

Cannabis – Reasons for Judgement Against the City

R&O summary by Winslow March 10, 2026

Pg 44: Section 12.12.190 Severely Limits the Number of Sites Available to Site an RME.

Pg 46: The Strand Trail is an Impassable Barrier. CCC Regs: Impassable Barrier means, for the purpose of determining the 500 feet buffer zone, a highway, public or private way or path, inaccessible structure, body of water, or other obstruction that renders any part of the 500-foot straight-line distance between a Marijuana Establishment Entrance and School Entrance inaccessible by a pedestrian or automobile.

Pg 49: For the reasons discussed above, I conclude that the multiple buffer zones in Section 12.12.190, coupled with the principal use requirement and failure to account for impassable barriers result in a marijuana zoning bylaw that is unreasonably impracticable in violation of Chapter 94G, § 3(a). In other words, the time, investment, and effort necessary for Benevolent to comply with Section 12.12.190 subjected it to unreasonable risk and required such a high investment of risk, financial resources, time or any other resource or asset that a reasonably prudent businessperson would not be able to operate a marijuana establishment.

Pg 51: Whether Malden's Measurement of Buffer Zones Violates Massachusetts Law

Conclusion – City could use a different measuring technique than used for school buffers.

Pg 53 I conclude that the multiple buffer zones in Section 12.12.190, coupled with the principal use requirement and failure to account for impassable barriers, has resulted in a zoning scheme that is in effect a ban on the statutory number of RMEs in violation of Chapter 94G, § 3(a)(2)(ii). Although Section 12.12.190 does not appear on its face to violate 94G, § 3(a) and § 3(a)(2)(ii), the evidence at trial has established that Section 12.12.190 violates 94G, § 3(a) and § 3(a)(2)(ii) as applied to Malden's urban fabric. Although the City did not intend to ordain a marijuana zoning bylaw which prevents the operation of five statutorily mandated RMEs, Section 12.12.190 effectively does so.¹¹

Pg 53-54: I note several apparent issues for consideration. For instance, it is unclear whether Section 12.12.190(A) authorizes the City Council to grant a variance from marijuana buffer zones for new construction RMEs or whether the “variance” therein refers to a variance from the Board of Appeal. It is also unclear why Section 12.12.190 established a Marijuana Establishment Overlay Zoning District that is not subject to the residential buffer zone under Section 12.12.190(F)(1)(f), even though a residential district directly abuts that Overlay District.

Malden Cannabis Ordinances

Options to Comply with Court Order

Proposed to R&O on March 11, 2026

Assumptions for all options:

- Change CLEC Ordinance only as necessary to minimize / eliminate cross references to deleted zoning sections
- Include a definition of “Impenetrable Barrier”
- Eliminate special overlay district
- Eliminate the “primary use” requirement
- Clarify where buffers will be measured, make consistent with state guidelines

Option 1: Treat Marijuana facilities in the same way as retail, manufacturing facility etc.

- a) Eliminates all buffer zones, including school buffer zone
- b) Eliminates any special permit requirements unique to marijuana related businesses

Option 2: Maintain the school buffer zone of 500 feet (or less), otherwise marijuana facilities treated as retail etc.

- a) Eliminates all buffer zones, except school buffer zone
- b) Eliminates any special permit requirements unique to marijuana related businesses

Option 3: Maintain the school buffer zone, eliminate special permit for highway business and industrial zones

1. Eliminate all buffers except school buffer
2. Only require special permit in certain zones

Option 4: Maintain the school buffer zone of 500 feet (or less) and have special permit requirements unique to marijuana establishments

1. Eliminate all buffers except school buffer
2. Only require special permit in certain zones
3. Allow variances of some requirements