

**COMMONWEALTH OF MASSACHUSETTS**

LAND COURT DEPARTMENT

CIVIL ACTION NO. 26 MISC 000403

MIDDLESEX, SS.

MISTY MOUNTAIN SHOP LLC, and  
HALONA MUI,

Plaintiffs,

v.

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

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,

Defendants.

**JOINT STATEMENT PURSUANT TO STANDING ORDER 1-04**

The Plaintiffs, Misty Mountain Shop LLC and Halona Mui, ("Plaintiffs") and Defendants, The City of Malden ("Defendant-City") 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 ("Defendant-Council") as members of the City Council, (collectively "Defendants" or "City") (Plaintiffs and Defendants together the "Parties") through their own counsel, submit this Joint Statement pursuant to Standing Order 1-04, in advance of the Case

Management Conference scheduled for September 8, 2026, at 2:00 p.m. before the Honorable Diane R. Rubin.

## **1. CASE DESCRIPTION**

### **A. Plaintiffs' Description of the Case**

This is an appeal under G.L. c. 40A, § 17 challenging the Malden City Council's June 23, 2026 vote granting a cannabis special permit transfer to Beach House Cannabis LLC. Plaintiffs contend that the vote was unlawful on multiple grounds, including alleged failures concerning the recording and lapse of the permit, the validity of a building permit, the Council's authority to approve the transfer, the Cannabis Local Equity Criteria, barriers imposed by the Host Community Agreement, undisclosed ownership changes, and the Council's finding regarding parking, as set forth in the complaint.

### **B. Defendants' Description of the Case**

The City of Malden denies Plaintiffs' contention that the Council's vote was unlawful.

DMS Trinity LLC ("DMS") applied for and received a special permit from the City to open a retail marijuana establishment. The special permit was granted by the Defendant-Council subject to 20 conditions. One of the conditions was that the special permit was non-transferable and non-assignable.

On or about May 7, 2026, DMS filed a petition with Defendants to amend its special permit. Specifically, DMS requested to change the "NAME OF PETITIONER" from DMS Trinity LLC to Beach House Cannabis, LLC ("Beach House") as Beach House was in a joint venture relationship with DMS. To effectuate this change, would necessitate the Defendant-Council to remove the condition providing that the special permit was non-transferable and non-assignable. In its petition, DMS stated it intended to remain involved in the marijuana business and this joint venture was for financial purposes.

The hearing was held on June 23, 2026. Plaintiff, Misty Mountain, ("Misty"), another marijuana establishment in the City and a competitor of DMS. During public comment, Misty spoke in opposition to the amendment of the special permit. Plaintiff, Halona Mui ("Mui") is an abutter to Misty's property and did not speak during public comment. After hearing the public comments for and against the petition, the Council deliberated and voted to approve the requested petition for the amendment. Aggrieved by the Council's decision, Plaintiffs filed the within action.

The case at bar is Plaintiff's purported MGL c. 40A §17 appeal of the Council's. Because the Council acted consistent with the provisions of the Massachusetts Zoning Act, MGL c. 40A; the Plaintiffs have failed to state claims upon which relief can be granted, and all Counts against the Defendants should be dismissed.

## **2. IDENTIFICATION OF PARTIES**

### **Plaintiffs:**

Misty Mountain Shop LLC (corporate disclosure filed pursuant to Supreme Judicial Court Rule 1:21; principal contact: Erik Gath, preferred honorific: Mr.; preferred pronoun: he/him) and Halona Mui (preferred honorific: Ms.; preferred pronoun: she/her).

### **Defendants:**

- a) City of Malden is a Massachusetts municipal corporation having an address of 215 Pleasant Street, Malden, Massachusetts.
- b) Peg Crowe (she/her/hers) as a Member of the City of Malden City Council,
- c) Paul Condon (he/him/his) as a Member of the City of Malden City Council.
- d) Amanda Linehan (she/her/hers) as a Member of the City of Malden City Council.
- e) Ryan O'Malley (he/him/his) as a Member of the City of Malden City Council.
- f) Ari Taylor (she/her/hers) as a Member of the City of Malden City Council.
- g) Stephen Winslow (he/him/his) as a Member of the City of Malden City Council.
- h) Christopher Simonelli (he/him/his) as a Member of the City of Malden City Council.
- i) Jadeane Sica (she/her/hers) as a Member of the City of Malden City Council.
- j) Michelle Luong (she/her/hers) as a Member of the City of Malden City Council.
- k) Karen Colón Hayes (she/her/hers) as a Member of the City of Malden City Council.
- l) Carey McDonald (they/them/theirs) as a Member of the City of Malden City Council.

**Unrepresented Defendant:**

DMS Trinity, LLC, the transferee of the cannabis special permit at issue in this appeal, has not yet retained counsel and has not entered an appearance. Plaintiffs are serving DMS Trinity, LLC with court filings by paper mail until counsel enters an appearance. The Plaintiffs respectfully suggest that the Court may wish to address DMS Trinity, LLC's status at the Case Management Conference, including whether to set a deadline for entry of counsel's appearance.

**3. RELATED CASES**

The Parties are not aware of any related cases in this or any other court or tribunal.

**4. EMAIL SERVICE**

Counsel for Plaintiffs and Defendants has agreed to accept service of pleadings and other documents by email pursuant to Mass. R. Civ. P. 5(b). DMS Trinity, LLC will continue to receive paper copies of filings until counsel enters an appearance.

**5. DISCOVERY PLAN**

Both parties anticipate that discovery outside the administrative record may be necessary. The City of Malden will prepare and certify the administrative record. The Parties anticipate that the scope and necessity of any discovery outside the administrative record may require further direction from the Court.

The Plaintiffs propose the following schedule:

Record certification by City of Malden: At a specific date to be determined by or at the Case Management Conference.

Plaintiffs' opening brief: 45 days after record certification

Defendants' opposition: 30 days after Plaintiffs' opening brief

Plaintiffs' reply: 14 days after Defendants' opposition

The Parties reserve the right to designate expert witnesses. Any expert designations and disclosures concerning expected testimony shall be completed no later than January 23, 2027. In the event that any party designates an expert, all other Parties shall have the opportunity to designate responsive experts by February 14, 2027. The Parties note that these deadlines are not anchored to any event in the briefing schedule and request that the Court confirm it is consistent with applicable F Track deadlines in all anticipated scenarios.

### **Defendant's Position**

Defendants' deadline proposal:

- |                                            |                    |
|--------------------------------------------|--------------------|
| ◆ Administrative Record Filed <sup>1</sup> | September 30, 2026 |
| ◆ Transcription of Hearing Filed           | TBD                |

### **6. MOTION SCHEDULE**

The City of Malden anticipates filing a dispositive motion under Mass. R. Civ. P. 12. Plaintiffs anticipate filing cross-motions for judgment on the pleadings or summary judgment. The Parties request that the Court address the sequencing of any threshold Rule 12 motion and merits briefing at the Case Management Conference.

The Parties propose the following schedule, consistent with the F Track deadlines, subject to the Court's availability and the sequencing to be determined at the Case Management Conference:

Dispositive motions filed and served: February 22, 2027

Responses filed and served: March 24, 2027

Motions heard, with reply briefs due 10 days before the hearing: April 23, 2027

### **Defendants:**

The Defendants proposes the following schedule for Initial Rule 12B Motions:

- |                                      |                                       |
|--------------------------------------|---------------------------------------|
| Rule 12 b Motion served and filed    | December 18, 2026                     |
| Opposition served and filed          | In accordance with Land Court Rule 5. |
| Reply served and filed               | In accordance with Land Court Rule 5. |
| Hearing on Initial Rule 12B Motion   | TBD by the Court                      |
| Dispositive Motions served and filed | TBD by the Court                      |
| Hearing on Dispositive Motions       | TBD by the Court                      |

### **7. ALTERNATIVE DISPUTE RESOLUTION**

Plaintiffs' counsel has notified Halona Mui and Erik Gath of court-offered alternative dispute resolution services. The Parties have discussed ADR and agree that mediation is

---

<sup>1</sup> Defendants will try to order the transcript on or before September 8, 2026, and will supplement Administrative Record when transcript is completed.

not viable at this time, as the dispute turns primarily on questions of law requiring judicial resolution. No ADR process has been attempted, scheduled, or proposed.

### **8. THIRD PARTIES**

DMS Trinity, LLC is a named defendant and the transferee of the cannabis special permit at issue. DMS Trinity, LLC has not yet retained counsel and has not entered an appearance. Plaintiffs reserve the right to move for a default or other appropriate relief if DMS Trinity, LLC fails to appear within a Court-ordered deadline.

The Parties have no position on the appropriate remedy for DMS Trinity, LLC's failure to appear at this time.

### **9. ADDITIONAL NOTICES**

The Parties are not aware of any additional notices required at this time, including notice to the Attorney General or potential intervenors.

### **10. OTHER MATTERS**

The City of Malden reserves the right to raise additional matters at the Case Management Conference. Plaintiffs have no additional matters to raise at this time.

### **11. CERTIFICATIONS**

Plaintiffs' counsel certifies that Plaintiffs have been provided with all required certifications regarding alternative dispute representation and submits that the Limited Assistance Representation Information Sheet is not applicable.

### **Defendants:**

Not applicable

*[signatures on following page]*

Respectfully submitted,

**MISTY MOUNTAIN SHOP LLC and HALONA MUI,**

By their attorney,

**/s/ Blake M. Mensing, Esq.**

---

Blake M. Mensing, Esq.  
BBO #678779  
Cable Fleisher & Sosebee PLLC  
90 Conz St  
Northampton, MA 01060  
(413) 268-6500  
blake@cfsattorneys.com

Dated: September 1, 2026

Respectfully Submitted:

**CITY OF MALDEN; 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,**

By their Attorney,

**/s/ Alicia Ann McNeil, Esq.**  
***(Signature applied with assent of counsel.)***

---

Alicia Ann McNeil, Esq. (BBO #632134)  
CITY OF MALDEN  
15 Pleasant Street, Suite 420  
Malden, MA. 02148  
(781) 397.7106  
amcneil@cityofmalden.org

Dated: September 1, 2026

**CERTIFICATE OF SERVICE**

I certify that on Sept. 1, 2026, a true and correct copy of the above document was served by mail, United States Postal Service First Class, on the following parties:

DMS Trinity, LLC  
260 Second St.  
Chelsea, MA 02150

DMS Trinity, LLC  
C/O DENIS PINHONE DOS SANTOS  
145 Marble St.  
Unit 508  
Stoneham, MA 02180

**/s/ Blake M. Mensing, Esq.**

---

Blake M. Mensing, Esq.