laboratory, Marijuana Product Manufacturer or Marijuana Retailer. Marijuana Establishment is specifically and expressly defined to exclude a Marijuana Social Consumption Establishment, Marijuana Research Facility, Medical Marijuana Treatment Center, and any other type of licensed Marijuana-related businesses. A Marijuana Establishment may not be classified as any other use in this Ordinance. A Marijuana Establishment must be the principal use of the property and may be accessory only to another type of Marijuana Establishment at the same property and shall be prohibited as an accessory use to any other use. Any

Marijuana Establishment use, whether principal or accessory, shall require a special permit in accordance with Section 300.20 and other applicable provisions of this Ordinance.

Marijuana Product Manufacturer: An entity licensed by the Commission to obtain, manufacture, process, and package Marijuana, or Marijuana Products, to deliver Marijuana and Marijuana Products to Marijuana Establishments, and to transfer Marijuana and Marijuana Products to other Marijuana Establishments, but not to consumers.

Marijuana Products: Products that have been manufactured and contain Marijuana or an extract of Marijuana, including concentrated forms of Marijuana and products composed of Marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils, and tinctures. Marijuana for Medical Use is expressly excluded from this definition.

Marijuana Research Facility: An entity that cultivates, purchases or otherwise acquires Marijuana for the purpose of conducting research regarding Marijuana Products.

Marijuana Retailer: An entity licensed by the Commission to purchase and deliver marijuana and Marijuana Products from Marijuana Establishments and to deliver, sell, or otherwise transfer marijuana and Marijuana Products to Marijuana Establishments and/or to consumers.

Marijuana Social Consumption Establishment: An entity that sells Marijuana or Marijuana Products for consumption or use on the premises where sold.

Marijuana Transporter: An entity which transports Marijuana and/or Marijuana Products.

II. To Amend Section 800.6 (Definitions) to amend the following existing definitions as follows:

Convenience Store: To add the following language: "Convenience stores are expressly prohibited from any retail sale of Marijuana or Marijuana Products."

General Retail Sales: To delete "general;" and to add the following language: "specifically excluding any Marijuana Establishment and Marijuana Social Consumption Establishment."

Light Manufacturing: To add the following language: "specifically excluding any Marijuana Establishment and Marijuana Product Manufacturer."

Medical Marijuana Treatment Centers: to add the following language:
"specifically excluding any Marijuana Establishment, Marijuana Research Facility and Marijuana Social Consumption Establishment."
"Medical Marijuana Treatment Center may also be known as a Registered Marijuana Dispensary."

Research & Development: to add the following language: "specifically excluding any Marijuana Establishment, Independent Marijuana Testing Laboratory and Marijuana Research Facility."

Warehouse: to add the following language: "specifically excluding any Marijuana or Marijuana Products."

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TO: Michelle Romero, City Planner
CC: Honorable Members of the Malden City Council
FROM: Kate Fallon, City Solicitor
DATE: 6/19/18
RE: Marijuana Zoning, Ordinances Licensing

As we have reviewed proposed zoning, ordinances, and licensing procedures relating to retail sales of marijuana, you requested legal input and opinion regarding the issues addressed below in the order presented.

1. Question: Do buffers apply to the proposed overlay district?

Answer: Yes, provided the City of Malden enacts zoning regulations including buffer zones in the overlay district.

In other words, if the City chooses not to adopt or enact buffer zones in the overlay district, in my opinion, the reading of the CMR buffer zone provision does not serve as a default; it indicates the 500 foot buffer from preexisting public or private K-12 schools unless a city adopts an ordinance reducing the distance requirement.¹ Therefore, if the zoning ultimately enacted does not include buffer zones in the overlay district, it can be presumed the City intended to reduce or exclude buffer zones in the overlay district. It must be addressed one way or the other.²

¹ RETAIL SALES BUFFER ZONE: 935 CMR: CANNABIS CONTROL COMMISSION REGULATION - BUFFER ZONE – RETAIL

935 CMR 500.110: (3) Buffer Zone. The property where the proposed Marijuana Establishment is to be located, at the time the license application is received by the Commission, is not located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades one through 12, unless a city or town adopts an ordinance or by-law that reduces the distance requirement. The distance under 935 CMR 500.110(3) shall be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Establishment is or will be located.

² This is obviously not firmly resolved yet by caselaw. There is a Norfolk Superior Court decision answering no to the question of whether one RMD regulatory buffer zone omitted in the bylaw would still be applicable: "The town vote itself is evidence that the omission of a buffer zone for 'facilities in which children commonly congregate' was intentional. The question therefore is whether the Town's adoption of buffer zones for certain schools and for daycare centers but not for facilities in which children commonly congregate, leaves intact the 500 foot buffer zone provision of the DPH Siting Regulation for such facilities. This court holds that it does not." Little Children Schoolhouse, Inc., TMS, Inc. d/b/a The Children's Book Shop, The Golden Chickpea Center v. Town of Brookline Zoning Board of Appeals, 2016, MISC15-000518 (Justice Scheier).

MEDICAL DISPENSARY BUFFER ZONE: 105 CMR 725.110: Security Requirements for Registered Marijuana Dispensaries

105 CMR 725.110(A)(14): An RMD shall comply with all local requirements regarding siting, provided however that if no local requirements exist, an RMD shall not be sited within a radius of 50 feet of a school, daycare center, or any facility in which children commonly congregate. The 500 foot distance under this section is measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD.

The framework for considering zoning and licensing regulations is set by the statute: "A city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with this chapter or with regulations", and unreasonably impracticable is defined "that the measures necessary to comply with the regulations, ordinances or by-laws adopted pursuant to this chapter subject licensees to unreasonable risk or require such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate a marijuana establishment". MGL c. 94G §3. MGL c. 94G §1. The overarching considerations in enacting zoning and the licensing process are to NOT be overly restrictive or unreasonably impracticable.

4. Question: Are there additional amendments recommended?

Answer: Yes, as per our discussions, the recommended amendments are as follows.

The joint public hearing will consider possible implementation of districts including: 1) only the overlay district; 2) an overlay district with additional adult retail marijuana sales zoning districts; or 3) only the adult retail marijuana sales zoning districts. Therefore we discussed the following amendments:

1. Section 300.3 - Add column for overlay
2. Section 300.1.3.2 - Add exception for personal growing of no more than six plants by an individual for personal use at his/her residence per MGL c. 94G §7 (2) and provided no more than twelve plants are cultivated if more than one adult resides therein. (However, this must be permitted by the landlord if the cultivator is not the property owner.)
3. Section 300.20 (H) i delete "unless there is an amendment of the special permit"
4. Section 800.6 (Definitions) Medical Marijuana Treatment Center: exclude Marijuana Establishments
5. Community Host Agreement: possibly change "fees" to "funds"
6. add provision re: taxes: "Community impact fees hereunder are in addition to taxes collected per MGL c. 64N §3.
7. Marijuana for Medical use: add "as regulated by Medical Marijuana Treatment Center per this Ordinance."

5. Question: Is a moratorium appropriate to finish working on the local process?

Answer: No, a moratorium is not appropriate now that the regulations are in place.

The City already had a moratorium on permits for retail establishments last year to review this issue and it was sufficiently limited in time and scope. Now having studied the issue it is not appropriate to implement a second moratorium, and the delay to act will be detrimental to the City with regulations effective July 1st.

6. Question: Can the City of Malden Liquor Licensing Board (LLB) serve as the Licensing Authority for Cannabis Establishment Licensing for the City of Malden.

Answer: Yes, in my opinion, there is no statute or regulation precluding the LLB from serving as the City's local cannabis licensing authority. This is qualified by the following: the City Council must create by ordinance the regulatory process and set authorization for local licensing with the LLB; the City Council, which is the contracting authority on behalf of the City, must negotiate the Host Community Agreements with prospective Licensees; and provided the City Council, which is the fee regulatory authority on behalf of the City, reviews and approves the schedule of fees to be charged for applications and renewal applications, as it does for fees charged by any Board, Commission.

7. Can the zoning prohibit conversions from Medical to Recreational or from Recreational to Medical.

Answer: The only prohibition contained in the statute prohibits zoning ordinances or ordinances that: "(i) prevent the conversion of a medical marijuana treatment center licensed or registered not later than July 1, 2017 engaged in the cultivation, manufacture or sale of marijuana or marijuana products to a marijuana establishment engaged in the same type of activity under this chapter;" therefore this does not appear to be at issue in the current zoning review. MGL c. 94G §3(a)(1).

Please let me know if there are any other questions or concerns.

In order to obtain a state license, a petitioner must demonstrate to the state permit granting authority the siting of the establishment complies with local zoning ordinances. The proposed zoning will fix the buffer zones, including buffer zones contained in the overlay district, if the City so chooses. When a license petition filed with the Cannabis Control Commission "CCC" is complete, the CCC notifies the municipality, which then has 60 days to notify the CCC that the license petitioner is not in compliance with local ordinance/bylaws, and if no notice is sent to the CCC, the license petitioner is automatically deemed in compliance with local ordinances.

2. Question: Can buffer zones other than schools be included?

Answer: Yes, the law and regulations contemplate local control and requirements.³

The law also states it does not prevent the City "from prohibiting or otherwise regulating the possession or consumption of marijuana or marijuana accessories within a building owned, leased or occupied by the commonwealth, a political subdivision of the commonwealth or an agency of the commonwealth or a political subdivision of the commonwealth"; and does not authorize "the possession or consumption of marijuana or marijuana accessories on the grounds of or within a public or private school where children attend classes in preschool programs, kindergarten programs or grades 1 to 12, inclusive, on a school bus, in any youth center, or on the grounds of or within any correctional facility or detoxification facility." MGL c. 94G §§2(d)(2), 2(d)(3).

Therefore it is reasonable to create buffer zones aimed at prevention of consumption, possession and access to marijuana pursuant to the limitations contained in the law. This is qualified with the caveat that if the buffer zones are so broad as to restrict locations in such a manner or to such a degree that establishments would essentially be zoned out of any area to operate, or are so restrictive as to make it impossible to operate, in my opinion such regulations would not withstand judicial scrutiny as reasonable.⁴ Additionally, regulations should define how the buffer zone will be calculated – door to door, sidewalk to sidewalk, parcel boundary to parcel boundary, etc.

Conversely, the law and regulations also permit the City to reduce the distance and locations of buffer zones, and/or the manner in which the distance is calculated.

3. Question: Does the City need a licensing process if the statute has a licensing process?

Answer: Yes, the law and regulations contemplate that the City adopt its own regulatory scheme and structure for the local licensing of marijuana sales establishments including fees and renewals. FN 3.

The position that there is no need for local licensing is inconsistent with the laws and regulations for both retail and medicinal sales. It is also inconsistent with the ballot question itself, which specified "The proposed law would authorize cities and towns to adopt reasonable restrictions on the time, place, and manner of operating marijuana businesses and to limit the number of marijuana establishments in their communities." The ballot question was to legalize use and sales, but did not usurp local authority to regulate, similar to local licensing authority to regulate retail and restaurant sales of alcoholic beverage; the ABCC is the state regulatory commission with oversight, but the regulations and law leave the licensing, enforcement, and annual renewals up to the local licensing authority.

³ MGL c. 94G §3 Local control: "(a) A city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with this chapter or with regulations made pursuant to this chapter..."⁴

935 CMR 500.170: Municipal Requirements: (1) A Marijuana Establishment and other registered persons shall comply with all local rules, regulations, ordinances, and bylaws. (2) Nothing in 935 CMR 500.000 shall be construed so as to prohibit lawful local oversight and regulation, including fee requirements, that does not conflict or interfere with the operation of 935 CMR 500.000.

935 CMR 500.650: Non-conflict with Other Law (1) Nothing in 935 CMR 500.000 shall be construed to limit the applicability of other law as it pertains to the rights of landlords, employers, law enforcement authorities, or regulatory agencies, except as otherwise provided 935 CMR 500.000.

⁴ For example, one proposed buffer zone map contains so many locations to be buffered at a distance of 500 feet, such that it appears retail sales establishments would practically be prohibited in most of the City, therefore, from a legal perspective this will not likely be upheld as reasonable.

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