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Land Court
Docket Number: 26 MISC 000403

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS. LAND COURT DEPARTMENT
MISC. SESSION

MISTY MOUNTAIN SHOP LLC, and HALONA MUI,

Plaintiffs,

v.

CITY OF MALDEN; and PEG CROWE, PAUL CONDON, AMANDA LINEHAN, RYAN O'MALLEY, ARI TAYLOR, STEPHEN WINSLOW, CHRIS SIMONELLI, JADEANE SICA, MICHELLE LUONG, KAREN COLÓN-HAYES, and CAREY MCDONALD, as Members of the CITY OF MALDEN CITY COUNCIL; DMS TRINITY, LLC; BEACH HOUSE CANNABIS, LLC; and ROSEANNE J. SPINNEY, as trustee of the CHARLES STREET REALTY TRUST 2020,

Defendants.

Civil Action No.: 26 MISC 000403

SECOND AMENDED COMPLAINT

NOW COMES the Plaintiffs, HALONA MUI and MISTY MOUNTAIN SHOP LLC, by and through their counsel, and brings the following suit against the Defendants by this Second Amended Complaint for review under G.L. c. 40A, § 17:

INTRODUCTION

1. This is an action pursuant to G.L. c. 40A, § 17 by Misty Mountain Shop LLC and Halona Mui (the "Plaintiffs") to appeal the June 23, 2026 decision of the Malden City Council ("City"), filed with the City Clerk on July 6, 2026, to amend the special permit in Case 77-25 to change the name to allow for the transfer of the business. A certified copy of the challenged decision with City Council Case Number #334-26 (the

"Decision") is attached hereto as Exhibit "A." The Decision exceeds the scope of the authority of the City and the Plaintiffs pray that the decision be annulled.

2. The Plaintiffs seek judicial review of the Decision granting petitioner DMS Trinity, LLC the ability to transfer a prior special permit to Beach House Cannabis, LLC for use of 36 Charles Street, Malden, MA 02148 (the "Property") as an adult-use cannabis retailer.

PARTIES

3. Plaintiff Misty Mountain Shop LLC ("MMS") is a Massachusetts limited liability company with a principal place of business located at 323 Commercial St, Malden, MA 02148.

4. Plaintiff Halona Mui ("Mui") is an individual residing at 260 Main Street, Unit 303, Malden, MA 02148. Mui is the record owner Unit 303 as evidenced by Unit Deed recorded at the Middlesex South Registry of Deeds at Book 46703, Page 520, on December 21, 2005.

5. Defendant City of Malden ("City") is a Massachusetts municipal corporation having an address of 215 Pleasant Street, Malden, MA 02148.

6. Upon information and belief, Defendant Peg Crowe ("Crowe") is an individual with a residence at 9 Hancock Street, Malden, MA 02148, and a Member of the Malden City Council.

7. Upon information and belief, Defendant Paul Condon ("Condon") is an individual with a residence at 52 Gale St, Malden, MA 02148, and a Member of the Malden City Council.

8. Upon information and belief, Defendant Amanda Linehan ("Linehan") is an individual with a residence at 83 Blomerth St, Malden, MA 02148, and a Member of the Malden City Council.

9. Upon information and belief, Defendant Ryan O'Malley ("OMalley") is an individual with a residence at 706 Main St, Malden, MA 02148, and a Member of the Malden City Council.

10. Upon information and belief, Defendant Ari Taylor ("Taylor") is an individual with a residence at 19 Wolcott St, Malden, MA 02148, and a Member of the Malden City Council.

11. Upon information and belief, Defendant Stephen Winslow ("Winslow") is an individual with a residence at 83 Jacob St, Malden, MA 02148, and a Member of the Malden City Council.

12. Upon information and belief, Defendant Chris Simonelli ("Simonelli") is an individual with a residence at 366 Ferry St, Malden, MA 02148, and a Member of the Malden City Council.

13. Upon information and belief, Defendant Jadeane Sica ("Sica") is an individual with a residence at 12 Cleveland St, Malden, MA 02148, and a Member of the Malden City Council.

14. Upon information and belief, Defendant Michelle Luong ("Luong") is an individual with a residence at 111 Daniels St, Malden, MA 02148, and a Member of the Malden City Council.

15. Upon information and belief, Defendant Karen Colón Hayes ("Hayes") is an individual with a residence at 105 Wyoming Ave, Malden, MA 02148, and a Member of the Malden City Council.

16. Upon information and belief, Defendant Carey McDonald ("McDonald") is an individual with a residence at 33 Pierce St, Malden, MA 02148, and a Member of the Malden City Council.

17. Defendant DMS Trinity, LLC ("DMS") is a Massachusetts limited liability company with a principal place of business located at 260 Second Street, Chelsea, MA 02150. DMS is the original petitioner for a special permit.

18. Defendant Beach House Cannabis, LLC ("Beach House") is a Massachusetts domestic profit limited liability company with a Secretary of State registration number of 001793563 and principal address of 113 Falmouth Heights Rd., Falmouth, MA 02540. Beach House is the proposed recipient of the special permit and a party-in-interest to this proceeding.

19. Defendant Roseanne J. Spinney ("Trustee"), is sued solely in her capacity as trustee acting on behalf of the Charles Street Realty Trust 2020 ("Trust"). The Trust, by way of deed recorded at the Middlesex Reg. of Deeds, Book 74655, Pg. 384 (May 12, 2020), is the current owner of the Property. The Trust is set forth by instrument recorded at the Middlesex Reg. of Deeds, Book 74655, Pg. 380 (May 12, 2020) ("Certificate of Trust"). Per the Certificate of Trust, the Trustee is the sole representative and Trustee of the Trust and is sued on behalf of the Trust in such capacity only. The Trust is a party-in-interest to this proceeding as the Property owner of record. On information and belief, the mailing address of the Trustee is 40 Spruce Road, North Reading, MA 01867.

FACTUAL ALLEGATIONS

20. The subject Property is known and numbered as 36 Charles Street, Malden, MA 02148 and is located in the I2 Zoning District with City Assessor's parcel ID 062 239 910.

21. The Property owner of record is the Trust.

22. The Petitioner is the proposed tenant, DMS Trinity LLC, 3260 Second Street, Chelsea, MA 02150, doing business as Trinity Naturals.

23. On April 26, 2022, the Malden City Council granted a special permit in Case 202-22 to allow Marijuana Establishment use of the property, specifically marijuana retailer use of approximately 4,006 square feet of the first floor, subject to twenty conditions.

24. Condition 8 of the special permit granted in Case 202-22 provided that the special permit is non-transferable and non-assignable.

25. None of the decisions comprising the special permit chain for 36 Charles Street (Case 202-22, Case 233-23, or Case 77-25) have been recorded at the Middlesex South Registry of Deeds. Accordingly, no special permit in the chain has taken effect pursuant to G.L. c. 40A, §11, which provides that no special permit shall take effect until a certified copy of the decision bearing the certification of the city clerk that twenty days have elapsed without appeal, or that any appeal taken has been dismissed or denied, has been recorded in the registry of deeds for the county in which the land is situated.

26. Title 12, §12.32.030, item 7 of the Code of the City of Malden (the "Ordinance") establishes a one-year lapse period for special permits, absent a Planning Board determination, following notice and a public hearing, that substantial construction or use in accordance with the permit has occurred. No such determination was made, and

no such hearing was held, with respect to Case 202-22 or any subsequent amendment thereof.

27. On June 6, 2023, the City Council granted a twelve-month extension of the special permit in Case 233-23, subject to twenty conditions, including Condition 8's non-transferability and non-assignability restriction. The extension was predicated on an administrative filing protocol that has no basis in G.L. c. 40A or the Ordinance; the statutory mechanism to avoid lapse is commencement of substantial use or construction, not the filing of an application.

28. Even assuming the extension granted in Case 233-23 was valid, the resulting extended permit expired on or about June 6, 2024.

29. On February 11, 2025, the City Council acted in Case 77-25 to amend the special permit in Case 233-23, revising the approved floor plan to increase the size of the premises by approximately 1,627 square feet and authorizing marijuana retailer use of approximately 5,524 square feet of the first floor, again subject to twenty conditions, including the same Condition 8 non-transferability and non-assignability restrictions.

30. Case 77-25 was decided on February 11, 2025, more than eight months after the expiration of the extended permit on or about June 6, 2024. The City Council therefore purported to amend a permit that had already lapsed under the Ordinance.

31. A building permit, Permit No. CMID-040598-2021, was issued on May 8, 2024 for construction at the property. At the time of issuance, no recorded, effective, and unexpired special permit existed: Case 202-22 had not been recorded and was locally lapsed; Case 233-23 had not been recorded and rested on an administrative extension protocol without statutory or local ordinance footing; and Case 77-25 had not yet been

decided. Title 12, §12.32.030, item 5 of the Ordinance makes a valid special permit a prerequisite to the issuance of a building permit for a Marijuana Establishment use. The building permit was accordingly issued without lawful authority.

32. All work under the building permit passed final inspection by the City, and the City issued an occupancy permit for a marijuana retailer at the property on March 12, 2025, Permit No. COO-071463-2025. As of the date of the public hearing in Case 334-26, no cannabis retail operations had commenced at the property, no sales to consumers had occurred, and no final license nor commence operations authorization from the Massachusetts Cannabis Control Commission had been issued to the operator. The Land Court, in Benevolent Botanicals LLC v. City of Malden, Land Court No. 22 MISC 000076, found as fact that DMS Trinity had yet to open its doors and that its permit requires approximately 9,018 square feet, or sixty-nine percent of the building, to remain vacant with no proposed use.

33. Title 12, §12.12.190.H of the Ordinance, subject to an order of the Land Court suspending operation of the Ordinance, governs the conditions applicable to every special permit granted for a Marijuana Establishment within the City of Malden. That provision states, in relevant part, that the City Council may impose any conditions it deems reasonable to regulate the use of a property for a Marijuana Establishment, and provides further that in addition and in all cases, any special permit granted hereunder shall be subject to enumerated mandatory conditions, with non-transferability and non-assignability listed first among them.

34. The mandatory character of the non-transferability requirement under §12.12.190.H is established by the prefatory clause "in addition and in all cases" and the operative verb

"shall." Non-transferability is accordingly an ordinance mandate applicable to every cannabis special permit, not a permit-specific condition subject to discretionary removal by the City Council acting in an adjudicative capacity under G.L. c. 40A, §9.

35. In Benevolent Botanicals LLC v. City of Malden, the Land Court issued a Decision on January 29, 2026, finding §12.12.190 unreasonably impracticable in violation of G.L. c. 94G, §3(a), and declaring the section unlawful in its entirety. On May 28, 2026, the Land Court issued a Clarified Judgment superseding that Decision and narrowing the operative relief: the Clarified Judgment strikes §12.12.190 and related provisions only to the extent they would require Benevolent Botanicals to obtain a special permit based upon Benevolent's proposed marijuana use. The strike is expressly limited to the plaintiff in that action.

36. The City Clerk issued a public hearing notice for Case 334-26 describing the petition as seeking to "reissue the special permit and/or transfer the rights authorized by the special permit to a different entity." That disjunctive framing reflects the City's own recognition, at the notice stage, that the existing permit may not have been legally sufficient to support a transfer without reissuance.

37. DMS Trinity, LLC (d/b/a Trinity Naturals), the proposed tenant of the property, filed a petition designated as Permit Application CMID-040598-2021 and docketed as Case 334-26, seeking to amend the special permit in Case 77-25 to remove Condition 8 and allow transfer of the business to a new entity.

38. The proposed transferee is Beach House Cannabis, LLC, which petitioner described at the public hearing as a joint venture between DMS Trinity, LLC and new operational partners and financial backers. According to petitioner, an Asset Purchase Agreement

provides for the transfer of all of petitioner's assets, including its Provisional Marijuana Retailer License, to Beach House Cannabis, LLC, subject to receipt of all necessary state and City approvals. DMS Trinity's own Addendum to Petition, signed by Denis Pinhone Dos Santos, admits that DMS Trinity will maintain a financial and operational interest in Beach House Cannabis, LLC after the proposed transfer.

39. No new plans were submitted with the petition in Case 334-26, and no changes to the plans approved in Case 77-25 were proposed.

40. The City Solicitor, Alicia McNeil, provided a memorandum dated June 23, 2026 and verbal testimony at the public hearing regarding the validity of the special permit chain and the effect of the State Permit Extension Act of 2024, Chapter 238 of the Acts of 2024, on the permit's asserted lapse. Nelson Miller, Building Commissioner, and Ron Hogan, Chief Strategy and Innovation Officer, both members of the Malden Cannabis Licensing and Enforcement Commission (CLEC), provided a memorandum dated June 23, 2026 and verbal testimony at the public hearing enumerating the actions that would be required of the City Council, the Mayor, CLEC, and the Cannabis Control Commission before any transfer could be effectuated, including: amendment of the City's licensing ordinance and promulgation of transfer regulations; vetting and approval of the proposed new ownership and operator by CLEC; negotiation and execution of a new Host Community Agreement; and vetting and approval of the proposed new ownership and operator by the Cannabis Control Commission. The City's own officials thereby conceded that the June 23, 2026 vote did not effectuate a transfer and that multiple additional legislative, regulatory, and contractual steps would remain necessary before any transfer could occur.

41. The Malden Planning Board provided the City Council with an advisory report and recommendations dated June 10, 2026, pursuant to §12.32.030.B.2 of the Ordinance, recommending approval of the petition for a special permit subject to the same twenty conditions imposed in Case 77-25.

42. In opposition to the petition at the public hearing were the owner and operator of a competing marijuana retail establishment (one of the Plaintiffs, MMS) in the City of Malden, its attorney, and one Malden resident.

43. On June 23, 2026, pursuant to a motion made by Councilor Sica and seconded by Councilor Simonelli, the Malden City Council voted ten in favor and none opposed to amend the special permit in Case 77-25 by removing Condition 8 regarding non-transferability and non-assignability, and to grant a new special permit in Case 334-26 subject to nineteen conditions. Councilor O'Malley was absent during the vote and did not participate, stating prior to his departure: "This just does not seem appropriate. It doesn't smell appropriate. Um so I'm just going to recuse myself."

44. None of the three decisions comprising the special permit chain for 36 Charles Street, Case 202-22 (granted April 26, 2022), Case 233-23 (granted June 6, 2023), and Case 77-25 (granted February 11, 2025), was recorded at the Middlesex South Registry of Deeds at the time of its issuance, at the time the City issued Building Permit No. CMID-040598-2021 on May 8, 2024, at the time the City issued Occupancy Permit No. COO-071463-2025 on March 12, 2025, or at the time the City Council acted in Case 334-26 on June 23, 2026. The Plaintiffs raised the non-recording defect expressly at the June 23, 2026 public hearing.

45. On September 10, 2026, DMS caused all three predecessor decisions to be recorded at the Middlesex South Registry of Deeds: Case 202-22 at Book 86122, Page 499, Document No. 115074; Case 233-23 at Book 86122, Page 507, Document No. 115075; and Case 77-25 at Book 86122, Page 512, Document No. 115076. All three instruments were recorded on the same date at 11:14:26 AM under Receipt No. 3218990. Each recording includes a clerk's Certificate of Non-Appeal attested by the City Clerk on September 8, 2026.

46. The September 10, 2026 recordings postdate every legally operative event in the chain: the Plaintiffs' §11 objection at the June 23, 2026 hearing; the City Council's vote that same day; the filing of the written decision on July 6, 2026; and the commencement of this appeal. The predecessor decisions remained unrecorded at each of those moments.

47. As of October 7, 2026, Case 334-26 itself has not been recorded at the Middlesex South Registry of Deeds. The documents provided do not reflect such a recording. Plaintiffs reserve the right to supplement this allegation upon confirmation.

48. Among the findings stated in the decision, the City Council found that the petition does not change the proposal's existing violations of dimensional controls and does not change the proposal's existing deficiencies in parking requirements.

49. Case 334-26 then states in Condition 18 that the petitioner shall provide "twelve (12) off-site parking spaces" without addressing the feasibility of their provision or their availability to presumably rent within the general geographic vicinity of the proposed cannabis retail store.

50. Condition 15 of the new special permit requires that, prior to issuance of any final occupancy permit, petitioner submit: a valid license issued by the Massachusetts

Cannabis Control Commission; a fully executed Host Community Agreement with the City of Malden; any required license or approvals from CLEC; and any required license or approvals from the Malden Board of Health. Beach House Cannabis, LLC holds none of these approvals as of the date of this complaint.

51. The written decision was filed with the Malden City Clerk on July 6, 2026. Notice to the Building Inspector was provided on July 6, 2026.

52. Plaintiff Mui is an individual residing at 260 Main Street, Unit 303, Malden, Massachusetts 02148. Ms. Mui's property is situated within 300 feet of the property line of 36 Charles Street, Malden, Massachusetts, and she is accordingly an abutter within the meaning of G.L. c. 40A, §11. Ms. Mui received statutory notice of the public hearing held on June 23, 2026. She is a person aggrieved by the decision of the Malden City Council within the meaning of G.L. c. 40A, §17, and brings this appeal in that capacity.

53. Plaintiff Misty Mountain Shop LLC is a Massachusetts limited liability company operating a licensed marijuana retail establishment in the City of Malden. Misty Mountain Shop LLC ("MMS") is a person aggrieved by the decision of the Malden City Council within the meaning of G.L. c. 40A, §17. MMS holds a license issued by the Massachusetts Cannabis Control Commission and operates a marijuana retail establishment at 323 Commercial Street, Malden, within the same municipal market (standing 0.59 miles away as the crow flies). Approval of a permit transfer to a new, unvetted operator at 36 Charles Street through a process that bypasses the CLEC's competitive evaluation process for a city that will only issue five-licenses to adult-use

cannabis retailers directly affects MMS's defined, protected interest in the integrity of that licensing process it has through operation of the ordinance.

54. This appeal is timely. The twenty-day period prescribed by G.L. c. 40A, §17 runs from July 6, 2026, the date the decision was filed with the City Clerk, to July 27, 2026, July 26 falling on a Sunday.

CLAIMS FOR RELIEF

COUNT I (G.L. C. 40A, §17)

THE SPECIAL PERMIT CHAIN HAD NOT TAKEN EFFECT UNDER G.L. C. 40A, §11 AT THE LEGALLY OPERATIVE TIMES; THE SEPTEMBER 10, 2026 RECORDINGS DO NOT RETROACTIVELY SUPPLY THE AUTHORITY ABSENT WHEN THE CITY ACTED

55. The Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 54 as if fully set forth herein.

56. General Laws Chapter 40A, §11 provides that no special permit, "or any extension, modification or renewal thereof," shall take effect until a certified copy of the decision bearing the clerk's certification that twenty days have elapsed without appeal has been recorded in the registry of deeds for the county in which the land is situated.."

57. The recording requirement applies independently to each decision in the permit chain. Case 202-22 was an original special permit. Case 233-23 was an extension. Case 77-25 was a modification. Each required its own recording before it could take effect. None was recorded until September 10, 2026.

58. No decision in the special permit chain took effect under §11 at any point between April 26, 2022 and September 9, 2026. The chain was without legal effect when the City issued the building permit on May 8, 2024; when the City issued the occupancy permit on March 12, 2025; and when the City Council voted to amend the chain and grant Case 334-26 on June 23, 2026.

59. The September 10, 2026 recordings create prospective legal effect at most. Section 11's operative language, "shall not take effect until" recording, runs forward from the moment of recording, not backward to the decision date. Those recordings cannot supply, after the fact, the effective zoning predicate that §11 required before the building permit was issued or before the City Council acted.

60. The 2024 Permit Extension Act, St. 2024, c. 238, §280, extends only approvals "in effect or existence" during the tolling period. It addresses the duration of approvals that have already taken effect; it does not satisfy or displace the separate requirement under §11 that a permit take effect through recording before it may be exercised or acted upon. The City may contend that the Act preserved the permit chain for other purposes. That contention does not resolve the question whether the permits had taken effect under §11 at the moments that matter: when the building permit issued, when construction occurred, and when the Council acted on Case 334-26.

61. The timing of the September 10, 2026 recordings bears on the equities. The Plaintiffs identified the §11 non-recording defect on the public record at the June 23, 2026 hearing. DMS and the City had actual notice of the asserted deficiency before the Council voted. DMS did not record the predecessor decisions before the vote, before the written decision was filed on July 6, 2026, or before the appeal period expired. Recording occurred only after this appeal was imminent or had been commenced. That sequence forecloses any characterization of the non-recording as an inadvertent oversight and weighs against treating a post hoc cure as retroactively validating the Council's action.

62. A permit that had not taken effect under §11 conferred no rights that could be extended, amended, or transferred. The Council's June 23, 2026 vote in Case 334-26 therefore operated on a permit chain that had no legal effect at the time of that action. The Decision is ultra vires on this ground and subject to annulment.

63. The question is not whether the predecessor permits are recorded today. The question is whether there was an operative special permit for the Council to amend and transfer when it acted on June 23, 2026. There was not. The September 10, 2026 recordings postdate that action and cannot retroactively supply the authority §11 required at the time.

COUNT II (G.L. C. 40A, §17)

THE SPECIAL PERMIT HAD LAPSED UNDER THE ONE-YEAR LOCAL ORDINANCE

64. The Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 63 as if fully set forth herein.

65. Title 12, §12.32.030, item 7 of the Code of the City of Malden establishes a one-year lapse period for special permits, absent a Planning Board determination, following notice and a public hearing, that substantial construction or use in accordance with the permit has occurred.

66. No Planning Board hearing was held, and no determination of substantial construction or use was made, with respect to Case 202-22 or any subsequent amendment. In the alternative, and without waiving the primacy of the local one-year rule, even under the three-year default cap established by St. 2024, c. 238, § 172, Case 202-22 granted April 26, 2022 would have lapsed by April 26, 2025 absent substantial use. The local

ordinance's shorter lapse period is independently controlling because G.L. c. 40A permits municipalities to impose more restrictive special-permit requirements. Case 334-26 was decided June 23, 2026, after that extended deadline under either theory.

67. The June 6, 2023 extension in Case 233-23 was predicated on an administrative filing protocol that has no basis in G.L. c. 40A or the Ordinance. The statutory mechanism to avoid lapse is commencement of substantial use, not the filing of an application.

68. Even assuming the extension in Case 233-23 was valid, the resulting extended permit expired on or about June 6, 2024.

69. Case 77-25 was decided on February 11, 2025, more than eight months after the expiration of the extended permit. The City Council therefore purported to amend a permit that had already lapsed under the Ordinance.

70. No cannabis retail operations had commenced at the Property as of the public hearing in Case 334-26. No sales to consumers had occurred, and no final license from the Massachusetts Cannabis Control Commission nor authorization to commence operations had been issued to the operator. The Land Court, in Benevolent Botanicals LLC v. City of Malden, Land Court No. 22 MISC 000076, found as fact that DMS Trinity had yet to open its doors and that its permit requires approximately 9,018 square feet, or sixty-nine percent of the building, to remain vacant with no proposed use.

71. The City Council's own June 23, 2026 Decision in Case 334-26, Condition 2, expressly requires that approximately 2,393 square feet of the first floor "shall remain vacant and shall be used for no purpose whatsoever." The relevant question is whether the authorized use was substantially commenced or exercised, not merely whether physical improvements were made to the premises. McDermott v. Bd. of Appeals of Melrose, 59

Mass. App. Ct. 457 (2003), establishes that delayed recording does not automatically defeat a special permit if the permit was substantially used within the statutory period. It does not hold, however, that construction buildout alone constitutes substantial use. Construction performed pursuant to a building permit issued without an effective special-permit predicate does not constitute the substantial construction or substantial use of the authorized marijuana retail use required to preserve the special permit from lapse under the Ordinance or G.L. c. 40A, §9.

72. The construction buildout at the Property does not constitute substantial "use" of the authorized marijuana retail use within the meaning of G.L. c. 40A, §9 or the Ordinance. Under Cornell v. Board of Appeals of Dracut, 72 Mass. App. Ct. 390 (2008), acts that a holder could take without the zoning relief do not exercise or toll it. Construction of premises does not commence the authorized retail use.

73. Importantly, under Cannabis Control Commission's applicable licensing regulations and it's Guidance on Licensure, the only permissible path for an adult-use marijuana retailer to commence its actual business is to receive a formal notice from the Commission entitled: "NOTICE: COMMENCE OPERATIONS APPROVED" and to provide notice back to the Commission about the specific date and time the licensed business will open its doors to customers. Only then may a marijuana retailer such as DMS Trinity be allowed to commence its substantial use of the property as a marijuana retailer, which can only occur once it makes its first sale of cannabis to an adult that is 21+.

> **Commence Operations**
> Once the licensee is in full compliance following a Post-Final License Inspection, the ME and/or MTC will be recommended to the Commission to commence operations. Once approved, the licensee will receive a notice to commence operations. … Licensees may begin wholesaling products and certain licensees

> may begin selling marijuana and marijuana products to consumers and patients.
>
> Cannabis Control Commission, Guidance on Licensure, at pg. 46, available at https://masscannabiscontrol.com/wp-content/uploads/2024/03/Guidance-on-Licensure.pdf (emphasis in original).

74. Because the special permit had lapsed before the City Council acted on February 11, 2025, and again on June 23, 2026, the Council lacked authority to amend or transfer it.

COUNT III (G.L. C. 40A, §17)

THE BUILDING PERMIT WAS ISSUED WITHOUT LAWFUL AUTHORITY

75. The Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 74 as if fully set forth herein.

76. Title 12, §12.32.030, item 5 of the Ordinance makes a valid special permit a prerequisite to the issuance of a building permit for a Marijuana Establishment use.

77. Building Permit No. CMID-040598-2021 was issued on May 8, 2024. At the time of issuance, no recorded, effective, and unexpired special permit existed: Case 202-22 had not been recorded and was locally lapsed; Case 233-23 had not been recorded and rested on an administrative extension protocol without statutory footing; and Case 77-25 had not yet been decided. At the time of issuance, no predecessor special permit had taken effect under G.L. c. 40A, §11; none had been recorded at the Middlesex South Registry of Deeds. The September 10, 2026 recordings postdate the building permit by more than sixteen months and do not retroactively supply the effective zoning predicate that the Ordinance required at the time of issuance.

78. The building permit was accordingly issued without lawful authority. A permit resting on a failed legal predicate is unauthorized and subject to annulment.

79. The Building Commissioner's own May 1, 2026 denial of DMS's application to amend the special permit, citing the "Code of the City of Malden, Title 12," confirms that the City itself recognized the permit chain was defective.

80. Construction under a building permit that lacked a valid special-permit predicate was not in conformance with the special permit. Such construction does not necessarily constitute the substantial use of the authorized marijuana retail use that G.L. c. 40A, §9 requires to prevent lapse.

81. All work under the building permit passed final inspection, and the City issued an occupancy permit for a marijuana retailer at the Property on March 12, 2025, Permit No. COO-071463-2025. Because the underlying building permit lacked a valid zoning predicate, the occupancy permit shares the same defect.

82. It was arbitrary and capricious for the City Council to issue a Special Permit in light of this deficiency.

COUNT IV

THE CITY COUNCIL FAILED TO INCLUDE A MANDATORY CONDITION (G.L. C. 40A, §17)

83. The Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 82 as if fully set forth herein.

84. Title 12, §12.12.190.H of the Ordinance governs the conditions applicable to every special permit granted for a Marijuana Establishment within the City of Malden. It provides that "the City Council 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," with non-transferability and non-assignability listed first among them.

85. The prefatory clause is two-part: the first is discretionary; the second, introduced by the operative verb "shall," is mandatory. Non-transferability is an ordinance mandate applicable to every cannabis special permit, not a permit-specific condition subject to discretionary removal by the City Council acting in an adjudicative capacity under G.L. c. 40A, §9.

86. As set forth in paragraph 35, the Clarified Judgment in Benevolent Botanicals LLC v. City of Malden, issued May 28, 2026, is final and expressly limits the operative relief concerning the challenged provisions to Benevolent Botanicals and to the extent they would require Benevolent to obtain a special permit based upon Benevolent's own proposed marijuana use. It does not purport to decide the ordinance's validity as applied to DMS Trinity.

87. The Clarified Judgment is final and has not been appealed. The City Solicitor's own June 23, 2026 memorandum acknowledges that "this ruling was specific to Benevolent Botanicals" and that "the Court did not opine on whether the special permit provision was stricken for any other marijuana retailer."

88. To the extent that requirement was imposed by the Ordinance itself and had not been adjudicated invalid as applied to DMS Trinity, the Council could not eliminate it through an adjudicative amendment of an individual special permit under G.L. c. 40A, §9. Any alteration of an ordinance-mandated requirement would require legislative amendment or other legislative action authorized by law.

89. A special-permit granting authority's power is delegated and bounded by the ordinance; it cannot act contrary to its governing legal predicate. ZBA of Amesbury v. Housing Appeals Comm., 457 Mass. 748, 755-58 (2010). The City Solicitor's own June 23, 2026

memorandum acknowledged on the public record that the Benevolent Botanicals ruling was specific to Benevolent Botanicals and that the Court did not opine on whether the special permit provision was stricken for any other marijuana retailer, a concession that G.L. c. 40A, §12.12.190.H remains operative as to DMS Trinity.

90. By removing Condition 8, the mandatory non-transferability and non-assignability requirement, the City Council attempted to eliminate a condition the Ordinance mandates. To the extent that requirement was imposed by the Ordinance itself and had not been adjudicated invalid as applied to DMS Trinity, the Council could not eliminate it through an adjudicative amendment of an individual special permit under G.L. c. 40A, §9. Any alteration of an ordinance-mandated requirement would require legislative amendment or other legislative action authorized by law.

91. The City's own Solicitor and officials conceded at the public hearing that the June 23, 2026 vote did not effectuate a transfer and that multiple additional legislative, regulatory, and contractual steps would remain necessary before any transfer could occur, including amendment of the City's licensing ordinance.

92. The City Council's June 23, 2026 vote, by motion of Councilor Sica and second by Councilor Simonelli, with ten in favor and none opposed (Councilor O'Malley absent after his recusal), to remove the non-transferability condition and grant a new special permit in Case 334-26 was ultra vires and void.

COUNT V

THE HOST COMMUNITY AGREEMENT BARS THE TRANSFER (G.L. C. 40A, §17)

93. The Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 92 as if fully set forth herein.

94. DMS Trinity, LLC and the City of Malden executed a Host Community Agreement governing the proposed marijuana establishment at 36 Charles Street.

95. Section 15 of the Host Community Agreement ("HCA") prohibits assignment without the City's prior written approval. No such written approval has been issued for the proposed transfer to Beach House.

96. Section 7(d) of the HCA requires DMS Trinity to copy the City on any Cannabis Control Commission change-of-ownership request and to seek CLEC approval within seven days. DMS Trinity has not complied with this requirement.

97. Section 14 of the HCA requires any amendment to be executed by both original parties. Beach House is not a party to the HCA and cannot execute an amendment on DMS Trinity's behalf.

98. Section 9 of the HCA provides for automatic termination if operations have not commenced under a Final License by November 10, 2026. DMS Trinity holds only a Provisional License, has not commenced retail operations, and holds no final certificate of occupancy for cannabis operations. The HCA will automatically terminate on that date absent a final license and commencement of operations; the proposed transfer cannot be completed before an agreement subject to automatic termination on that date.

99. The City Council's own June 23, 2026 Decision, Condition 15, requires a fully executed Host Community Agreement with the City of Malden prior to issuance of any final occupancy permit. As of the date of the Decision, Beach House holds no such agreement. As such, there were no vested rights to the use at the location to transfer or assign.

100. The proposed transfer to Beach House is barred by the operative terms of the Host Community Agreement.

COUNT VI

THE TRANSFER BYPASSES THE COMPETITIVE CLEC PROCESS (G.L. C. 40A, §17)

101. The Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 100 as if fully set forth herein.

102. The Malden Cannabis Licensing and Enforcement Commission ("CLEC") operates a competitive six-stage licensing process with a five-license cap, under which applicants are evaluated for suitability before receiving a local license.

103. Beach House was never evaluated by the CLEC. Its managers, per the Secretary of the Commonwealth, are Paul Ferazzi and Casey Baker; its financial backers are undisclosed.

104. The CLEC's own June 24, 2026 agenda listed the transfer as still open with regulations undrafted, undercutting any claim of CLEC approval.

105. The City's own officials, Nelson Miller (Building Commissioner) and Ron Hogan (Chief Strategy and Innovation Officer and Chair of the CLEC), both members of the CLEC, provided a memorandum dated June 23, 2026, enumerating that a future transfer review would be qualifying rather than competitive, yet no such qualifying review has occurred.

106. The City Council's approval of the transfer in Case 334-26 bypassed the competitive CLEC process established by the Ordinance and the Host Community Agreement.

COUNT VII

UNDISCLOSED CHANGES IN OWNERSHIP AND CONTROL VITIATE THE PERMIT CHAIN

107. The Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 106 as if fully set forth herein.

108. Since the CLEC's initial approval of DMS Trinity as a majority woman-owned business in March 2021, DMS Trinity has undergone successive undisclosed changes in ownership and control.

109. The Third Amendment to DMS Trinity's operating agreement, executed March 2022, shifted control to Dos Santos at 51.5%, later increased to 90.5% on the entity's cap table as submitted to the Cannabis Control Commission as part of the licensure process.

110. Four successive annual reports filed with the Secretary of the Commonwealth show that the original principals departed one by one. Each such departure was a material change in ownership or control that DMS Trinity was required to disclose to the CLEC pursuant to the disclosure obligations imposed by the CLEC's November 2020 governing vote, and none was disclosed.

111. DMS Trinity's own Addendum to Petition, signed by Denis Pinhone Dos Santos, admits that DMS Trinity will maintain a financial and operational interest in Beach House, contradicting the characterization of the transaction as a clean transfer to a new, independent entity.

112. These undisclosed changes in ownership and control, and the petitioner's own admissions regarding its continuing financial interest, undermine the good faith of the entire permit chain and the integrity of the process by which the City Council acted on June 23, 2026.

113. The failure of the City Council to consider this information makes its decision arbitrary, capricious, and lacking legal basis.

COUNT VIII

THE APPROVED TRANSFER COMPOUNDS EXISTING PARKING DEFICIENCIES IN VIOLATION OF THE ORDINANCE, ALONG OTHER UNCONSIDERED IMPACTS, AND WAS ARBITRARY AND CAPRICIOUS ON THAT BASIS

114. The Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 113 as if fully set forth herein.

115. The City Council's own Findings of Fact in Case 334-26 acknowledge that the petition "does not change the proposal's existing deficiencies in parking requirements."

116. The Planning Board's initial parcel use review found the proposal "grossly deficient" in parking. The original plan required five off-site parking spaces; the current proposal increases the number of required off-site parking spaces to twelve. The City Council's finding that existing deficiencies "do not change" reflects that the nature of the deficiency is unchanged and conflicts with the facts on the ground as the increase from five to twelve required off-site spaces confirms the proposal's parking obligations have grown without any demonstrated ability to meet them, and without any due consideration by the City Council of these changed impacts in the approval. The Planning Board also did not consider odor concerns that might arise from a cannabis facility.

117. R.K. Malden, LLC, owner of the abutting property at 99 Charles Street approximately 68 feet from the property line of 36 Charles Street, submitted a public comment on February 3, 2025, confirming that no agreement is in place for its property to be used for overflow parking and that any such use would constitute trespassing.

118. Mui, as a direct abutter within 300 feet of the Property, has a documented, particularized interest in preventing the parking encroachment and traffic impacts that the Council's own findings confirm the proposal will generate.

119. The Council's approval of a transfer to a new operator with no demonstrated ability to cure the parking deficiency and the City Council's conclusory findings lacking substance explaining how the parking deficiency can be addressed, and with no Host Community Agreement or CLEC approval in place, compounds the injury to abutters that the Ordinance's mandatory conditions were designed to prevent. These issues have not been properly addressed by the City and it is not sufficient to incorporate by reference a years old, expired special permit as a basis for the special permits' assignment.

COUNT IX
DECLARATORY JUDGMENT (G.L. C. 231A, § 6)

120. The Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 119 as if fully set forth herein.

121. An actual controversy exists concerning: (a) whether any permit in the chain for 36 Charles Street ever took effect under G.L. c. 40A, §11; (b) whether the permit lapsed under Title 12, §12.32.030, item 7 of the Code of the City of Malden, prior to Cases 77-25 and 334-26; (c) whether the building and occupancy permits were issued without lawful authority; and (d) whether §12.12.190.H remains operative as applied to DMS Trinity. The Plaintiffs are entitled to a declaration resolving each question pursuant to G.L. c. 231A, §1.

COUNT X

MANDAMUS (G.L. C. 249, §5)

122. The Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 121 as if fully set forth herein.

123. In the alternative, and only if the Court determines G.L. c. 40A, §17 does not provide adequate relief, the Building Commissioner had a ministerial duty under Title 12, §12.32.030, item 5 of the Code of the City of Malden not to issue a building permit for a Marijuana Establishment absent a valid, recorded, and unexpired special permit. No such permit existed on May 8, 2024. The Plaintiffs are entitled to a writ of mandamus directing the Commissioner to void Building Permit No. CMID-040598-2021 and Occupancy Permit No. COO-071463-2025 as issued without lawful authority, and that the City Council was in error to consider and issue a Special Permit with the relevant ordinance currently not of legal effect.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

A. Annul and set aside the June 23, 2026 Decision of the Malden City Council, filed July 6, 2026, amending the special permit in Case 77-25 and granting a new special permit in Case 334-26;

B. Declare that the special permits for 36 Charles Street (Cases 202-22, 233-23, and 77-25) had not taken effect under G.L. c. 40A, §11 at the time the building permit issued and therefore did not provide a valid zoning predicate for that building permit;

C. Declare that the special permit for 36 Charles Street had lapsed under Title 12, §12.32.030, item 7 of the Code of the City of Malden, prior to the City Council's actions in Case 77-25 and Case 334-26;

D. Declare that Building Permit No. CMID-040598-2021 and Occupancy Permit No. COO-071463-2025 were issued without lawful authority;

E. Declare that the City Council's removal of the non-transferability condition was ultra vires and void;

F. Declare that the Clarified Judgment in Benevolent Botanicals LLC v. City of Malden, Land Court No. 22 MISC 000076, is final and expressly limited to Benevolent Botanicals and does not purport to decide the ordinance's validity as applied to DMS Trinity;

G. Declare the legal status of the permit chain and the building and occupancy permits as set forth in Count IX;

H. In the alternative, issue a writ of mandamus as set forth in Count X finding the Special Permit and building permits were issued without legal authority;

I. Enjoin the City of Malden, its agents, officers, and employees, and DMS Trinity, LLC and Beach House, their successors and assigns, from proceeding with any transfer, assignment, or operation of a marijuana establishment at 36 Charles Street pursuant to the June 23, 2026 Decision;

J. Award the Plaintiffs their costs and such attorneys' fees as the Court deems appropriate, if any legal basis for such an award is found; and

K. Grant such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY FOR AND ANY ALL ISSUES SO TRIABLE.

DATED: Oct. 9, 2026.

Respectfully submitted,

MISTY MOUNTAIN SHOP LLC and
HALONA MUI

By their attorney,

/s Blake M. Mensing

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