

Executive Session Meeting Minutes regarding Paper 205-26
Dris Corporation et al v. City of Malden
April 14, 2026

Order: That the City Council will vote whether to go into Executive Session with Legal Council regarding the matters of Benevolent Botanicals LLC and 926 Eastern Avenue LLC v. City of Malden (22MISC000076), and Dris Corporation et al v. City of Malden (24MISC000281) for the purposes of Exemption Three Massachusetts General Laws Chapter 30A Section 21(a)(3) to discuss strategy with respect to litigation and the status conference held on March 25, 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 and Ron Hogan, Chair of Cannabis Licensing and Enforcement Commission.
(Roll Call Required)

During the City Council meeting on April 14, 2026, a motion was made by Councillor O'Malley, seconded by Councillor Winslow to enter into Executive Session to address Paper 205-26.

Order was approved by an 8-2 roll call vote.

Yea- Condon, Crowe, Luong, Linehan, McDonald, Sica, Taylor, Winslow

Nea- Colón Hayes, O'Malley

Absent- Simonelli

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

Absent – Simonelli, Councillor Sica vacated the building after the vote to enter into Executive Session passed.

Also in attendance was City Clerk Carol Ann Desiderio, City Solicitor Alicia McNeil, Special Assistant to the Mayor Maria Luise, Chief Strategy and Innovation Officer Ronald Hogan, and Clerk of Committees Lisa Cagno.

The meeting was called to order at 7:36 PM.

The meeting opened with City Solicitor Alicia McNeil giving a reminder to 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. There were no questions or comments posed pertaining to the laws of ES.

Councillor O'Malley opened discussion with reading select passages from the transcript of the status conference held in Judge Diane Rubin's Land Court on March 25, 2026 between Dris Corporation and the City of Malden. This transcript document was forwarded by Clerk Desiderio to the entire Council during the meeting. The topic of discussion in court that day, which included the attorneys representing Benevolent Botanicals (BB), came around to the disagreements had between parties regarding Judge Rubin's invalidating the Code of the City of Malden (MCC) 12.12.190. Councillor O'Malley wished to bring attention to the judge stating her intent was to invalidate the entire marijuana regiment, including any additional ordinances that pointed back or referred to MCC

12.12.190. Judge Rubin is of the belief that marijuana establishments are commercial retail establishments allowed by right and she wasn't waiting for Malden to re-write a new bylaw before allowing BB to open their business. She believes Benevolent Botanicals does not require any special permits from the City Council. She further stated if the parties needed clarification on her judgement, BB should file a motion for clarification of judgement, which they did on April 3, 2026. A response from Malden to that motion is due by April 22 and this is what this meeting has been scheduled to discuss this evening.

Councillor O'Malley is of the understanding that the judge does not want any new ordinances to affect BB's application process. In court on March 25, Solicitor McNeil made representation that she would speak with her clients on how they wished to move forward. Councillor O'Malley is now seeking to offer guidance to the Legal Department for the purposes of that representation.

Solicitor McNeil explained the April 22 memo is to respond to the motion for clarification and to also point out other areas of the MCC that tie back to ordinance 12.12.190 and seek to determine if the court indeed meant to invalidate all of those additional sections. If that is so, it leaves the city with a very big mess. Is the judge's intent that BB does not have to submit a new application to the Cannabis Licensing and Enforcement Commission (CLEC) even though a large portion of their company has changed? Is the judge stating BB no longer is required to hold a community meeting? These are some of the questions for which the city requires answers. Solicitor McNeil stated the Body is welcome to discuss the matter further but this is the purpose and will be the focus of her response memo.

Councillor Winslow reminded the Body that the Rules & Ordinance Committee had an in-depth discussion and has a preliminary ordinance drafted. This could be used to acknowledge to the court that Malden recognizes MCC 12.12.190 is gone. He also spoke on the importance of having the CLEC remain in place as leverage to enforce a rigorous screening process, considering areas like security is being followed, financing is in place, standards are being met and to have enforcement tools when needed. His motion is to submit the new ordinance language to see if it is acceptable to the court. There was no second to this motion.

BB's attorney represented to the court that he had spoken with a City Councillor and was told BB couldn't move forward until Malden ordained a new ordinance. McNeil responded as far as she was concerned when it came to BB, that was not the case. Councillor Luong was very disturbed to hear a Councillor had dialogue with BB attorneys and asked to find out the name of the Councillor. Councillor Linehan noted BB reached out to her and Councillor Winslow on today's date but neither of them responded and don't intend to.

Mr. Hogan expressed his point of view on the checks and balances involved with issuing marijuana licenses in the city. The Council has a voice through the special permit process, the Mayor through the host community agreement, and the CLEC through local licensing requirements. It is critical to get clarity if it is the expectation of Judge Rubin that all three of those areas no longer exist or if it is just the special permit process she is concerned about. If all three of those areas are being invalidated, then what does that mean for the city when attempting to negotiate this new business. It is possible Judge Rubin did not understand the completeness of the entire process and how one of the three areas tie in with the other two. Additionally, is this ruling mandated for all future marijuana establishments or is this special disposition only for BB.

Councillor Colón Hayes asked how all of this may pertain to Dris Corporation. The difference with Dris is that they do not have a license or even a location, putting them in another situation entirely different from that of BB.

Councillor O'Malley noted that Land Court does not have jurisdiction over non-zoning ordinances, such as Chapter 6 Business Licenses, Permits, and Regulations. The court is invalidating the special permit which speaks to Chapter 12 Zoning only. He said Judge Rubin considers what BB has gone through to be an ordeal and should not be subject to any further discretionary permits through the city. All they need do now is obtain building permits. The court recommends mediation for the parties at this time.

Solicitor McNeil noted the judge recognized that she is not the final arbiter and acknowledges whatever happens at this point in Land Court the city may have an opportunity for appeal. If both parties go before the judge to obtain clarity on her ruling and that explanation is not in line with the reasons why Malden withdrew their appeal, then Malden would have grounds to appeal the entirety of court's decision. Councillor Colón Hayes asked if it came to that, would the Council be responsible for making that decision to re-file the appeal? McNeil said she would consult with the Council but she isn't saying the Council would be responsible for making the decision on that particular issue.

Councillor O'Malley is in favor of negotiating a community host agreement through mediation and letting BB move forward without a special permit so that this whole scenario may be moved beyond and not waste any more of anyone's time. Solicitor McNeil stated for the record that she does not see any of this as a waste of time; this is what the legal team was hired to do.

At this point, it is unclear if the court can order mediation between BB and Malden as there is already a judgement in this case. After the parties walk through this exercise of motion for clarification, if the judge recommends non-binding mediation, McNeil would be happy to go but it is unclear if the court even has jurisdiction for such an order.

Councillor McDonald supports finding a non-confrontational way to simply ask the judge if it was her intent to throw out the entire special permit process or if it was just to exempt BB from the special permit process. The distinction is important because zoning ordinances have a higher standard to change. If this is just a situation where BB has been through an ordeal and is exempt from the process, they are fine with that; let them move forward without the special permit. But they do not believe the city can invalidate their own special permit process through mediation because that would require input from the Planning Board. Additionally, state law allows for a special permitting process around marijuana licensing and many cities do. Comments taken out of context from the court transcript are insufficient to overrule the city's own zoning.

Council President Linehan requested this meeting come back into session after the April 28 court date to receive an update from Solicitor McNeil.

A motion was made by Councillor Luong, seconded by Councillor Taylor, to exit Executive Session and adjourn the Council, motion passed by a 9-0 roll call vote.

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

Nea-zero

Absent- Sica, Simonelli

Executive Session was adjourned at 8:21 PM.

Minutes compiled by City Clerk Carol Ann Desiderio

Pursuant to M.G.L. c. 30A, s. 22(g)(1), with the approval of Council President Linehan and City Solicitor McNeil, on April 17, 2026 eleven members of the Malden City Council were invited to review draft executive session minutes in the privacy of the City Clerk's Office. The members were asked for a review to both finalize draft minutes and to review for public release.

If there were any motions for amendments or need for further discussion a date would be set to meet in Executive Session to deliberate. Otherwise, if there were no objections, on behalf of the Body, Council President Linehan would be tasked with the approval of said minutes. On April 23, Council President Linehan authorized the approval of draft executive session minutes from April 7 and 14 to be finalized.

Concurrently, a periodic review was completed to determine if a number of minutes warranted continued non-disclosure. Council President Linehan, under the advice of counsel from Solicitor McNeil, has now ordered the City Clerk to release the executive session minutes from the meeting of April 14, 2026.

Under Open Meeting Law, M.G.L. c. 30A, s. 22(f) certain executive session meeting minutes are being withheld "as publication may defeat the lawful purpose[s] of the executive session". Under the Public Records Law, these same sets of executive session meeting minutes are being withheld based on attorney-client privilege. (See *Suffolk Construction Co. v. Division of Capital Asset Management*, 449 Mass. 609, 619 (2007)). The meetings were held in executive session with the City Solicitor and City officials (attorney-client relationship); the City officials sought legal advice from the City Solicitor; and the communications of these meetings have not been waived.

For the above reasons, the following meeting minutes are withheld from public release: April 7, 2026.