

City Council Docket
January 28, 2019

The Waltham City Council will meet in the Council Chamber at City Hall, 610 Main Street, Waltham, MA on Monday, January 28, 2019 at 7:30 pm. The following matters and others may be considered.

Notice is hereby given that the City Council and the Board of Survey and Planning will hold a joint Public Hearing in the Council Chamber, City Hall, 610 Main Street, Waltham, Massachusetts, on Monday, January 28, 2019 at 7:30 p.m. on the following proposed amendment to the Zoning Ordinance

Public Hearing
Zoning Amendment

Be it Ordained: That the Zoning Ordinance of the City of Waltham, as most recently amended, is hereby further amended by adding the following new Article XII to read as follows:

Article XII. Non-medical Marijuana Establishments Sec. 12.1 – Sec. 12.13 and it is further ordained that the following additional amendments are made to the Zoning Ordinance: Article III Section 3.222, 3.225, 3.228, 3.248, 3.250, 3.251, 3.252 and 3.4. The entire copy of the ordinance text is posted at City Hall and is attached hereto as Attachment A.

Notice is hereby given that the City Council and the Board of Survey and Planning will hold a joint Public Hearing in the Council Chamber, City Hall, 610 Main Street, Waltham, Massachusetts, on Monday, January 28, 2019 at 7:30 p.m. on the following proposed amendment to the Zoning Ordinance

Public Hearing
Zoning Ordinance

- Whereas...** The Cannabis Control Commission did not adopt regulations until March 7, 2018, and
- Whereas...** The original moratorium was adopted on June 18, 2018
- Whereas...** At the very next meeting of the Ordinances & Rules Committee, on June 25, 2018, it was voted to request that the Law Department draft the Zoning Ordinance amendment to regulate marijuana establishments, and
- Whereas...** The Ordinances & Rules Committee received the draft on November 2, 2018, and
- Whereas...** After a quick review, the Ordinances & Rules Committee voted on November 19, 2018 to send the draft to the full Council with the recommendation that a public hearing be scheduled forthwith, and
- Whereas...** The Ordinances & Rules Committee has acted as expeditiously as possible, a public hearing has been scheduled for the Zoning Ordinance amendment, and the City Council expects to act on the matter as quickly as possible, **now therefore...**

Be It Ordained:

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That the Zoning Ordinance of the City of Waltham, Article III entitled "Establishment of Districts," Section 3.4, entitled "Table of Uses," Subsection 3.42, entitled "Moratorium on Marijuana Establishments," as most recently amended, is hereby further amended by deleting in both places where it appears the following:

"December 31, 2018"

and inserting in place thereof the following:

"June 30, 2019, or the effective date of the Zoning Ordinance amendment establishing a new Article XII entitled Non-medical Marijuana Establishments, whichever is earlier".

Communications from the Mayor

1. The Mayor respectfully requests a street opening at 509 and 533 Moody Street for Phase 1 and Phase 2 of the Moody Street Fire Station Project.
2. The Mayor respectfully requests the transfer of care, custody and control of the Young Building, 509 Moody Street to the Fire department to effectuate the Moody Street Fire Station Project.
3. The Mayor respectfully requests an appropriation in the amount of \$35,223 to reimburse the Building Department and Repair account for a new furnace and bathroom at 92 Felton Street and material at City Hall.
4. The Mayor respectfully requests a transfer of traffic impact funds in the amount of \$33,842 to be used for the purpose of repairing broken conduit at two locations on River Street.
5. The Mayor respectfully requests approval of a loan authorization in the amount of \$1,085,000 for the construction improvements to Hillcroft Playground.
6. The Mayor respectfully requests a name dedication at Veteran's Field new playground structure area.
7. The Mayor respectfully requests confirmation of the appointment of Rebecca Migdal, 248 Warren Street, Waltham as a member of the Waltham Historical Commission to fill the vacancy created by the resignation of John Cox.

Applications & Licenses

- Lodging house renewal – 12 Lowell Street – Middlesex Human Service Agency, Inc.
- Lodging house renewal – 94 Adams Street – AMG Beech Road, LLC
- Class 2 renewal – Colvins Inc. – 185 Prospect Street
- Class 2 renewal – Classic Cars Inc. – 251 High Street
- Class 2 renewal – Waltham Auto Tow, Inc. – 279 R. Crescent Street

Orders, Ordinances & Resolutions

Committee Reports

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Licenses and Franchises

1. The Licenses and Franchises Committee recommends the Class II License renewal –251 Lexington Street – Boston Muffler & Brake, Co., Inc. be approved.
2. The Licenses and Franchises Committee recommends the Class II License renewal –935 Rear Main Street – Pilicy Auto & Yacht Inc. be approved.
3. The Licenses and Franchises Committee recommends the Class II License renewal –53 Felton Street Pilgrim Auto Body, Inc. be approved.
4. The Licenses and Franchises Committee recommends the request for a permit to put a temporary float on the Cronin’s Landing Dock be approved.
5. The Licenses and Franchises Committee recommends the extended hour’s renewal for CVS Pharmacy #114 located at 12 Harvard Street be approved.
6. The Licenses and Franchises Committee recommends the lodging house renewal for Bentley University Stratton House Beaver be approved.
7. The Licenses and Franchises Committee recommends the lodging house renewal for Bentley University Slade Upper Hall be approved.
8. The Licenses and Franchises Committee recommends the lodging house renewal for Bentley University Nathan Miller Hall Upper be approved.
9. The Licenses and Franchises Committee recommends the lodging house renewal for Bentley University Kresge Hall Upper be approved.
10. The Licenses and Franchises Committee recommends the lodging house renewal for Bentley University Forest Hall Upper be approved.
11. The Licenses and Franchises Committee recommends the lodging house renewal for Bentley University Fenway Hall be approved.
12. The Licenses and Franchises Committee recommends the lodging house renewal for Bentley University Copley Hall South Lower be approved.
13. The Licenses and Franchises Committee recommends the lodging house renewal for Bentley University Copley Hall North Upper be approved.
14. The Licenses and Franchises Committee recommends the lodging house renewal Dennis Dyer at 403 River Street be approved.

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15. The Licenses and Franchises Committee recommends the lodging house renewal Dennis Dyer at 107 Adams Street be approved.
16. The Licenses and Franchises Committee recommends the lodging house renewal for MST Realty Associates, LLC at 49-51 Brown Street be approved.
17. The Licenses and Franchises Committee recommends the lodging house renewal for SMT Realty Associates, LLC at 104 Adams Street be approved.
18. The Licenses and Franchises Committee recommends the lodging house renewal for SMT Realty Associates, LLC at 74 Adams Street be approved.
19. The Licenses and Franchises Committee recommends the lodging house renewal for Max Horn at 755 Main Street be approved.
20. The Licenses and Franchises Committee recommends the lodging house renewal for Max Horn at 21-23 Pine Street be approved.

Public Works & Public Safety

1. The Public Works & Public Safety Committee recommends the 17-25 street opening at 84 Upton Road be approved.

Finance

1. The Finance Committee recommends the appropriation of \$30,712 for the purchase of a Ford F150 pickup truck for the Building Maintenance Department be approved.
2. The Finance Committee recommends the appropriation of \$53,342 for the purchase of two electric vehicles be approved.
3. The Finance Committee recommends the acceptance of numerous gifts from John and Paula Hughes be approved.
4. The Finance Committee recommends the acceptance of two grants; \$1,400 for HMEP and \$20,460 for EMPG from MEMA be approved.

Unfinished Business & Other Business

- Time extension for Order #33403 – BP 99 Third Avenue, LLC
- Time extension for Special Permit Application at 95-99 Moody Street
- Time extension for Special Permit Application at 265 Bear Hill Road

Tabled Items

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- Mayor's veto on Order Nos. #34291, 34292, 34295
- UMass Fields Resolution
- Installation of a guard rail on the backside of Beal Road sidewalk

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Attachment A

- Copy of the entire Zoning Ordinance Amendment of Article XII:

That the Zoning Ordinance of the City of Waltham, as most recently amended, is hereby further amended by adding the following new Article XII to read as follows:

Article XII. Non-medical Marijuana Establishments

Sec. 12.1. Intent and purpose.

It is the intent and purpose of this article to protect the public safety, health, and general welfare of the community from negative quality of life impacts, including but not limited to increased noise, offensive odors, and public safety issues (e.g., violent crime), to discourage the growth of illegal resale markets, and to promote the protection of minors by regulating, in a manner that is not unreasonably impracticable, the establishment of non-medical marijuana establishments (hereafter “marijuana establishments”), as defined below, and which term shall not include medical marijuana treatment centers, as follows:

- (a) Establish specific zoning standards and regulations for marijuana establishments as defined below;
- (b) Protect the public health, safety and welfare of Waltham residents;
- (c) Regulate the siting, design, placement, safety, monitoring, modification, and removal of marijuana establishments; and
- (d) Minimize the adverse impacts of marijuana establishments on adjacent properties, residential neighborhoods, schools and other places where children congregate, local historic districts, and other land uses potentially incompatible with said facilities.

Sec. 12.2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

21. Marijuana Establishment: A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business, as those terms are defined in G.L.M. chapter 94G, as it may be amended from time to time, but excluding from said definition medical marijuana treatment centers, production areas within such centers, and medical marijuana cultivation operations as defined in Chapter 369 of the Acts of 2012 and as controlled by Article XI of this Zoning Ordinance.
22. Consumer: A person who is at least 21 years of age.
23. Hemp: The plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight

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of marijuana product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

24. Host Community Agreement: The agreement that must be executed by and between the intended owner/operator of each marijuana establishment and/or each medical marijuana treatment center with the City of Waltham prior to the issuance of a license, from the state's Cannabis Control Commission or Massachusetts Department of Public Health, whichever is applicable, and covering, at a minimum, the topics identified in G.L.M. chapter 94G, Section 3(d).
25. Marijuana: All parts of any plant of the genus Cannabis, not excepted below and 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 as defined in G.L.M. chapter 94C, section 1; provided, however, that "marijuana" shall not include: (i) 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; (ii) hemp; or (iii) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.
26. Marijuana Products: Products that have been manufactured and contain marijuana or an extract from 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, but excluding all such items that are subject to the provisions of Article XI of this Zoning Ordinance.
27. Unreasonably Impracticable: This term shall mean that the measures necessary to comply with this Zoning Ordinance article and any conditions imposed pursuant to a special permit granted hereunder shall not subject licensees under G.L.M. chapter 94G 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.
28. All other definitions contained in G.L.M. chapter 94G, section 1 shall apply to this Article of the Zoning Ordinance.

Sec. 12.3. Special-permit-granting authority.

For all purposes pursuant to this article, the Waltham City Council is hereby designated as the special-permit-granting authority. All special permit applications made pursuant to this article shall

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conform to the standards and criteria and procedural provisions as required by the Rules of the Waltham City Council and the zoning ordinances of the City of Waltham, including but not limited to the provisions of Section 3.5.

Sec. 12.4. Special permit application.

In addition to the requirements contained in Section 3.5 and the Rules of the City Council, an applicant for a special permit shall be required to provide the following:

- (a) Copies of any provisional licenses issued to the applicant by the Cannabis Control Commission and any other licenses and/or permits issued by the Commonwealth of Massachusetts and any of its agencies for the operation of the facility;
- (b) Evidence of the applicant's right to use the site of the proposed facility, such as a deed or lease;
- (c) If the applicant is a business organization, a statement under oath disclosing all of its owners, shareholders, partners, members, managers, directors, officers, or other similarly situated individuals and entities and their addresses. If any of the above are entities rather than persons, the applicant must disclose the identity of the owners of such entities until the disclosure contains the names of individuals;
- (d) Plans for all proposed security measures for the facility, including lighting, fencing, gates, cameras, alarm systems, security monitoring, and on-site security personnel, to ensure the safety of persons and to protect the premises from theft;
- (e) Plans for all proposed ventilation and air cleaning installations, including technical specifications for the equipment to be used; and
- (f) A copy of the emergency response plan filed by the applicant with the fire and police departments.

Sec. 12.5. Standards and criteria.

In addition to the specific criteria contained within this article, the City Council shall consider the following criteria, where it deems relevant, before issuing a special permit for the operation of a marijuana establishment:

- (a) Compliance with all requirements of 935 CMR 500.001, et seq.;
- (b) Adequacy of the site in terms of the size of the proposed use(s);
- (c) Suitability of the site for the proposed use(s);
- (d) Suitability of the security to be provided for the proposed use(s);
- (e) Impact on traffic and safety;
- (f) Impact on the visual character and security of the surrounding neighborhood;
- (g) Adequacy of parking; and

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- (h) Adequacy of utilities, including sewage disposal, water supply and storm water drainage.

Sec. 12.6. Specific restrictions and requirements.

- (a) No marijuana establishment, as defined in this article and G.L.M. chapter 94G, shall be established except in compliance with this article.
- (b) No marijuana establishment shall be considered a "customary home occupation."
- (c) No marijuana establishment shall be allowed as an accessory use in any zoning district, to the extent such exclusion is permitted by law.
- (d) No marijuana establishment, nor any combination of marijuana establishments on the same parcel, shall have a total gross floor area of less than 2,500 square feet or more than 20,000 square feet.
- (e) No marijuana establishment shall be permitted within 500 feet of any pre-existing school, day-care center, park, recreational facility, elderly housing facility, facility for the developmentally disabled, or any facility in which children commonly congregate. For purposes of determining the minimum distance separation, the distance shall be measured by following a straight line from the outer property line of the proposed facility to the outer property line of any such school, day-care center, park, recreational facility, elderly housing facility, facility for the developmentally disabled, or facility in which children commonly congregate.
- (f) No marijuana establishment shall allow anyone other than a consumer as defined in section 12.22 hereof to enter any such establishment.
- (g) All marijuana establishments shall comply with the sign requirements of Article VI of the Zoning Ordinance and all other applicable sign requirements.
- (h) No marijuana establishment shall be located in any building that contains residential housing.
- (i) No marijuana establishment shall operate between the hours of 8:00 p.m. and 8:00 a.m., nor on Sundays or holidays.
- (j) No smoking, burning or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises of any marijuana establishment.
- (k) All marijuana establishments that include an indoor component shall install, maintain, and operate adequate ventilation and air-cleaning equipment to ensure that no odors produced by the operation are detectible in any area of the premises accessible to the public, any public spaces, or any adjacent property.
- (l) All marijuana establishments shall provide the Chief of Police, the Inspector of Buildings, and the special-permit-granting authority (City Council) with a list containing the names, phone numbers, and e-mail addresses of all management staff and key holders. An updated list shall be provided whenever changes occur to the information listed.
- (m) Before the granting of any special permit under this article, the applicant shall provide proof

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of an executed host community agreement with the City Council.

- (n) No marijuana establishment shall allow cultivation, processing, manufacture, sale or display of marijuana or marijuana products to be visible from a public place without the use of binoculars, aircraft or other optical aids.
- (o) No marijuana establishment shall allow any person under 21 years of age to volunteer or work for a marijuana establishment.
- (p) Every marijuana establishment must secure every entrance to the establishment so that access to areas containing marijuana is restricted to employees and others permitted by the marijuana establishment to access the area and to agents of the Cannabis Control Commission or state and local law enforcement officers and emergency personnel.
- (q) The total number of marijuana establishments, as defined by Section 12.21, shall be limited to no more than twenty percent (20%) of the number of licenses issued within the City of Waltham for the retail sale of alcoholic beverages not to be drunk on the premises where sold under Section 15 of Chapter 138 of the Massachusetts General Laws; provided that if the resulting number includes a fractional amount the total shall be rounded up to the next whole number.

Sec. 12.7. Parking.

Any marijuana establishment permitted under this article shall provide one space for each 400 gross square feet of floor area used for sale, dispensing and processing and one space for each 2,000 gross square feet of floor area used for cultivation. All parking areas shall be designed and built according to the standards contained in Sections 5-4 to 5-48.

Sec. 12.8. Commercial cultivation activities.

Commercial cultivation of marijuana for recreational purposes, by any person, entity or marijuana establishment in any location other than where specifically authorized by special permit granted under this article shall be disallowed.

Sec. 12.9. Conformance to zoning requirements.

A marijuana establishment shall be designed and constructed in accordance with the underlying zoning district and the requirements of all applicable provisions of the zoning ordinances of the City of Waltham.

Sec. 12.10. Compliance with special permit.

- (a) A full set of as-built plans, certified by a registered professional land surveyor, architect and/or engineer as appropriate shall be submitted to the City Clerk, the Building Inspector, the

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Chief of Police, and the Fire Chief before the issuance of any occupancy permit. The as-built plans shall attest to a development's conformity to the provisions of the special permit and all plans approved therewith by indicating landscaping, buildings, drainage flow, number of parking stalls, and limits of parking areas and drives and shall include detailed floor plans showing all portions of the building subject to the special permit and clearly indicating areas open to the public and areas not open to the public.

- (b) Each marijuana establishment permitted under this article shall, as a condition of its special permit, file an annual report to the City Council certifying its continued compliance with the special permit. The report shall include copies of all current applicable state licenses and shall be signed by an authorized agent under the pains and penalties of perjury. The report shall be filed with the Office of the City Clerk no later than January 31 of each year.

Sec. 12.11. Term of special permit.

Special permits granted under this article shall be valid for three years, provided that the permit holder is in compliance with the provisions of the special permit and with Section 3.55 of the Zoning Ordinance. All special permits granted under this article shall be issued to the applicant and shall terminate automatically upon transfer of the land, building and/or lease or sublease of the land and/or building where it is located or the sale of the operation to another person and/or entity.

Sec. 12.12. Appeals.

Any person aggrieved by a decision of the City Council under this section may appeal to the Superior Court, the Land Court or the District Court pursuant to Chapter 40A of the Massachusetts General Laws.

Sec. 12.13. Severability.

If any provision of the article or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this article, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of the article are severable.

AND IT IS FURTHER ORDAINED THAT: Article III, Section 3.4 of the Zoning Ordinance, as most recently amended, is hereby further amended by adding to the Table of Uses, under the category commercial, the following lines:

Marijuana establishments (non-medical marijuana)

RA-1 RA-2 RA-3 RA-4 RB RC RD HR1 HR2 BA BB BC LC
N N N N N N N N N N N N N N

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C I C/R
S1S1 N

Commercial marijuana cultivation (non-medical marijuana)
RA-1 RA-2 RA-3 RA-4 RB RC RD HR1 HR2 BA BB BC LC
N N N N N N N N N N N N

C I C/R
S1S1 N

AND IT IS FURTHER ORDAINED THAT: The following additional amendments are made to the Zoning Ordinance:

Article III, Section 3.222 of the Zoning Ordinance, as most recently amended, is hereby further amended by adding the following sentence at the end: “Medical marijuana facilities as identified in Article XI hereof, and marijuana establishments as identified in Article XII hereof shall be required to obtain special permits for such uses as would otherwise qualify them as “retail stores”.”

Article III, Section 3.225, as most recently amended, is hereby further amended by adding the sentence at the end: “No marijuana establishment as defined by Article XII hereof and/or G.L.M. chapter 94G shall have a drive-in customer service component.”

Article III, Section 3.228, as most recently amended, is hereby further amended by adding the sentence: “No wholesale sale, storage and/or warehousing of marijuana and/or marijuana products, as defined in Article XII and/or G.L.M. chapter 94G shall be authorized without a special permit issued pursuant to Article XII hereof.”

Article III, Section 3.248, as most recently amended, is hereby further amended by adding a sentence at the end: “No open storage of marijuana or marijuana products shall be permitted. This prohibition, however, shall not operate to prevent the cultivation of marijuana or its storage in compliance with all applicable state statutes and regulations, subject, however, to the further requirement that such activity complies with all state statutes and regulations applicable thereto and that a special permit therefor is obtained pursuant to the provisions of Articles XI and/or XII, whichever is applicable.”

Article III, Sections 3.250, 3.251 and 3.252, as most recently amended, are hereby further amended by adding a sentence at the end of each stating that: “All marijuana establishments engaging in such activities require a special permit under Article XII.”

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