

Structured Analysis: Benevolent Decision/Judgment, §12.12.190, & §6.08.070:

I. Benevolent Decision & Judgment

A. High-Level Holding

The Court:

1. Declared §12.12.190 unlawful in its entirety.
2. Held it is:
 - “Unreasonably impracticable” under G.L. c. 94G §3(a); and
 - Violative of §3(a)(2)(ii) because it effectively prevents the operation of the statutory minimum number of marijuana retailers (5).
3. Declared the Northern Strand Community Trail an impassable barrier.

B. What the Court Requires the City To Do

The practical legal requirements are:

- Repeal or replace §12.12.190.
- Adopt a zoning framework that:
 - Does not render siting “unreasonably impracticable.”
 - Does not effectively cap retailers below 5.
 - Recognizes impassable barriers.
 - Eliminates structural constraints (principal use + cumulative buffers) that shrink available sites to near zero.

II. §12.12.190 – High-Level Summary

Current ordinance (pre-judgment):

- Limits RMEs to specific districts.
- Imposes six buffer zones.
- Measures property-line to property-line.
- Requires principal use of property.
- Requires Board of Appeal variance for buffer relief in new construction.
- Does not recognize impassable barriers.

The Court found the **cumulative effect** unlawful.

III. §6.08.070 – High-Level Summary (Complete Text)

Section 6.08.070:

- Establishes CLEC as local licensing authority.
- Caps marijuana retailer licenses at 20% of package store licenses (5).
- Requires initial CLEC screening before special permit.
- Limits advancement to “maximum of five (5)” applications in initial period.
- Includes geographic diversity factor.
- Allows CLEC to deny advancement based on discretionary factors.

IV. Conflicts Between §12.12.190 and §6.08.070

1. Advancement Structure vs. Site Scarcity

- §6.08.070 advances applicants before zoning certainty.
- §12.12.190 leaves only 0.40% of parcels eligible (per Decision).
- Applicants are advanced into a system with virtually no viable sites.

This structural misalignment contributed to the Court's finding of impracticability.

2. Geographic Diversity + Buffer Overlay = Statutory Violation

§6.08.070(D)(1)(d) requires:

Location zoned for such use and geographically diverse

When combined with:

- Six buffer zones
- Principal use restriction
- Property-line measurement

The effect is further contraction of eligible parcels below what is necessary to support 5 retailers. This conflicts directly with the Court's holding under §3(a)(2)(ii).

3. Five-Application Advancement Cap

§6.08.070(D)(1) limits advancement to a maximum of five applications.

If any of those fail zoning (as occurred), the structure effectively prevents achieving 5 operating retailers — violating the statute.

4. Enforcement & Renewal Authority

§6.08.070(E)(2) allows CLEC to impose operational conditions.

Without constraint, this could:

- Reintroduce buffer-type restrictions administratively.
 - Functionally recreate the unlawful zoning scheme.
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V. How Both Ordinances Conflict with the Decision

A. Unreasonably Impracticable Standard

Court found:

- Multiple buffers
- Principal use requirement
- Property-line measurement
- No impassable barrier recognition

= unlawful under §3(a).

Any revised licensing structure that:

- Uses geographic diversity to eliminate otherwise lawful sites
- Caps advancement in a way that blocks 5 retailers
- Recreates site scarcity administratively

would perpetuate violation.

B. Statutory Minimum Retailers

Court held ordinance effectively prevented statutory minimum.

Licensing procedures cannot be structured in a way that indirectly limits retailers below 5.

C. Impassable Barrier Mandate

Judgment declares the Strand Trail an impassable barrier.

Failure to embed impassable barrier recognition in both zoning and licensing determinations would directly contradict the Judgment.

VI. Redlined Ordinances (Complete Version)

A fully updated redlined Word document incorporating:

- Structural corrections to §12.12.190
- Comprehensive revisions to §6.08.070
- Elimination of principal use requirement
- Reduced buffers
- Pedestrian-path measurement
- Impassable barrier definition
- Limitation on geographic diversity
- Advancement structure revised to ensure compliance with statutory minimum
- Safeguards preventing CLEC from recreating unlawful restrictions via renewal

Download here:

Proposed_Redlined_Ordinances_Complete_06.08.070.docx

VII. Key Structural Corrections in Revised §6.08.070

1. Removed rigid “maximum of five” advancement structure.
 2. Modified geographic diversity to be discretionary and subordinate to G.L. c. 94G.
 3. Required zoning determinations to follow amended §12.12.190.
 4. Prevented renewal conditions from functioning as zoning substitutes.
 5. Embedded statutory compliance language directly in CLEC authority.
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