

Executive Session Meeting Minutes regarding Paper 116-25  
Benevolent Botanicals et al v. City of Malden  
February 25, 2025

Order: That the City Council will vote to go into Executive Session with Alicia A. McNeil, City Solicitor regarding the matter of Benevolent Botanicals and 926 Eastern Avenue v. The City of Malden for the purposes of Exemption Three Massachusetts General Laws Chapter 30A Section 21(a)(3) to discuss strategy with respect to litigation, where such discussion in open meeting may have a detrimental effect on the litigation position of the City, if so declared by the chair. And if so allowed by the Body, to admit Maria Luise, Special Assistant to the Mayor.  
(Roll Call Required)

During the City Council meeting on February 25, 2025, a motion was made by Councillor Colón Hayes, seconded by Councillor Sica to enter into Executive Session, order was approved by a 10-0 roll call vote.

Yea- Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Sica, Simonelli, Taylor, and Winslow

Nea- Zero

Absent- Spadafora

The meeting was called to order at 8:25 PM. In attendance were Councillors Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Sica, Simonelli, Taylor, and Winslow.

Also in attendance was City Clerk Carol Ann Desiderio, Clerk of Committees Lisa Cagno, and City Solicitor Alicia McNeil.

Absent- Spadafora

Before the meeting began, Councillor Sica started off with a motion to adjourn based on her belief that recent Executive Sessions (ES) regarding the suit between Benevolent Botanicals (BB) and the City have not been kept confidential. She is claiming the discussion should not be had if it cannot be protected by attorney/client confidentiality.

Councillor Sica stated she has seen social media posts from one of the BB owners that sounded as if he was aware of happenings from previous sessions. She further stated that approximately six hours earlier there was a post on Reddit from a sitting City Councillor asking the public for their thoughts on this lawsuit. The Councillor in question further wrote online about her support for a settlement offer and how she intends to vote on the issue. Councillor Sica read directly from the posts to make her claim.

Councillor Sica explicitly explained how upsetting she finds this breach and how important it is for Councillors to not overshare with the public on matters of confidentiality. She is not comfortable discussing this topic further at this time and does not believe she may speak candidly on the subject. Her proposal is to adjourn the meeting and allow the Legal Department to move forward as they see fit regarding this evening's topic.

Councillor O'Malley commented there is a concern that generally has been shared that discussions had in ES are not staying within the City Council but may be getting shared with others, including the opposing party.

Councillor Colón Hayes asked for the opportunity to respond to the accusation. She explained how she posts Council information and asks for feedback from her constituents every week. That post was not about ES but a court case that has been ongoing for many years and she has posted about it many times. Councillor Colón Hayes also noted the post wasn't just on Reddit but also on Facebook. Just because she wrote what she wrote does not indicate that the public is aware this was a topic during ES. She said she would like to hear from Attorney McNeil about the legality of posting her opinion and voting position online.

Councillor O'Malley mediated between the two Councillors who were engaged in heated debate. There was much discussion that publicly stating how one intends on voting can be considered, or may lead to, swaying the opinion of others, serial deliberation, an indication that the Body is discussing settlements in ES, and tips the hand of the City's litigation position.

Attorney McNeil said this is the first she is hearing of this online chatter but it is certainly a violation. She can see how people would decide they do not wish to enter into ES because the other side knows this ES is happening and so by Councillor Colón Hayes' postings, combined with the comments made by BB's owner, it becomes clear what is being discussed in these meetings. Explained in that way, Councillor Colón Hayes acknowledged her mistake.

Councillor Simonelli vacated the meeting at 8:27 PM.

A motion was made by Councillor Sica, seconded by Councillor Condon to exit Executive Session, motion failed by an 3-6 roll call vote.

Yea- Condon, Crowe, Sica

Nea- Colón Hayes, Linehan, McDonald, O'Malley, Taylor, Winslow

Absent- Simonelli, Spadafora

Councillor Sica vacated the meeting at 8:36 PM.

Councillor Colón Hayes asked for a moment to apologize to the Body. She is very open with her constituents, and it never crossed her mind that these posts would create a problem. Councillor Winslow stated open meeting law training is very clear that posting on social media could be interpreted as serial deliberation. Councillor McDonald asked if the commentary disadvantages the Council or creates a legal barrier to further discussion. Attorney McNeil said it is a problem as far as open meeting law but does not pose a legal barrier to further discussion or negotiation in the case. However, it does tip the City's hand. She further reiterated there is a purposeful reason why she starts every ES with a statement of confidentiality; for reasons exactly such as this.

With that, Councillor McDonald tried to move the conversation forward by asking what happened during the past two weeks while the judge gave BB the opportunity to file their motion with answers to her line of questioning in court on February 7. Benevolent filed a memorandum in support of second supplemental motion for sanctions, which is fifteen pages long. Councillor O'Malley passed

out copies for the Body's review. A PDF of the same may be found attached to the end of this document.

Councillor O'Malley opened discussion on this point with a review of the fiduciary responsibility the Council has to the residents of Malden. Difficult financial decisions must be made without regard to politics. He is of the opinion that Malden should offer Benevolent their special permit with no hearing necessary in exchange for them dropping the entire case altogether, sanctions included. Malden can negotiate the judge to issue a court sanctioned special permit so Malden does not have to admit wrongdoing in any way. He does not want to see this trial go to judgement and risk losing the case. Nor does he want to risk being penalized monetarily in amounts that are larger than what BB is currently asking for. He would rather see the suit turn into a revenue-raising business opportunity for the benefit of the city. Councillor Linehan doesn't disagree with this line of thinking but also noted the Council had the option to do that years ago. Her struggle is between settling with BB and having that look like an admission of guilt and losing the case and having a large court ordered payout. She is very concerned the city may have detrimental financial consequences due to what could end up being labeled a bad ordinance.

Councillor McDonald is in support of seeing this case through to finality, as it sets a bad precedent to do otherwise. They would like to authorize Attorney McNeil to negotiate up to the amount she is already authorized for, \$50,000. They believe any applicant that has made it through the CLEC process should have the opportunity to be heard by the Council. They also feel the timing of Councillor Colón Hayes' posts puts the city at a disadvantage from a negotiation standpoint.

So too is Councillor Condon in support of going to judgement. He was adamant that Malden should not pay for any settlement if they are not in the wrong. If the judge rules Malden is in the wrong, the City will pay accordingly but he doesn't believe Malden is in the wrong and therefore should not willingly pay out any cash settlement.

One consideration at hand if the city were to settle this case, is any other businesses that could have opened a marijuana establishment but didn't try because they knew our zoning ordinance wouldn't allow for their suggested location without a variance. Is the city setting a precedent for future lawsuits?

Councillor Crowe takes issue with the suggestion of having the court order the city to either issue the special permit without a hearing or the settlement offer allowing for the hearing without the Council being able to consider the buffer zones accordingly. Businesses cannot just be allowed to bypass city ordinances and/or procedures based on the threat of lawsuits. This disregards not only the Board of Appeal but also the opinions of the neighborhood. Regarding the argument that if a petitioner makes it through the CLEC process, they deserve to be heard by the Council, Councillor Crowe argues the CLEC process is only there to make sure the petitioner has all their necessary documentation in order. This is similar to the way any petition is reviewed by the Clerk's office prior to receiving a date to be placed on Council agenda. It's not a guarantee the petition will be granted. Attorney McNeil commented that CLEC is indeed not a decision-making body. Rather they are there to review if the applicant is financially liable, has a suitable location, and if their location is in an area that requires a variance.

Councillor Taylor is of the opinion that BB's settlement offer is much of a reach, given they think they might lose but are still going to attempt to receive money and a special permit from the city. She also wonders overall what settling says about the Council's collective voice when pushed against a wall by a company who displays enough time and money to wait out this judgement. She does think the zoning ordinance could be more inclusive but her bigger concern is most businesses don't just sue if they can't find a parcel appropriate for their business plan. Rather, they continue on looking at other locations and cities.

Councillor Winslow made a motion to enter into a settlement agreement which would result in a judgement by the court to issue Benevolent a special permit and to authorize the City Solicitor to go up to her settlement authority of \$50,000 in exchange for both the underlying case and the sanctions being dismissed with prejudice. There was much discussion on whether a judge can even issue an order making Malden grant a special permit. The motion failed for a second.

Councillor Taylor asked Attorney McNeil straight out what she would do if the decision was solely up to her. Attorney McNeil responded, the city has argued some very valid points, and she would continue with the litigation. Malden has some issues with their case but so does the Benevolent team; that happens in any litigation. Malden has already had nine applicants qualify for five licenses with three gone: two businesses currently open and one about to open in the spring. The judge did a walk-through of the area and saw first-hand how Malden's zoning districts overlap with residential in every area. Attorney McNeil believes in moving forward with the suit.

The City Solicitor was instructed to tell Benevolent the Council needs more time to deliberate.

A motion was made by Councillor Taylor, seconded by Councillor Linehan to table the discussion for one week to March 4, motion passed by an 8-0 roll call vote.

Yea- Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Taylor, Winslow

Nea- Zero

Absent- Sica, Simonelli, Spadafora

A motion was made by Councillor Linehan, seconded by Councillor Condon to exit Executive Session and adjourn the Council, motion passed by an 8-0 roll call vote.

Yea- Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Taylor, Winslow

Nea- Zero

Absent- Sica, Simonelli, Spadafora

Executive Session was adjourned at 9:44 PM.

Minutes compiled by City Clerk Carol Ann Desiderio

At a duly posted Executive Session on March 4, 2025, a motion was made by Councillor McDonald, seconded by Councillor Crowe to table the above minutes secondary to Councillor Colón Hayes not being in attendance to vote given the significant amount of discussion that revolved around her in the first half of the meeting, motion passed by a 7-2 roll call vote.

Yea- Crowe, Linehan, McDonald, O'Malley, Spadafora, Taylor, and Winslow

Nea- Condon, Sica

Absent- Colón Hayes, Simonelli

Double click on the PDF on page four to open the entire file.

Date Filed: 2/19/2025 4:01 PM  
Land Court  
Docket Number: 22 MISC 000076

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

LAND COURT DEPARTMENT  
CIVIL ACTION NO. 22MISC000076

BENEVOLENT BOTANICALS LLC and  
926 EASTERN AVENUE, LLC,

Plaintiffs,

v.

CITY OF MALDEN,

Defendant.

**PLAINTIFFS' MEMORANDUM  
IN SUPPORT OF SECOND  
SUPPLEMENTAL MOTION  
FOR SANCTIONS**

SERVED VIA E-MAIL

During the February 7, 2025 hearing on Plaintiffs' Motion and Supplemental Motion for Sanctions,<sup>1</sup> this Court specifically requested Plaintiffs supplement their prior motions and provide this Court with: (i) a copy of the deposition notice they served upon Defendant City of Malden ("Malden") pursuant to Mass. R. Civ. P. 30(b)(6);<sup>2</sup> (ii) per this Court's docket entry, identification of the "specific late-produced documents that would have aided plaintiffs in the preparation and the reasons therefor;" and (iii) the "case law supporting the requested relief." Plaintiffs therefore submit this memorandum to respond to this Court's request and demonstrate why the sanctions requested by Plaintiffs, including the costs authenticated by the affidavits attached hereto as Exhibits 2 and 3, are more than proper.

**I. IDENTIFYING SPECIFIC LATE PRODUCED DOCUMENTS THAT WOULD HAVE AIDED PLAINTIFFS IN THE PREPARATION OF THEIR CASE**

The 657 pages of documents that Malden withheld during this litigation and did not produce until days before – and/or weeks after – trial contained the missing pieces necessary for

<sup>1</sup> Plaintiffs hereby incorporate the arguments made in those pleadings.

<sup>2</sup> Plaintiffs have attached this deposition notice to this memorandum as Exhibit 1.

At a duly posted Executive Session on March 11, 2025, a motion was made by Councillor Crowe, seconded by Councillor Taylor to approve the above meeting minutes, motion passed by a 10-0 roll call vote.

Yea- Colón Hayes, Crowe, Linehan, McDonald, O'Malley, Sica, Simonelli, Spadafora, Taylor, and Winslow

Nea- Zero

Absent- Condon

At a duly posted Executive Session on February 10, 2026, a motion was made by Councillor Sica, seconded by Councillor Simonelli, to retain the above noted minutes in continued non-disclosure until the City Solicitor has determined the time frame for the appeal process has been exhausted, motion passed by a 10-1 roll call vote.

Yea- Colón Hayes, Condon, Crowe, Linehan, Luong, McDonald, Sica, Simonelli, Taylor, and Winslow

Nea- O'Malley

Absent- Zero

Minutes released from non-disclosure March 11, 2026.