

City of Malden Massachusetts

INSPECTIONAL SERVICES
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November 10, 2022

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

**Re: Amendments of §§12.12.190.A and 12.12.190.B, Title 12, Code of City of Malden
Use Regulations for Marijuana Establishments: Relief Required for Violations of
Dimensional Controls, Parking Requirements and Buffer Zones for
New Buildings & Existing Buildings
City Council Paper #315/2022**

Dear Councilors:

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

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

1. Approval of the proposed amendment of Section 12.12.190.A.
2. Approval of the proposed amendment of Section 12.12.190.B only regarding dimensional controls and parking requirements.
3. Disapproval of the proposed amendment of Section 12.12.190.B re: buffer zones.

For your reference, enclosed please find the Planning Report & Recommendation dated October 12, 2022 with attachments and Supplement dated November 9, 2022 presented at the public hearing.

Finally, please be advised, that, if the City Council fails to act on the amendments within ninety (90) days of the date the public hearing closed, a new duly advertised public hearing must be held. Accordingly, **the final date for action is February 7, 2023.**

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

Sincerely,

Michelle A. Romero
City Planner

Enclosures

CC: Mayor Gary Christenson
John McNaught, Acting City Solicitor

PLANNING REPORT & RECOMMENDATION

To: Malden Planning Board
From: Malden City Planner
Date: October 12, 2022
Subject: Amendments of §§12.12.190.A and 12.12.190.B, Title 12, Code of City of Malden (MCC)
Use Regulations for Marijuana Establishments (CCP 315/2022)

PROCEDURAL: The petition was filed by the City Council (§12.32.050) by sponsor Ward 3 City Councilor Amanda Linehan. For full text of amendments, see attached City Council Paper 315/2022.

***Note 1:** The City Council's vote on June 28, 2022 to refer this petition to the Planning Board for public hearing was reconsidered on August 9, 2022, pursuant to a reconsideration motion made on June 29, 2022; the reconsideration failed, and on August 11, 2022, the City Clerk transmitted the petition to Planning Board.*

CURRENT ZONING: The current zoning ordinance for Marijuana Establishments (Title 12.12.190, MCC, attached) was ordained on September 24, 2018 (CCP 283/2018) and amended to include an application fee (CCP 49/2020). State law authorizes local control for the City to enact zoning regulations (M.G.L. c. 40A) and to adopt ordinances that impose reasonable safeguards on the operation of marijuana establishments, provided they are not “unreasonably impracticable” or in conflict with the law, and to adopt ordinances to govern their time, place and manner (M.G.L. c. 94G).

***Note 2:** Malden also regulates Marijuana Establishments through its licensing ordinance, administered by the City's Cannabis Licensing & Enforcement Commission (CLEC) (Title 6.08.070, MCC).*

Under the City's current zoning and licensing ordinances, the following permitting has occurred to date:

- Seven Marijuana Establishments have been approved by CLEC to proceed to the zoning process.
- Three Marijuana Establishments (Marijuana Retailers) have been granted a special permit.
- Two Marijuana Establishments (Marijuana Retailers) have been issued a building permit.
- One Marijuana Establishment (Marijuana Retailer) has been issued a temporary occupancy permit. (for permit details, see **APPLICATION and EXEMPTIONS** herein below on page 5).

***Note 3:** The maximum number of licenses for Marijuana Retailers in the City of Malden is five (=20% of off-premises all- alcoholic beverages licenses/“package store liquor licenses”) Title 6.080.070.C.2, MCC.*

***Note 4:** A petition for a proposed Marijuana Establishment (Marijuana Retailer, Marijuana Cultivator, Marijuana Product Manufacturer) at 926 Eastern Avenue was denied a variance of the residential buffer zone by the Board of Appeal (decision dated January 22, 2022 re: Permit Application #CMID-040216-2021); this denial was upheld by the Massachusetts Land Court (decision dated August 31, 2022 re: petitioner's appeal). Petitioner voluntarily dismissed its open meeting law complaint against the City. Petitioner and property owner/co-owner of proposal currently continue on-going litigation against the City re: the zoning ordinance.*

Provisions of the current City zoning ordinance relevant to the proposed amendment:

- A. A special permit is required for a Marijuana Establishment (ME) (§§12.12.030 & 12.12.190).
- B. The special permit granting authority (SPGA) is the City Council (§12.12.190).
***Note 5:** A pending proposed amendment would change the SPGA to the Planning Board (CCP 286/2022).*
- C. Use categories: marijuana retailer, marijuana cultivator, independent marijuana testing laboratory, marijuana product manufacturer, marijuana research facility, marijuana transporter (§§12.12.030, 12.32.060).
- D. Zoning districts where ME are allowed: Highway Business, Industrial 1, Industrial 2, Marijuana Establishment Overlay district (see attached zoning map).
- E. Established buffer zones (§12.12.190.F.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:

- a) 75 feet of a Substance Abuse Treatment Center, as defined by this Ordinance;*
- b) 500 feet of a public or private school providing education in kindergarten, or Grades 1- 12;*
- c) 75 feet of any residential use;*
- d) 250 feet of any park playground, recreational field or recreational facility, and including, but not limited to: the Malden Teen Enrichment Center, the YMCA and the YWCA;*
- e) 75 feet of any religious facility; and*
- f) 75 feet of any daycare licensed by the Commonwealth of Massachusetts;*

Except for a Marijuana Establishment located at property in the Marijuana Establishment Overlay zoning district, which shall not be subject to a buffer zone from any residential use, however, shall comply with all other buffer zones specified herein this Ordinance.”

F. Building Commissioner determines compliance with buffer zones (§12.12.190.F.2).

Other provisions of City ordinance and state laws/regulations/guidance for Background Reference.

The City ordinance requires “for (at least) 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 an applicant who would qualify for the Cannabis Control Commission Economic Empowerment Priority Review, OR the Social Equity Program, OR a minority owned business as designated by the Commonwealth of Massachusetts.” (Title 6.08.070(d)(1), MCC).

The state Cannabis Control Commission operates three “Equity Programs,” which provide “benefits directly intended for disproportionately harmed people (known as the Social Equity Program), for businesses that economically empower disproportionately harmed people (known as Economic Empowerment Priority), and for minority-owned, women-owned, and veteran-owned businesses.” (Cannabis Control Commission, Commonwealth of Massachusetts, “Guidance on Equity Programs,” revised June 2020).

State regulations define “unreasonably impracticable” to mean, “the measures necessary to comply with the regulations, ordinances or bylaws adopted pursuant to [state laws] 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.” (935 CMR 500.002).

State law was amended on August 11, 2022 by, “An Act Relative to Equity in the Cannabis Industry” (Acts of 2022, Chapter 180), to provide financial incentives for communities to license Social Equity applicants; revise regulations re: Host Community Agreements and community impact fees; and add regulations re: a Cannabis Social Equity Trust Fund and on-site consumption re: marijuana retailers.

SUMMARY of PROPOSED AMENDMENTS:

1. Regulations for use of new buildings to be constructed (Section 12.12.190.A).

Purpose and Intent:

The proposed amendment is administrative in nature and is to clarify the relief required for violations of dimensional controls and parking requirements and for noncompliance with buffer zones; the amendment is to codify the current protocol and administration.

Current zoning: A variance is required.

Proposed zoning: A variance is required.

Note 6: Per state statute, only the Board of Appeal may grant variances.

2. Regulations for use of existing buildings (Section 12.12.190.B).

A. Dimensional controls and parking requirements.

Purpose and Intent: The proposed amendment is administrative in nature and is to clarify the relief required for violations of dimensional controls and parking requirements; it codifies the current protocol and administration and renders the language of the ordinance consistent with the current interpretation.

Current zoning: Where use of an existing building creates new or increased violations of dimensional controls or parking requirements, the SPGA may allow the violations under the special permit, provided the SPGA makes a finding the new or increased violations are not more detrimental to the neighborhood.

Proposed zoning: The amendment will expressly state the relief required for new/increased violations of dimensional controls and parking requirements:

“if the City Council makes the finding that any creation or increase in violations of dimensional controls and parking requirements will not be more detrimental to the neighborhood, then any new or increased violations of dimensional controls or parking requirements may be allowed by the special permit granted by the City Council and shall not require a variance.”

B. Buffer Zones.

Purpose and Intent: The purpose and intent of the amendment re: buffer zones are unclear. The amendment is substantive and significantly changes the current ordinance re: buffer zones for Marijuana Establishment uses, and its necessity is unsubstantiated by on-going permitting of Marijuana Establishments in the City (for details re: approved permits in **APPLICATION and EXEMPTIONS** herein below on page 5).

***Note 7:** Buffer zones are unique zoning controls that relate to the use of the property and establish a specific area and distance, a buffer, between a proposed use and surrounding properties with other uses. The objectives of buffer zone regulations for Marijuana Establishments (§12.12.190.F.1) are in accord with and/or the same as much of the Purpose and Intent of the City zoning ordinance (§12.04.010):*

- *To address incompatibility of uses*
- *To prevent conflicts between land uses*
- *To protect other properties from potential impacts of particular use*
- *To minimize impacts on abutting and surrounding properties*
- *To conserve the value of land and buildings*
- *To encourage the most appropriate use of land throughout the City*

***Note 8:** The current buffer zone regulations were recently established and necessitated by the following specific characteristics of Malden:*

- *the City is densely populated and densely developed.*
- *all uses that are the subject of the buffer zones (residential, public or private schools/K-12, parks, playgrounds, recreational field or facility, religious facility, daycare) are located throughout the City in all zoning districts where Marijuana Establishments may be proposed.*

Current zoning: A variance from the Board of Appeal is required where a property does not comply with the buffer zones. The statutory criteria to grant a variance are specific and strictly interpreted by the Board of Appeal, which has the sole statutory authority, and experience and expertise to do so. The following prerequisite criteria for a variance are established by state law (M.G.L. c.40A, §10):

- 1) circumstances specially affecting the land or structures but not the zoning district in general, relating to soil conditions; shape; or topography;
- 2) a literal enforcement of the provisions of the ordinance would involve substantial hardship, financial or otherwise; and
- 3) desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the ordinance.

Proposed zoning: For property that does not comply with the established buffer zones, the proposed amendment changes the type of zoning relief required from variance to special permit. The amendment eliminates the requirement for a variance from Board of Appeal and allows the SPGA to reduce buffer zones by only a discretionary finding as part of the special permit:

“if the City Council makes the finding that any creation or increase in violations of buffer zones will not be more detrimental to the neighborhood, then any new or increased violations of buffer zones may be allowed by the special permit granted by the City Council and shall not require a variance.”

Outstanding Concerns: The proposed amendment may impact the administration of the City zoning ordinance for the following reasons:

1. Failure to recognize substantive differences between distinct zoning requirements for Marijuana Establishments: the proposed new regulation incorrectly treats buffer zones as the same type/kind of zoning control as dimensional controls and parking requirements.
Buffer zones relate to use of a property in relation to uses of surrounding properties.
Dimensional controls relate to the property and building itself and regulate physical characteristics of a property and building, i.e., lot area, yard setbacks, height.
Parking requirements relate to the use and size of the property/building.
2. Elimination of the statutory variance process and removal of the protective “checks and balances” system of the current ordinance: the proposed new regulation would be administered by the same permitting granting authority, the SPGA, which administers use regulations, and eliminates the statutory function of the Board of Appeal to grant variances.
3. Promotion of inconsistent application of established zoning standards: the proposed new regulation would be administered by elected officials who form the City’s legislative body and have less experience in administration of the zoning laws (See **Note 9**).
4. Introduction of a discretionary mechanism to reduce buffer zones: the proposed finding, “not more detrimental,” is a broad discretionary standard, in contrast to the strict criteria for a variance, and may be met by a low, simple-majority threshold (50%).
5. Establishment of an overly broad regulation that applies to:
 - All Marijuana Establishment use categories: marijuana retailer, marijuana cultivator, independent marijuana testing laboratory, marijuana product manufacturer, marijuana research facility, marijuana transporter.
 - All ME buffer zones: residential use, public or private schools (K-12), parks, playgrounds, recreational field or facility, religious facility, daycare.
 - allows reduction of any buffer zones by any extent, up to 100%.
6. Contrary to the original intent of the Marijuana Establishment zoning ordinance: as repeatedly stated throughout the amendment process (CCP 283/2018), the provisions re: buffer zones are subject to variance granted by the Board of Appeal. (See **Note 10**)
7. Direct undermining of the required buffer zones for all Marijuana Establishments for all the above reasons.

Note 9: *This concern would be eliminated in the event of the ordainment of the proposed amendment that would change the SPGA to the Planning Board (CCP 286/2022).*

Note 10: *The City Solicitor has provided the City Council and City Planner with various memoranda that address buffer zone regulations, dated June 19, 2018, June 25, 2018, May 3, 2022 and June 1, 2022.*

APPLICATION and EXEMPTIONS: The amendments will apply to new construction and new use/occupancy of existing buildings, unless exempt by M.G.L. c. 40A, §6; §12.28.010; the express language of the amendment; or the subject of a building permit or special permit issued before the first publication of notice of the public hearing (September 23, 2022).

The following projects are exempt from the proposed amendments, given issuance of a building permit and/or special permit before the date of first publication of hearing notice:

1. 323 Commercial Street (permit application CMID-032303-2020/special permit granted October 13, 2020; permit application CMID-039258-2021/building permit issued 10/21/21; permit COO-046158-2022/temporary occupancy permit issued 6/30/22).
2. 7 Linehurst Road (permit application CMID-032442-2020 special permit granted October 27, 2020; permit applications CMID-038167-2021 & CMID-039978-2021/building permits issued 7/19/21 & 10/25/21)
3. 36 Charles Street (permit application CMID-040598-2021/special permit granted April 26, 2022).

***Note 11:** Per statute, applications for permits in the processing stage when publication occurs are not protected; historically, the City interprets, in consideration of a pending petitioner's good faith reliance on current regulations, that proposed amendments do not apply to applications filed prior to the first publication of the notice of public hearing (see date above). There are no complete applications in the processing stage.*

EFFECTIVE DATE: The effective date of an amendment is the date of the City Council's vote to ordain the amendment (§12.32.050.F). The Council must act on the amendment within ninety (90) days after the public hearing closes, otherwise, a new duly advertised public hearing must be held (§12.32.050.D); accordingly, if the public hearing closes on October 12, 2022, the final date for action is January 10, 2023.

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

1. Section 12.12.190.A. Regulations for use of new buildings to be constructed.
The proposed amendments are administrative in nature and make important updates necessary to render the ordinance consistent with current protocol.
2. Section 12.12.190.B. Regulations for use of existing buildings.
 - a) The proposed amendments re: dimensional controls and parking requirements are administrative in nature and make important updates necessary to render the ordinance consistent with current protocol.
 - b) Re: the proposed amendment re: buffer zones:
 - There are no known substantive planning objectives that direct the proposed amendment.
 - The amendment is not supported by community need (see approved permits in **APPLICATION and EXEMPTIONS** herein above on this page)
 - The amendment is contrary to the general welfare for various reasons (see **2B. Buffer Zones, Outstanding Concerns**, herein above on page 4).

PLANNING RECOMMENDATION: *(Made prior to the public hearing)* That the Planning Board recommends to the City Council re: CCP 315/2022:

1. Approval of the proposed amendment of Section 12.12.190.A.
2. Approval of proposed amendment of Section 12.12.190.B only regarding dimensional controls and parking requirements.
3. Disapproval of the proposed amendment of Section 12.12.190.B re: buffer zones.



Legislation Details (With Text)

File #: 315-22 **Version:** 1 **Name:**
Type: Ordinance **Status:** In Committee
File created: 6/22/2022 **In control:** Planning Board
On agenda: 6/28/2022 **Final action:**
Title: Order: That MCC 12.12.190.A and 12.12.190.B be amended
Sponsors: Amanda Linehan
Indexes:
Code sections:
Attachments: 1. 6.15.21 Prop #1

Date	Ver.	Action By	Action	Result
8/9/2022	1	City Council	defeated	Fail
6/28/2022	1	City Council	referred	Pass

Order: That MCC 12.12.190.A and 12.12.190.B be amended

Order: That Title 12 of the Code of the City of Malden be amended for purposes of amending special permit use regulations for marijuana establishments re: buffer zones, and re: relief required, to update use regulations to reflect current protocol and administration of zoning ordinance to render the language in the ordinance consistent with current interpretation and application.

To further amend the following sections of Title 12, Code of City of Malden as follows:

Section 12.12.190.A amend to state the following:

"A. For construction of new buildings, compliance with the dimensional controls, parking requirements, and buffer zones of this Ordinance. A variance shall be required to grant relief from any noncompliance with dimensional controls, parking requirements, and buffer zones of this Ordinance."

Section 12.12.190.B amend to state the following:

"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 for 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, parking requirements, and/or buffer zones will not be more detrimental to the neighborhood; and if the City Council makes the finding that any creation or increase in violations of dimensional controls, parking requirements, and/or buffer zones will not be more detrimental to the neighborhood, then any new or increased violations of dimensional controls, parking requirements or buffer zones may be allowed by the special permit granted by the City Council and shall not require a variance."

PAPER³¹⁵-22:

ORDER: That Title 12 of the Code of the City of Malden be amended for purposes of amending special permit use regulations for marijuana establishments re: buffer zones, and re: relief required, to update use regulations to reflect current protocol and administration of zoning ordinance to render the language in the ordinance consistent with current interpretation and application.

To further amend the following sections of Title 12, Code of City of Malden as follows:

Section 12.12.190.A amend to state the following:

“A. For construction of new buildings, compliance with the dimensional controls, parking requirements, and buffer zones of this Ordinance. A variance shall be required to grant relief from any noncompliance with dimensional controls, parking requirements, and buffer zones of this Ordinance.”

Section 12.12.190. B amend to state the following:

“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 for 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, parking requirements, and/or buffer zones will not be more detrimental to the neighborhood; and if the City Council makes the finding that any creation or increase in violations of dimensional controls, parking requirements, and/or buffer zones will not be more detrimental to the neighborhood, then any new or increased violations of dimensional controls, parking requirements or buffer zones may be allowed by the special permit granted by the City Council and shall not require a variance.”

12.12.190 A MARIJUANA ESTABLISHMENT

A Marijuana Establishment, as defined by this Ordinance to expressly only include Marijuana Retailer, Marijuana Cultivator, Independent Marijuana Testing Laboratory, Marijuana Product Manufacturer, Marijuana Research Facility and Marijuana Transporter, may be allowed only in the Highway Business, Industrial 1 and Industrial 2 zoning districts or the Marijuana Establishment Overlay District, only by special permit granted by the 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:
 - a. 75 feet of a Substance Abuse Treatment Center, as defined by this Ordinance;
 - b. 500 feet of a public or private school providing education in kindergarten, or Grades 1- 12;
 - c. 75 feet of any residential use;
 - d. 250 feet of any park playground, recreational field or recreational facility, and including, but not limited to: the Malden Teen Enrichment Center, the YMCA and the YWCA;
 - e. 75 feet of any religious facility; and
 - f. 75 feet of any daycare licensed by the Commonwealth of Massachusetts; Except for a Marijuana Establishment located at property in the Marijuana Establishment Overlay zoning district, which shall not be subject to a buffer zone from any residential use, however, shall comply with all other buffer zones specified herein this Ordinance.
 - 2. The City of Malden Building Commissioner shall determine whether a proposed location

is compliant with the buffer zones specified herein this Ordinance.

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 Mass. Gen. Laws ch 44 § 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:

1. The special permit is non-transferable and non-assignable.
2. 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.
3. Consumption of Marijuana and/or Marijuana Products is prohibited at or within 500 feet of a Marijuana Establishment.
4. Smoking or burning of Marijuana and/or Marijuana Products is prohibited on the premises of a Marijuana Establishment.
5. 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.
6. Any outside storage of any kind is prohibited.
7. Any outside display of any kind is prohibited.
8. The Marijuana Establishment shall incorporate odor control technology and provisions, and ensure that emissions do not violate Mass. Gen. Laws ch 111 § 31C, including but not limited to those specified for odors.
9. 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.
10. The expiration, termination or revocation for any reason of any licenses and approvals as required by this Ordinance and described herein above shall be grounds for the immediate revocation of a building permit and/or occupancy permit.

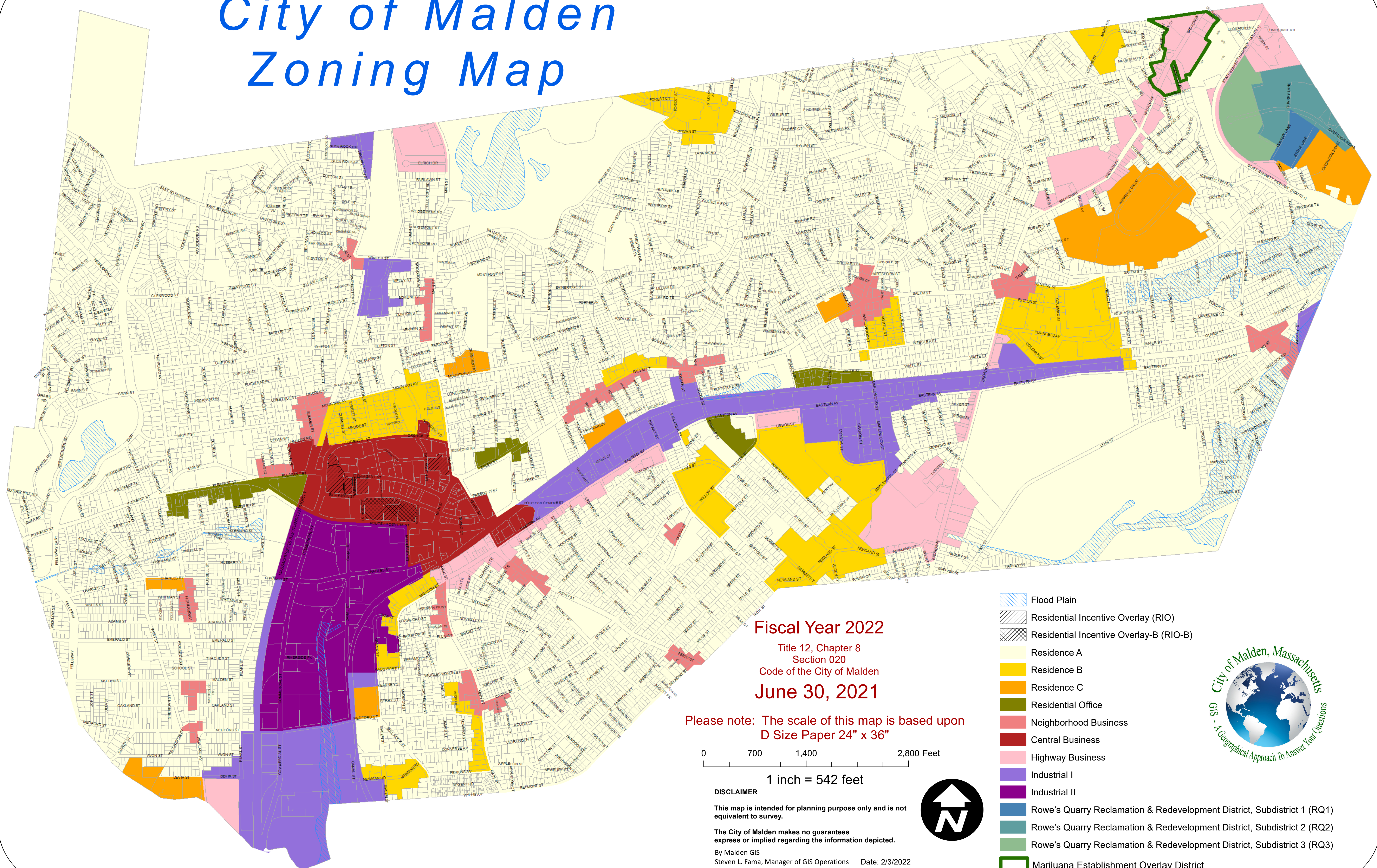
I. Filing Requirements:

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 facade 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 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. A non-refundable special permit application fee of \$750.00.

HISTORY

Amended by Ord. [49-20](#) on 2/11/2020

City of Malden Zoning Map



CITY OF MALDEN, MASSACHUSETTS
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TO: Honorable Members of the Malden City Council
FROM: Kathryn Fallon, City Solicitor
DATE: May 3, 2022
RE: Explanation of the Buffer Zones and Dimensional Controls

This informational memo is provided in response to the City Council's April 26th vote in which the Council ordered this Department to provide "a memo explaining the relationship between buffer zones and dimensional controls". Please be advised that this informational memo offers generally information only, and specific circumstances, cases and issues are not addressed, and therefore may not be applicable to active claims/litigation in which this office represents the City relating to or involving the same or similar subject matter. It is provided only in the context of your order to produce a memo of explanation.

1. Malden's authorization to enact zoning and cannabis regulations.

Generally, buffer zones and dimensional controls in this context are zoning regulations enacted pursuant to the Massachusetts Zoning Act, MGL c. 40A. Malden's cannabis buffer zone ordinance, MCC 12.12.190, was enacted pursuant to MGL c. 40A, and specifically pursuant to MGL c. 40A §5 process.

Malden's cannabis licensing ordinance, MCC 6.08.070, is authorized and was enacted pursuant to the Massachusetts statute on use and distribution of retail marijuana, MGL c. 94G. Specifically, MGL c. 94G §3 authorizes local control; Malden's cannabis licensing ordinance, was enacted consistent with this authority as well as the Massachusetts Cannabis Control Commission, "CCC", regulations pertaining to Adult Use of Marijuana, 935 CMR 500, with specific authorization for local control as authorized pursuant to 935 CMR 500.170. The CCC is the state agency charged with licensing and regulation of marijuana establishments in accordance with MGL c. 94G §4.

MGL c. 94G grants the City the authority to adopt ordinances that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable or in conflict with MGL c. 94G or the provisions of 935 CMR 500; the City is permitted via ordinance to adopt ordinances that govern the time place and manner of marijuana establishment operations. MGL c. 94G §3. MCC 6.08.070 states in part: "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."

2. Distinct types of regulations.

As stated, Malden is authorized by state and regulation to implement regulations pertaining to marijuana establishments much the same as other establishments are regulated. Malden can and has adopted zoning districts, zoning controls including buffer zones, and other dimensional controls pertaining to retail cannabis establishments, to achieve the objectives stated in MCC 6.08.070. Malden has implemented three distinct types of regulations which are the subject of regulation in this context: use regulations MCC 12.12.030, dimensional controls MCC 12.16.010, and buffer zones.

Use regulations pertain to the specific zoning districts in which retail cannabis establishments are permitted within the City. Use regulations are not subject to variance. The use is either permitted or it is not, and no variance is available.

Dimensional controls are controls relating to the parcel of land and the structure or structures on the parcel. Dimensional controls, also known as dimensional requirements, regulate the specific characteristics of a property, lot and/or building. Dimensional controls are regulations of the characteristics of a parcel/structure, for example: area, frontage, front and side yard setbacks, open space, building coverage, density and building height. These pertain to the physical features of the particular property, building or structure. Dimensional controls are specific to the lot or building itself. Dimensional controls are subject to variance.

Buffer zones are regulations pertaining to the use of the parcel as it relates to uses of surrounding parcels. A buffer zone is the dimension of a use of a parcel in relation to parcels in the vicinity. Though the cannabis zoning ordinance mandates buffer zones, it has been determined that the buffer zones in this context can be the subject of variance, contrasted with conservation buffer zones, which cannot.

Buffer zones are zoning controls relating to the use of the property, which establish a buffer between the proposed use and set the distance between that proposed use and the other properties in the vicinity, setting the specific distance required in order to allow use of the property.

Buffer zones establish a specific area (buffer) between uses of properties, as well as sets a specific distance between the uses of properties. The objectives of buffer zones include, but are not limited to:

- To address incompatibility of uses
- To prevent conflicts between land uses
- To protect other properties from potential impacts of particular use
- To minimize impacts on abutting and surrounding properties.
- To conserve the value of land and buildings and encourage the most appropriate use of land within various zoning districts

Please let me know if you have any other questions in regard to this informational memo.

PLANNING REPORT & RECOMMENDATION *Supplement*

To: Malden Planning Board
From: Malden City Planner
Date: November 9, 2022 (*Tabled on October 12, 2022*)
Subject: Amendments of §§12.12.190.A and 12.12.190.B, Title 12
Code of City of Malden (MCC)
Use Regulations for Marijuana Establishments (CCP 315/2022)

PROCEDURAL: This supplements the Planning Report & Recommendation dated October 12, 2022. There was no quorum of the City Council Ordinance Committee in attendance at the joint public hearing on October 12, 2022, and the Planning Board tabled the joint public hearing to November 9, 2022, without taking any public testimony.

CLARIFICATION, UPDATES and ADDITIONAL INFORMATION:

Number of Licenses.

A. Marijuana Cultivator, Independent Marijuana Testing Laboratory, Marijuana Product Manufacturer, Marijuana Research Facility and Marijuana Transporter.

City ordinance and state law do not provide a minimum or maximum limit for the number of licenses that may be issued for these types of Marijuana Establishments.

B. Marijuana Retailer.

The City licensing ordinance provides the maximum limit of the number of licenses for this type of Marijuana Establishment, under, “Types and Limitation on Licenses to be Issued:”

“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 Mass. Gen. Laws Chapter 138 §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.” (Section 6.08.070.C.2, MCC).

This City ordinance is in accord with state law, which provides the minimum limit of the number of marijuana retailer licenses may be no fewer than:

“20 per cent of the number of licenses issued within the city or town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under section 15 of chapter 138.” (M.G.L. c.94G, Section 3a.2.ii).

Currently, there are nineteen (19) licenses issued in the City pursuant to M.G.L. c.138, Section 15; this number has remained the same since 2016, per the Malden License Board; and this number and license category includes liquor stores, supermarkets and convenience stores that sell alcohol. Per the required calculation, 20% of 19 is 3.8 licenses, which is rounded up to 4.

Note 1: *The Acting City Solicitor notes a conflict between Section 6.080.070.C.2 (above) and another section of the City licensing ordinance, “Initial License Application Process,” (Section 6.08.070.D.1), which contains a reference to, “the limit of five Marijuana Retailer licenses;” and recommends that this conflict of ordinance must be resolved by the City Council.*

Date for Final Action.

The City Council must act on the amendments within ninety 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 November 9, 2022, the final date for action is February 7, 2023.

Status of Approved Projects.

The following projects are exempt from the proposed amendments, given issuance of a building permit and/or special permit before the date of first publication of the public hearing notice:

1. 323 Commercial Street
 - special permit granted October 13, 2020 (permit CMID-032303-2020)
 - building permit issued October 21, 2021 (permit CMID-039258-2021)
 - temporary occupancy permit issued June 30, 2022 (permit COO-046158-2022)
2. 7 Linehurst Road
 - special permit granted October 27, 2020 (permit CMID-032442-2020)
 - building permits issued July 19, 2021 & October 25, 2021 (permit CMID-038167-2021 & CMID 039978-2021)
 - temporary occupancy permit issued October 19, 2022 (permit COO-048933-2022)
3. 36 Charles Street
 - special permit granted April 26, 2022 (permit application CMID-040598-2021)