

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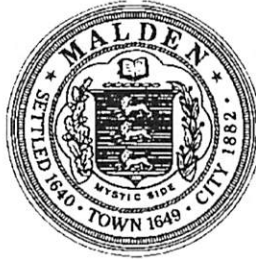
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TO: Honorable Members of the Malden City Council
FROM: Kathryn Fallon, City Solicitor
DATE: May 3, 2022
RE: Explanation of the Buffer Zones and Dimensional Controls

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.