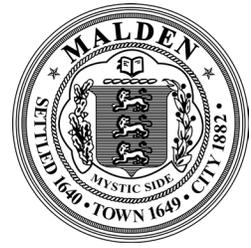


City of Malden Massachusetts



Malden City Council
215 Pleasant St, 4th Floor
Malden, Massachusetts 02148

March 24, 2026

To Rules and Ordinance Committee

From: Malden City Council Rules & Ordinance Chair Stephen Winslow

Re: Rules & Ordinance Committee Proposal Re: Land Court Decision in Benevolent Botanicals LLC v City of Malden

On January 29, 2026 the Commonwealth of Massachusetts Land Court for Middlesex County, Department of the Trial Court, Judge Diane Rubin Presiding (Case No. 22 MISC 000076 (DRR)) issued its decision in Benevolent Botanicals LLC v City of Malden found that: (1) Section 12.12.190 of the City of Malden's Municipal Code, when applied, is unreasonably impracticable and in violation of MGL Chapter 94G SS 3(a) and SS 3(a)(2)(ii) and (2) the Northern Strand Community Trail constitutes an impassable barrier for the property at 926 Eastern Avenue. In granting relief, the Court declared that Section 12.12.190 to be unlawful in its entirety. The Court also noted that if the City were to seek to ordain a new local marijuana ordinance that 12.12.190(A) is unclear whether the City Council has authority to grant a variance from marijuana buffer zones for new construction of retail marijuana establishments or whether such variance authority refers to the Board of Appeal. The Court further questioned the establishment of the Marijuana Establishment Overlay District that abutted a residential district.

On February 24, 2026, the City Council in executive session directed the City Solicitor to withdrawal the appeal that had been filed on behalf of the City in this matter; in doing so, the City now must take actions necessary to comply with the Court's decision.

To comply with the Court's Decision:

- A notation will be made within the Municipal Code that the Court's decision has invalidated Section 12.12.190 of the Code Ordinances,
- Potential applicants will be made aware that a license issued under Section 6.08.70 and a Special Permit under Section 12.12.010 and 12.12.030 will be required and can be sought immediately,
- The Special Permitting Granting Authority will consider the factors laid out in Section 12.12.010 B when issuing a permit and issue any appropriate findings related to setbacks new and increased nonconformities of dimensional controls and parking requirements for pre-existing nonconforming buildings and properties, and
- In consultation with City Staff updates to the City ordinances related to marijuana are proposed including an entirely new version of 12.12.190.

Order

2026 Update of City of Malden Ordinances related to Marijuana Establishments

This draft has been drafted by Councillor Winslow with comments from Planner Romero and Solicitor McNeil.

Particular policy issues for further Council discussion are:

- 1. Whether the City Council or Planning Board should be the Special Permit Granting Authority. This draft is written with the Planning Board being the special permit granting authority.*
- 2. Whether to reduce the school buffer zone to less than the 500 feet established by state law*

Be it ordained by the Malden City Council that Sections 6, 10 and 12 of the Malden Municipal Code (Revised Ordinances of 2020) are hereby amended to read as follows:

Section 6.08.070 LICENSING OF MARIJAUANA ESTABLISHMENTS Paragraph D.2.a is amended to read:

- a. Host a Community Meeting for the proposed location as outlined in CMR 500.101(1)(a).9, as modified by MCC 12.32.020 Paragraph K, and further in compliance with MCC 12.12.190 Paragraph H.5.

Section 6.08.070 LICENSING OF MARIJAUANA ESTABLISHMENTS Paragraph D.2.e is amended by adding the following:

Such license shall contain the following standard conditions:

1. Consumption, smoking or burning of Marijuana and/or Marijuana Products is prohibited at the ~~or within 500 feet of a~~ Marijuana Establishment,
2. Marijuana in any form, including plants, and Marijuana Products shall not be stored or be visible from outside of the building in which the Marijuana Establishment is located.
3. Any outside display of any kind is prohibited.
4. The Marijuana Establishment shall incorporate and keep fully operational odor control technology, making provisions to ensure that emissions do not violate Mass. Gen. Laws ch 111 § 31C, including but not limited to those specified for odors.

Section 10.04.040 NUISANCE PROHIBITED, PUBLIC CONSUMPTION OF MARIJUANA is amended by inserting the following at the end of Paragraph A:

3. Consumption, smoking or burning of Marijuana and/or Marijuana Products is prohibited at a Marijuana Establishment,
4. Consumption, smoking or burning of Marijuana and/or Marijuana Products is prohibited within 500 feet of a Marijuana Establishment,

Section 12.12.100 BASICALLY Paragraph A. is amended by striking the words "City Council" in the first sentence and replacing that with "Planning Board"

Section 12.12.190 A MARIJUANA ESTABLISHMENT is amended by striking such section in its entirety and inserting the following:

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 Planning Board and only in conformance with the following controls and requirements:

- 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.
- 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 Planning Board must find that any creation or increase in violations of dimensional controls and/or parking requirements will not be more detrimental to the neighborhood; and if the Planning Board makes the finding that any creation or increase in violations of dimensional controls and/or parking requirements will not be more detrimental to the neighborhood, then any new or increased violations of dimensional controls and parking requirements may be allowed by the special permit granted by the Planning Board and shall not require a variance.
- 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.
- E. The location of a Marijuana Establishment shall comply with the following buffer zones.
 - a. No Marijuana Establishment shall be located within:
 - i. 500 feet of a public or private school providing education in kindergarten, or Grades 1- 12;
 - ii. 75 feet of a Substance Abuse Treatment Center, as defined by this Ordinance;
 - iii. Provided that, as of the date of filing of the petition for a special permit for the Marijuana Establishment, such property lying within the buffer zone has a certificate of occupancy for the applicable use.
 - b. The distance for school uses the buffer zone distance of 500 feet which shall be measured in a straight line from the geometric center of the Marijuana Establishment Entrance to the geometric center of the nearest School Entrance, unless there is an Impassable Barrier within those 500 feet; in these cases, the buffer zone distance shall be measured along the center of the shortest publicly-accessible pedestrian travel path from the geometric center of the Marijuana Establishment Entrance to the geometric center of the nearest School Entrance.

- c. The distance for Substance Abuse Treatment Centers shall be measured from *[the closest public entrance]* of the proposed Marijuana Establishment to the closest property line of the property used for a Substance Abuse Treatment Center.
- d. The City of Malden Building Commissioner shall determine whether a proposed location is compliant with the buffer zones specified herein this Ordinance.

F. Required findings: For a special permit to be granted, the Planning Board 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 Planning Board may employ an 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.

G. Conditions to Special Permit: The Planning Board 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. Marijuana in any form, including plants, and Marijuana Products shall not be stored or be visible from outside of the building in which the Marijuana Establishment is located.
3. The Marijuana Establishment shall design and implement a Security Plan approved by the Malden Police Chief and Malden Cannabis Licensing and Enforcement Commission.
4. Consumption, smoking or burning of Marijuana and/or Marijuana Products is prohibited at or within 500 feet of a Marijuana Establishment.
5. Consumption, smoking or burning of Marijuana and/or Marijuana Products is prohibited on the premises of a Marijuana Establishment.
6. 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.
7. Prior to issuance of any final occupancy permit pursuant to a special permit granted hereunder, the Marijuana Establishment shall submit copies of the following licenses and approvals:
 - a. A fully executed Community Host Agreement with the City of Malden, as defined herein by this Ordinance;
 - b. Any required license and/or approvals issued by the Malden Cannabis Licensing and Enforcement Commission; and
 - c. Any required license and/or approvals issued by the Malden Board of Health.

8. 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.

H. 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 a 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

Section 12.28.010 NONCONFORMING USES, LOTS, BUILDINGS AND STRUCTURE, Paragraph E is amended by striking the words "City Council" in the first sentence and replacing that with "Planning Board"