

# City of Malden

## Licensing of Marijuana Establishments

ORDER: TO AMEND CHAPTER 6, 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 Malden. 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 potential adverse impact Marijuana Establishments may 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 Cannabis Licensing and Enforcement Commission in accordance with the provisions of this ordinance and consistent with the requirements of 935 CMR 500.101(l)(a) for the Cannabis Licensing and Enforcement Commission 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, all as defined by the Massachusetts Cannabis Control Commission at 935 CMR 500.002.

**"Cannabis Licensing and Enforcement Commission" (CLEC)** 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. The CLEC shall enforce the provisions of this ordinance, the terms contained within the Special Permit and Host Community Agreement, and any Rules and Regulations that the CLEC may from time to time enact, adopt and amend. Members of the CLEC 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 which 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. TYPES AND LIMITATION ON LICENSES TO BE ISSUED**

The following license types shall be authorized under this ordinance: Independent Testing Laboratory, Marijuana Cultivator, Marijuana Product Manufacturer, Marijuana Research Facility, Marijuana Transporters and Marijuana Retailer all as defined by the Massachusetts Cannabis Control Commission at 935 CMR 500.002.

The number of marijuana retailer licenses shall be limited to 20% of the number of off premises all liquor licenses (commonly known as 'package stores') issued pursuant to G.L. c.138 Section 15. In such a case where 20% of the off premises liquor licenses results in a fractional number, the maximum number of licenses shall be the next greater whole number.

### **6.49.4. CANNABIS LICENSING AND ENFORCEMENT COMMISSION**

**A. Cannabis Licensing and Enforcement Commission Established.** There shall be established a Cannabis Licensing and Enforcement Commission (CLEC), which shall serve as the local licensing authority for Marijuana Establishments within the City of Malden. The Cannabis Licensing and Enforcement Commission shall have jurisdiction to issue, renew, rescind, revoke, or suspend the license for any Marijuana Establishment licensed to do business in Malden. The Cannabis Licensing and Enforcement Commission shall enforce the provisions of Marijuana Establishment Licenses, including but not limited to those items contained in 935 CMR 500, contained within the Special Permit and the host community agreement (HCA), and any rules and regulations promulgated by the CLEC. Members of the Cannabis Licensing and Enforcement Commission 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 Cannabis Licensing and Enforcement Commission shall consist of five (5) members, as follows, provided that the two (2) community members shall be Malden residents and shall have been residents of the City for at least two years immediately preceding their appointment.

- Police Chief
- Building Commissioner
- City Staff member with finance background as appointed by Mayor
- Community Member as appointed by City Council
- Community Member as appointed by Mayor

**C. Vacancy.** An immediate vacancy in an appointment shall occur if any member becomes involved either directly or indirectly with the sale of marijuana or ownership in a marijuana establishment or a Member fails to attend three (3) consecutive regularly scheduled meetings or hearings of the Cannabis Licensing and Enforcement Commission. Immediate vacancy shall occur if a Community Representative no longer resides in Malden.

**D. Term of Appointment.** Term of members appointed from the Community shall commence on the

date of their appointment and be arranged as to expire at the end of three and two years 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 CLEC and preside over hearings. The Chair shall be elected annually by the Members. One member shall serve as Clerk of the CLEC. 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 Mayor subject to appropriation by the City Council.

**F. Qualifications and Eligibility.**

1. No individual who has been convicted of a felony and/or who has been convicted of distribution of controlled substances to a minor in any jurisdiction shall be eligible for appointment.
2. 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.
3. No individual who has any interest in any Marijuana Establishment in any jurisdiction shall be eligible for appointment.

**6.49.5. INITIAL LICENSE APPLICATION PROCESS**

Applicants interested in opening a Marijuana Establishment within the City of Malden shall file an application with the Cannabis Licensing and Enforcement Commission in a form and with supporting documents as promulgated by the CLEC along with a \$200 application fee.

For the initialing licensing period, the CLEC shall establish an initial deadline for applications. The CLEC will review all applications submitted by the initial deadline and shall approve a maximum of five (5) Marijuana Retailer applications to proceed to host a community meeting and subsequently apply for a Special Permit. For one of the licenses, preference shall be given to an applicant where at least 51% of the business is owned by a resident of Malden, who has been a resident for each of the past five years, OR to an applicant who would qualify for the Cannabis Control Commission Economic Empowerment Priority Review. The CLEC may approve fewer than five (5) Marijuana Retailer applications, and if so, shall continue to review applications on a rolling monthly basis until the limit of five (5) Marijuana Retailer licenses is reached. The CLEC shall do a review of the application, the proposed applicant and location. The CLEC shall vote, by a simple majority, to permit or deny the applicant being authorized to host a community meeting and apply for a Special Permit as outlined in Chapter 12 of the Revised Ordinances of 1991 and further as contained in paper #283 of 2018. The CLEC shall initially evaluate applications based on the following, provided that the CLEC shall consider any additional factors it determines are in the best interest of the City of Malden.

- 1) The experience of the proposed applicant in the Marijuana industry or a similar industry
- 2) The support of the Ward Councilor
- 3) The overall financial strength of the applicant and the overall strength of the business plan
- 4) The proposed location being located within an area zoned for such use and being geographically diverse from other established, permitted or proposed establishments
- 5) Managers, directors, officers, investors and others related to the establishment are free of any disqualifying criminal convictions

Applicants who receive a successful initial screening from the CLEC shall follow the general steps as

outlined below:

- 1) Host a Community Meeting for the proposed location as outlined in CMR 500.101(1)(a).9 and further in compliance with Malden Zoning Code, Chapter 12, Section 300.20(i).5
- 2) Within 60 days of the completion of the Community Meeting, submit a Use Permit application to the Building Commissioner who will receive it on behalf of the Malden City Council. The application and supporting documentation requirements for the use permit shall be as prescribed by the Malden City Council and shall be provided to the applicant by the Building Commissioner.
- 3) Upon successful vote of the issuance of the Special Permit, applicant shall enter into a host community agreement (HCA) with the City of Malden containing at least the minimum criteria as outlined in section 6.49.5 of this ordinance.
- 4) Applicant shall obtain from the City a Host Community Agreement Certification Form along with a Community Outreach Meeting Attestation Form in order that the applicant may submit a completed application to the CCC.
- 5) Applicant shall, simultaneous with the application to the CCC, provide 8 completed applications to the CLEC.
- 6) Upon receipt of a Provisional License from the CCC as outlined in CMR 500.103(1), the CLEC shall schedule a public meeting to review the application in its entirety for the issuance of the local license required for operation. The CLEC shall review the applicant in its entirety and may consider information not previously known at the time of the issuance of the Special Permit or the execution of the HCA in determining to issue or deny the license required for operation.
- 7) With successful receipt of the local license, and payment of the first annual \$3,500 fee, and upon issuance of the Final License from the CCC, the Licensee shall have met all requirements for licensing to do business in the City of Malden.

#### **6.49.6. MINIMUM CRITERIA FOR HOST COMMUNITY AGREEMENT**

Host community agreements as proposed by the Applicant shall contain the following minimum criteria.

##### Operating Conditions

- Security plan to be reviewed and approved by Police Chief
- Traffic management plan
- Use of electronic means of verifying customer age
- Termination/Cessation of operating terms outlined

##### Financial Conditions

- Community Impact Fee of 3%
- Charitable donation requirement: \$25,000 yearly
- Annual reporting of financials to the CLEC
- Company vehicles must be registered in Malden

##### Community Support

- Local hiring preference
- Commitment to use of local vendors

##### Health Related

- Support for local educational programs on public health and drug abuse prevention

#### **6.49.7. ANNUAL LICENSE RENEWAL PROCESS**

To continue to operate in the City of Malden, each licensed and Marijuana Establishment shall as a condition of its license file an application for renewal annually on a form prescribed by the CLEC together with the following:

- (i) Annual renewal determination received from CCC demonstrating continued compliance with 105

CMR 725.000

- (ii) A copy of the active HCA with the City of Malden, provided that if the current HCA is to expire during the term of renewal, licensee shall enter a new HCA with the City of Malden prior to the renewal of the local license.
- (iii) \$3,500 annual renewal fee

The CLC shall conduct a review of compliance with the Host Community Agreement and Special Permit and shall have the authority to place conditions on the license to either bring the licensee in compliance with the HCA or special permit; further the CLC shall have the authority to place additional requirements on the license renewal that are operational in nature and intended to address operational issues that have arisen since initial licensure.

The Cannabis Licensing and Enforcement Commission 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.

**6.49.8. LICENSE TRANSFER PROHIBITED.** A Marijuana Establishment shall have no ability to transfer a license to a new operator.

**6.49.9. PROHIBITION ON HOLDING MORE THAN ONE LICENSE.** No person or entity shall retain ownership or any beneficial interest in more than one licensed Marijuana Establishment in the City of Malden.

**6.49.10. FAILURE TO OPERATE/CEASING TO CONDUCT BUSINESS.** A Marijuana Establishment shall notify the Cannabis Licensing and Enforcement Commission 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.

**6.49.11. 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 Cannabis Licensing and Enforcement Commission 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 Cannabis Licensing and Enforcement Commission, and all other code, regulatory, and/or permitting requirements applicable to the Marijuana Establishment including any conditions issued by the Cannabis Licensing and Enforcement Commission or other City of Malden permit granting authority. The Cannabis Licensing and Enforcement Commission shall specifically have the authority to enforce those conditions and requirements contained within the Special Permit and Host Community Agreement and shall set forth the penalties for non-compliance with such, which may include fines up to license suspension or revocation.

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.