

City of Malden

Massachusetts

INSPECTIONAL SERVICES
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Malden, Massachusetts 02148
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October 14, 2021

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

**Re: Amendments of §§12.12.030 and 12.12.010, Ch.12, Revised Ordinances of 2020, as Amended
Use regulations: Warehouse, Wholesale & Distribution in Highway Business zoning district
City Council Paper #383/2021**

Dear Councilors:

On October 13, 2021, the Planning Board and City Council Ordinance Committee jointly held a public hearing regarding the above-referenced proposed amendments.

As a result of the public hearing, on October 13, 2021, a majority of the Planning Board, namely, seven of those eight members present, voted to recommend to the City Council the following:

1. Approval of the proposed amendment of §12.12.030 re: Wholesale & Distribution use.
2. Disapproval of the proposed amendment of §12.12.030 re: Warehouse use.
3. Disapproval of the proposed amendment of §12.12.010 re: change of the SPGA.
4. Inclusion of the following language with any amendments ordained:
"This ordinance/amendment shall not apply to any application for a special permit or building permit filed before the date of first publication of the notice of public hearing re: this ordinance/amendment."

For your reference, attached please find the Planning Report & Recommendation dated October 13, 2021, which was 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 January 11, 2022.**

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

Sincerely,

Michelle A. Romero
City Planner

Attachment

CC: Greg Lucey, City Clerk
Kathryn Fallon, City Solicitor
Mayor Gary Christenson

PLANNING REPORT & RECOMMENDATION

To: Malden Planning Board
From: Malden City Planner
Date: October 13, 2021
Subject: Zoning Amendments (CCP #383/2021)
 Sections 12.12.030 and 12.12.010, Chapter 12, Rev. Ordinances of 2020, as Amended,
 City of Malden (*City zoning ordinance; all § references herein are to this*)

PETITION: This petition is made by the City Council (§12.32.050) and was filed by sponsors Councilors-at-Large Stephen Winslow and Deborah DeMaria and Ward 3 City Councilor Amanda Linehan (for full text of amendments see attached City Council Paper 383/2021).

SUMMARY of PROPOSED AMENDMENTS: Two “Alternative” amendments are proposed regarding use regulations for Warehouse and Wholesale & Distribution in the Highway Business zoning district:

Alternative #1: To amend the Table of Use Regulations (§12.12.030) to prohibit both uses in the Highway Business zoning district.

<i>Use</i>	<i>Zoning District</i>								
	A	B	C	RO	BN	BC	BH	I1	I2
Warehouse	No	No	No	No	No	No	SP No	SP	SP
Wholesale & Distribution	No	No	No	No	No	No	SP No	SP	SP

Alternative #2: To amend Use Regulations (§12.12.010.B) to change the special permit granting authority from the Planning Board to the City Council for Warehouse use and Wholesale & Distribution use in the Highway Business zoning district.

CURRENT ORDINANCE: History and Background.

History of amendments of use regulations.

<i>Time period</i>	<i>Use regulations</i>	<i>Amendment</i>
1977-1985	Allowed by right in HB	
1985-2007	Allowed by special permit SPGA- Board of Appeal	CCP 389/1985
2007-present	Allowed by special permit- SPGA -Planning Board	CCP 92/2007

Highway Business zoning districts. According to the City GIS system, currently there are approximately 135 parcels throughout the City, which are classified as Highway Business; the majority are located on Broadway and Eastern Avenue, however, there are a few located on Highland Avenue, Main Street and Route One.

- Broadway (at city line with Everett, including Broadway Plaza; north of Sheafe Street to Eastern Avenue; between Bike to Sea/NSCT to south of Plainfield Avenue; from Bowman Street to near Bayrd Street; from Blue Hill Avenue, south of Ridge Hill Avenue to city line with Melrose)
- Eastern Avenue (between Main and Ferry Streets, Ferry and Bryant Streets, Willow and Lisbon Streets)
- Highland Avenue (near city line with Medford, including Townline Plaza)
- Main Street (near city line with Melrose; at intersection of Madison Street and Eastern Avenue)
- Route One (at city line with Melrose and Saugus; near Kennedy Drive, Linehurst Road, Salem Street).

Since 1977, the zoning map has been amended several times to expand the Highway Business zoning district, most recently in 2008 with the rezoning of 29 parcels on upper Broadway (CCP 138/2008; see also CCP 158/1986, CCP 763/1986, CCP 21/1983).

Definitions. (§12.32.060)

Warehouse. City zoning ordinance defines “warehouse” as, “*A building or structure whose primary purpose is for the storage of goods and materials intended for use in manufacturing or the post-production storage of goods and merchandise prior to distribution for sale, specifically excluding any Marijuana or Marijuana Products. This shall not be interpreted to include storage incidental to the normal operation of a retail sales or service operation within the same building or structure.*”

Wholesale & Distribution. The current ordinance contains no definition; per ordinance, “Terms or words not defined herein but defined in the Massachusetts State Building Code shall have meanings given therein, unless a contrary intention clearly appears, otherwise as the meaning quoted in the Random House Unabridged Dictionary of The English Language, 1967 Copyright,” which appears to now be contained in the online dictionary, Dictionary.com; the latter provides the following relevant definitions for:

“wholesale”: “*the sale of goods in quantity, as to retailers or jobbers, for resale (opposed to retail)*”

“distribution”: “*the marketing, transporting, merchandising, and selling of any item.*”

By the nature of the business, wholesale & distribution use generally involves truck traffic.

APPLICATION and EXEMPTIONS: The amended ordinance will apply to new lots and new buildings and new use and occupancy of existing buildings on existing lots, unless exempt per M.G.L. c. 40A, §6, as a preexisting nonconforming use or building (§12.28.010); the subject of a building or special permit issued before the first publication of notice of the public hearing (September 10, 2021); land part of an approved and endorsed Approval Not Required or Definitive subdivision plan; or express language of the amendment.

Note 1: *Per state statute, applications for permits that are in the processing stage when publication occurs are not protected; historically, the City interprets, in consideration of any pending petitioner’s good faith reliance on current regulations, that proposed amendments do not apply to applications filed prior to the first publication of notice of public hearing (September 10, 2021). There is one pending application filed prior to first publication: a petition seeking a special permit for warehouse and wholesale & distribution use of a proposed new building at 320 State Highway, a.k.a., 735 Broadway (Parcel ID 184 573 368), filed on May 19, 2021 (Permit Application # CMID 037453-2021). See below for recommended language to extend the exemption to applications filed before the date of first publication of the hearing notice.*

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 13, 2021, the final date for action is January 11, 2022.

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.*

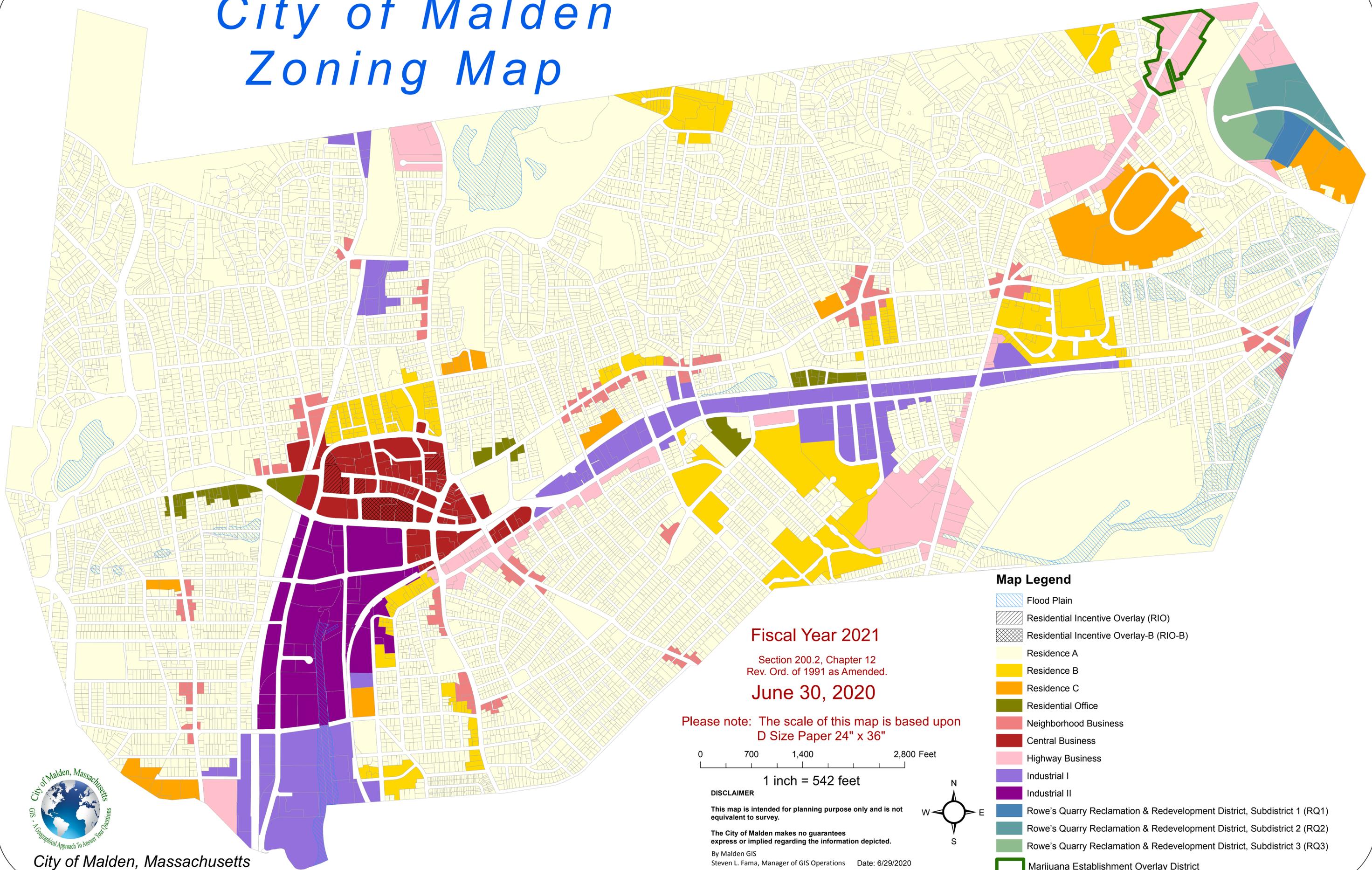
In general, existing special permit requirements provide adequate safeguards for most uses.

The Broadway Corridor Framework Plan (2020) recommends zoning amendments for the Corridor, including the prohibition of uses “in conflict with the Vision,” and identifies several such uses, including wholesale & distribution. The City recently received a Gaming Commission grant to hire a consultant to assist with implementation of other zoning amendments recommended by the Broadway Corridor Plan.

PLANNING RECOMMENDATION (*Prepared prior to the public hearing*): That the Planning Board recommends to the City Council:

1. Approval of the amendment to prohibit Wholesale & Distribution, as proposed.
2. Disapproval of all other amendments.
3. Inclusion of the following language with any amendments ordained:
“This ordinance/amendment shall not apply to any application for a special permit or building permit filed before the date of first publication of the notice of public hearing re: this ordinance/amendment.”

City of Malden Zoning Map



Fiscal Year 2021

Section 200.2, Chapter 12
Rev. Ord. of 1991 as Amended.

June 30, 2020

Please note: The scale of this map is based upon
D Size Paper 24" x 36"

0 700 1,400 2,800 Feet

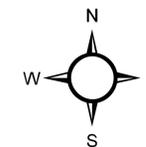
1 inch = 542 feet

DISCLAIMER

This map is intended for planning purpose only and is not equivalent to survey.

The City of Malden makes no guarantees express or implied regarding the information depicted.

By Malden GIS
Steven L. Fama, Manager of GIS Operations Date: 6/29/2020



Map Legend

- Flood Plain
- Residential Incentive Overlay (RIO)
- Residential Incentive Overlay-B (RIO-B)
- Residence A
- Residence B
- Residence C
- Residential Office
- Neighborhood Business
- Central Business
- Highway Business
- Industrial I
- Industrial II
- Rowe's Quarry Reclamation & Redevelopment District, Subdistrict 1 (RQ1)
- Rowe's Quarry Reclamation & Redevelopment District, Subdistrict 2 (RQ2)
- Rowe's Quarry Reclamation & Redevelopment District, Subdistrict 3 (RQ3)
- Marijuana Establishment Overlay District



City of Malden, Massachusetts