

Executive Session Meeting Minutes regarding Paper 39-26
Tufts Construction, Inc. v. City of Malden
January 20, 2026

Paper 39-26 Order: That the City Council will vote whether to go into Executive Session with legal counsel for the City regarding the matter of Tufts Construction, Inc., v. The City of Malden, Middlesex Superior Court Docket #2181CV01248, for the purpose of Exemption Three Massachusetts General Laws Chapter 30A Section 21(a)(3) for an update on recent developments regarding a tentative resolution to the civil action, 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 January 20, 2026, a motion was made by Councillor Sica, seconded by Councillor Luong to enter into Executive Session to address Paper 39-26. Order was approved by a 10-0 roll call vote.

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

Nea- zero

Absent- zero

Councillor O'Malley raised objection to the late posting of this meeting under the provisions of M.G.L. c. 30A, s. 20(b) as he does not believe movement in the Tufts lawsuit to be an emergency situation. He stated that the lawsuit was already known to the City and to members of the Council. Further, Councillor O'Malley stated there is no cause to enter into Executive Session because he has already heard from open court earlier in the afternoon that parties had agreed to a settlement.

Councillor O'Malley then left the dais, sat at the department head table and refused to respond to the Clerk during the call of the roll. Clerk Desiderio stated for the record that Councillor O'Malley did not wish to go on record with his vote. Nevertheless, Councillor O'Malley did enter into Executive Session with the rest of the Body upon adjournment of the open Council session.

In attendance were Councillors Colón Hayes, Condon, Crowe, Luong, Linehan, McDonald, O'Malley, Sica, Simonelli, Taylor, and Winslow.

Also in attendance was City Solicitor Alicia McNeil, Assistant City Solicitors Mark Rumley and Zaheer Samee, Special Assistant to the Mayor Maria Luise, Clerk of Committees Lisa Cagno, City Clerk Carol Ann Desiderio, and Attorney Jeff Blake from KP Law.

The meeting was called to order at 7:33 PM.

During the attendance roll call, Councillor O'Malley refused to speak when his name was called. There was some discussion about whether a member may be in attendance if they are refusing to participate and many questioned why Councillor O'Malley would have even joined the meeting.

City Solicitor Alicia McNeil reminded all parties present that Executive Session (ES) must remain in confidence only between the parties who are in attendance. What is discussed in this session may

not be shared with staff, spouse, or anybody for that matter. Councillor O'Malley asked if this was true also for the public information that was discussed in open court earlier in the day. Attorney Rumley advised that what was said in open court is not privileged information and asked Councillor O'Malley if he was now present at this meeting. Councillor O'Malley responded, "That's none of your business." With this, the room erupted with shocked response to this exchange. Clerk Desiderio quieted the room and Attorney McNeil proceeded to introduce Attorney Jeff Blake from KP Law, who is aiding the legal team. She then turned the meeting over to lead counsel on this case, Attorney Rumley who presented to the Body on the status of the Tufts case after parties met in court earlier in the day.

Trial was set to begin on this day, Tuesday, January 20th. Last week there were a number of pre-trial motions that were before the court, too numerous to elaborate but they are online for public viewing. During the course of this lawsuit, the judge repeatedly encouraged parties to come to a resolution to the case. Judge Adam Hornstein, who heard the first trial, conducted mediation to the parties on October 14, 2025, which proved unsuccessful. The second trial was then assigned to Judge Michale Pineault (pronounced Pina).

Over the past weekend, various discussions were held between the attorneys for both sides, which resulted in a tentative agreement. Judge Pineault was made aware of the agreement but the actual structure of the settlement, with specific details, must still be worked out. Judge Pineault entered a nisi order for thirty days. The purpose of this meeting is to bring these terms to the Council, prior to anything moving forward, for a full update as to what is happening and what still must be done within the next month.

Attorney Rumley then turned the meeting over to Attorney Blake to explain the tentative agreement. During the mediation, Tufts' ask was \$4.5 mil; the City was at \$550,000. Tufts negotiated such a high number, perhaps because during the first trial they were able to submit for possible lost contract opportunities of \$194 mil. They had a breach of contract claim that allows for consequential damages and a tort claim of defamation which often comes with much higher damage amounts.

Last Friday, January 16, Malden's legal team went to court for pretrial motions, one of which argued to eliminate such high damage amounts. The Judge did not rule on that but did make it clear from the bench that he was skeptical about Tufts having those damages in their case. The concern with having such high amounts during a jury trial is that the ceiling being so high, it is difficult to anticipate how much the jury might award. Opposing counsel, realizing that number wouldn't be entertained for settlement, came down to \$1.7 mil. And if the payments were split over time, they would be expecting more. After much back and forth throughout the course of the weekend, both sides ultimately agreed to \$1.2 mil with the payment split up over three fiscal years. \$300,000 up front; \$450,000 in fiscal year '27; \$450,000 in fiscal year '28.

Tufts also asked Malden to release the 5% retainage that was withheld when the last contract had been terminated. The retainage was worth \$47,860.22. 5% holdback was written into the contract and represents the standard amount on most construction projects.

Tufts also requested for Malden to release the bond. When the 2019 W1 and the 2020 W1 contracts were terminated, then City Solicitor Kate Fallon sent notice to both Tufts Construction and the company that held the bond. The bond company interpreted that as a claim on the bond, but no

claim on the bond was actually ever made by Malden. The City has agreed to 'release' what they never did.

Councillor Simonelli asked how the negotiated amount went from \$550,000 to \$1.2 and if the difference in the amount reflects damages. Attorney Blake explained exposure, which is the risk of being held responsible in a lawsuit for financial loss. [REDACTED]

[REDACTED] Finding an amount that is acceptable to both sides, takes away the uncertainty of judgement amounts that could range anywhere from \$4 mil exposure to \$194 mil, that opposing counsel was originally proposing. This deal also has the added benefit of being divided up between multiple fiscal years, offering some relief to the city budget.

Councillor McDonald inquired if their recollection was correct that Peter Tufts was the same man reportedly yelling at his work crew in a vulgar way in front of children walking to school and giving the police detail a hard time with his generally bad behavior. Their recollection was correct and in fact, the police officer involved in that situation has since left the MPD and now resides in Florida, making his cooperation as a witness in this case difficult. That incident was only one example of what led City Engineer Yem Lip to characterize Peter Tufts as 'can be a hot head' to a third party who was seeking a job reference on the company. It should be noted, during that reference Mr. Lip also said Tufts Construction does good work and that Malden has no problem with the LSLR contracts the company did but that Mr. Tufts' relationship with residents can be 'strenuous'. Strenuous is the word Mr. Tufts considered to be defamatory.

Councillor McDonald asked if truth is a valid defense against defamation. Yes, but the City's argument to that point is inhibited by the absence of the former police officer. Chief Cronin, who was the Captain on duty at the time of this incident was not on scene as a witness at the time this all occurred. It is not enough to have supporting facts in the case; they have to be able to be proven and believed by a jury.

With that line of questioning over, Councillor Simonelli asked what was specifically being asked of the Body at this time. Attorney Blake explained that, as the Chief Executive Officer, Mayor Christenson has the authority to approve the settlement terms for the City. This meeting is to notify the Council of the current status and make them aware they will be asked to authorize the appropriations for the settlement payouts.

Attorney Blake was careful to point out that the mediation session was presided over by the judge who heard the first case. Judge Hornstein indicated that he and his clerk believe Peter Tufts believed was a very sympathetic plaintiff. This is a man who never finished high school, worked his way into his owning his own business, provided employment opportunities to several crew members. [REDACTED]

[REDACTED] The overall analysis of the case may be different if it were being tried in front of a judge but with all things considered, this settlement makes sense. Councillor Winslow also pointed out that another dilemma facing the city with a jury trial is that it looks like government versus a small business owner.

Councillor Linehan asked if the settlement payments would be made out of free cash. Councillor O'Malley stated his belief they would be paid out of the water and sewer enterprise fund. Councillor Colón Hayes asked for clarification on what happens next. Council approval is not needed to move forward but it will be necessary when the appropriation order comes down. There is no vote being asked for at this meeting.

Councillor O'Malley asked Attorney Rumley where he got his settlement authority. Mayor Christenson informed the legal team over the weekend as to what they had the authority to offer. That offer is not finalized until it was accepted and even then it is not finalized because there has to be a settlement agreement with terms in place. Councillor O'Malley argued the Mayor doesn't have settlement authority and that he is in this meeting for the purpose of legal ethics reasons. As discussion ensued between Attorney Rumley and Councillor O'Malley whether Councillor O'Malley is properly informed on this matter, a motion to adjourn was quickly made.

A motion was made by Councillor Crowe, seconded by Councillor Taylor to exit Executive Session and adjourn the Council, motion passed by a 10-0 roll call vote.

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

Nea- Zero

Absent- Zero

During the adjournment roll call, Councillor O'Malley refused to speak when his name was called. Executive Session was adjourned at 8:00 PM.

Minutes compiled by City Clerk Carol Ann Desiderio

At a duly posted Executive Session on February 3, 2026, a motion was made by Councillor O'Malley, seconded by Councillor Crowe, to approve and release the January 20, 2026 minutes as redacted, due to the determination that unredacted minutes would defeat the lawful purpose of M.G.L. c. 30A, s. 22(f), upon the court's acceptance of the settlement agreement between Tufts Construction and City of Malden. The motion passed by a unanimous roll call vote.

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

Nea- Zero

Absent- Zero

Minutes released from non-disclosure March 11, 2026.