

Executive Session Meeting Minutes regarding Paper 425-22  
Benevolent Botanicals et al v. City of Malden  
October 25, 2022

Order: That the City Council meet with legal counsel in executive session in regard to Benevolent Botanicals v. City of Malden, under Massachusetts General Laws Chapter 30A Section 21(a)(3) to discuss strategy with respect to litigation, as such discussion in open meeting would have a detrimental effect on the City's litigating position, and to admit Maria Luise, Special Assistant to the Mayor. (Roll Call Required)

During the Committee of the Whole on October 25, 2022 a motion was made by Councillor Colón Hayes, seconded by Councillor O'Malley to enter into executive session, order was approved by a vote of 8-1. Councillor Sica was nay vote.

In attendance were Councillors Colón Hayes, Condon, Crowe, McDonald, O'Malley, Simonelli, Winslow, Spadafora. Absent were Councillors Linehan and Murphy. Also in attendance was Assistant City Clerk Carol Ann Desiderio, Clerk of Committees Lisa Cagno, Special Assistant to the Mayor Maria Luise, Acting City Solicitor John McNaught, Jr., Assistant City Solicitor Alicia McNeil.

The meeting opened with Assistant City Solicitor Alicia McNeil giving a brief review of the status of the case. Benevolent Botanicals (BB) is suing the City of Malden, alleging 1) the Board of Appeal was wrong in their original ruling to deny BB's application based on the buffer zone variance ordinance and 2) the City's buffer zone ordinance is illegal because it does not comply with State law. Attorney McNeil stated the previous City Solicitor Kathryn Fallon submitted to the court a motion to dismiss. In the first allegation the motion to dismiss was to state BB had no standing to sue because the Board of Appeal was correct in their ruling based on the ordinance of the City at the time the application was submitted. This count was dismissed. In the second allegation the motion to dismiss was denied.

In the meantime, BB has since added a second plaintiff to their case, 926 Eastern Avenue, LLC. The City of Malden has been served with discovery and Building Commissioner Nelson Miller has been deposed on behalf of the City's Cannabis Licensing and Enforcement Commission (CLEC). Likewise, Malden has served both plaintiffs with discovery and the depositions are scheduled to begin in early November. The trial may begin at some point during the first or second quarter of next calendar year.

According to M.G.L. c. 40A, s. 9 the process to file for a zoning special permit is that the petitioner files application with the City Clerk and said application with time stamp of filing is also filed with the special permit granting authority who then, if the application is complete, holds a public hearing within 65 days from the date of filing. The plaintiffs had filed but the Building Commissioner deemed their application was incomplete and could not be processed until such time a complete application was delivered. The plaintiffs alleged that Nelson Miller was incorrect in his determination and went further to file a Certificate of Constructive Approval. The Legal Department responded to the plaintiffs' attorney, Michael D. Rosen of Ruberto, Israel & Weiner P.C., on October 20, 2022

stating the City's position is that the claim of constructive approval was improper given the application was not properly filed and therefore M.G.L. c. 40A, s. 9 does not apply.

Councillor O'Malley responded that how the Council wants the Legal Department to respond on their behalf is something that should have been discussed prior to Attorney McNeil taking this liberty. Solicitor McNaught explained that there was only a 20-day window in which to respond, not a lot of time to request, post, and execute a meeting of the City Council executive session and that some legal issues are a matter of course in their duties to protect the interests of the City regardless of what the Council would recommend Legal Department does. Solicitor McNaught went further to say that the law, correct process, time constraints are all considered when the Legal Department is deciding how to best defend the City at a moment's notice.

Councillor O'Malley reiterated that if Legal is filing anything in the name of the Council, they should do so only after it has been discussed as such. He would prefer to discuss the strategy of how Legal should proceed and that Legal has a responsibility to find out what the body as a whole wants filed in their name as they are the client. Attorney McNaught stated the Legal Department makes decisions based on the best information they have at hand and as they understand the intent of the City. They analyze many different options including legal strategy, who to depose, and the best defense available for the protection of the City and that is not something they would be advised on by the City Council.

Councillor McDonald stated that if Council members are named in a law suit they should be notified immediately. Attorney McNeil assured him nobody was personally named in the suit, it was filed against The City of Malden. Councillor McDonald asked if the Council's inaction on updating marijuana ordinances would impact the judge's decision to rule against the City? Although it could possibly affect the outcome of the suit and their lawyers may try to argue for that, it really should not make a difference if we update the ordinance because the case must be based on the ordinance as it was written at the time the case was filed, not possible future variations on City ordinance.

Councillor Colón Hayes asked if there was any talk of settling and if the City is in violation of 94G. There is no talk of settling and the court has not yet decided on the question of 94G.

Councillor Winslow noted the responsibility to legally protect the City falls squarely on the Solicitor's Office and he wished to thank them for the work they've done on this case. Also, that he would like to commit to continuing the process of updating the ordinances as this hearing continues to play out. Councillor Winslow pondered if the Council should even be the special permit and licensing authority?

Councillor O'Malley suggested the legislative intent of the City's ordinance was to allow projects like BB to move forward by allowing for variances in buffer zones and the way this ordinance was written does not reflect that legislative intent. This special permit application should have come to the Council and that the Council has a process to grant applications even when the application is not complete, ie: Dartmouth Street. The Council should at least have had the option to make this decision instead of a staff member down stream which then leads to the City getting sued. City's buffer zone ordinance is illegal because it makes the marijuana application process too difficult for

businesses to get approved and all applications currently with CLEC have buffer zone issues, which may lead to more lawsuits.

Councillor Spadafora responded that the Dartmouth Street building is a poor example because it is in the RIO district. He stated his belief that the plaintiffs are using personal friendships to lobby the Council to change the ordinance for their benefit. Our Revolution had went as far as endorsed some of the Councillors in this meeting.

Councillor Colón Hayes wished to address the “friends” comment asking if that was directed towards her. At this point the discussion devolved into heated debate between Councillors Simonelli, Colón Hayes, Spadafora and O’Malley to the point where Solicitor McNaught had to remind them that the rules of executive session mandate only topics which were duly posted for discussion may be discussed and this conversation is no longer appropriate for the purposes of M.G.L. c. 30A, s. 21(a)(3).

With the close of discussion, a motion was made by Councillor Crowe, seconded by Councillor Condon to exit executive session, motion passed by a vote of 7-0. Councillor Simonelli stepped out early.

Minutes compiled by Assistant City Clerk Carol Ann Desiderio.

Pursuant to M.G.L. c. 30A, s. 22(g)(1), and with the approval of Council President Winslow and City Solicitor McNeil, on August 26, 2024 eleven members of the Malden City Council were offered a one month period of time to review fourteen sets of executive session minutes dating back to April 2021 in the privacy of the City Clerk’s Office. It was explained that any questions or amendments may be submitted to the City Clerk and a date would be set to meet in Executive Session for further discussion. Otherwise, if there were no objections, on behalf of the Body, Council President Winslow would be tasked with the approval of said minutes.

After the one-month review period had expired, on September 29, 2024, Council President Winslow authorized the approval of all draft executive session minutes. Among those fourteen drafts, this set was included.

Approval process organized and overseen by City Clerk Carol Ann Desiderio.

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.