

Executive Session Meeting Minutes regarding Paper 83-25
Benevolent Botanicals et al v. City of Malden
February 11, 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 11, 2025, a motion was made by Councillor Simonelli, seconded by Councillor Crowe to enter into Executive Session, order was approved by a 10-0 roll call vote.

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

Nea- Zero

Absent- Sica

The meeting was called to order at 9:45 PM. In attendance were Councillors Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Simonelli, Spadafora, Taylor, and Winslow.

Absent was Sica.

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

A motion was made by Councillor Colón Hayes, seconded by Councillor Winslow to approve the Executive Session meeting minutes from February 4, 2025, Paper 61-25 regarding Benevolent Botanicals (BB) and 926 Eastern Avenue v. The City of Malden, motion passed by a 10-0 roll call vote.

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

Nea- Zero

Absent- Sica

A motion was made by Councillor Spadafora, seconded by Councillor Simonelli to approve the Executive Session meeting minutes from February 4, 2025, Paper 62-25 regarding Zeraschi v. The City of Malden, motion passed by a 10-0 roll call vote.

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

Nea- Zero

Absent- Sica

During this meeting a review of Executive Session minutes regarding Benevolent Botanicals and 926 Eastern Avenue v. The City of Malden from the dates listed herein was conducted to determine if

release of records is appropriate at this time. This review was done to satisfy an open meeting law request by Brian DeLacey of 1 Earl Street, Malden on February 7, 2025.

October 25, 2022

September 12, 2023

September 26, 2023

February 4, 2025

A motion was made by Councillor McDonald, seconded by Councillor Spadafora, to retain said meeting minutes in continued non-disclosure. The motion was approved by the following roll call vote:

Yea: Colón Hayes, Condon, Crowe, Linehan, McDonald, Simonelli, Spadafora, Taylor, Winslow, O'Malley

Nea: Zero

Absent: Sica

The reasoning for not releasing the above noted meeting minutes is because although closing arguments in the referenced case have concluded, the judge has not yet ruled. Nor has any potential appeal process been established. It is the determination of the Body that release of these records would have a detrimental effect on the litigation position of the City.

The meeting opened with City Solicitor Alicia A. 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. The City of Malden is in active litigation, and nothing should be done that would risk leaking the City's position, for any reason at all. Attorney McNeil offered an opportunity to those present to ask further questions on ES or the laws pertaining to ES; no one responded so she proceeded.

Councillor O'Malley gave a recap that there is a settlement offer on the table from the last meeting of February 4 and opposing counsel, with one of their clients, are currently waiting in Council Chamber in the event the meeting presents any questions they may assist in resolving.

Attorney McNeil reported since the last meeting, she has rejected Benevolent's settlement offer and presented the Council's counteroffer, which was that the City Council agrees to hold a hearing on plaintiff's special permit application in exchange for plaintiff dismissing their complaint and motion for sanctions. If plaintiffs are willing to accept this offer, Malden is willing to negotiate the details of time in a written agreement.

Malden's counteroffer was rejected by BB that same day. Opposing counsel offered the following in return as is outlined in the attachment on last page of this report. Malden has until 1:00 PM on February 12 to respond. It was further noted opposing counsel has been authorized by their clients to reject any counteroffer that does not include monetary compensation and an agreement that the Council will not use the buffer zone as a means for denying the special permit.

Councillor O'Malley was in court to witness closing arguments on Friday, February 7; he asked Attorney McNeil to explain the affidavit discussion that was brought up that day regarding City Planner Michelle Romero. It was explained that Planner Romero was asked to provide maps after her deposition, which she did. During the process, Benevolent claimed they didn't receive these maps so Planner Romero signed an affidavit stating any maps she had have been provided to

plaintiffs. During the trial, Benevolent attempted to impeach Romero on the basis they hadn't received said maps. Planner Romero did not perjure herself and Attorney McNeil stated she did not see Romero's testimony as a central part of the trial.

The judge directly asked Attorney McNeil if any company is able to qualify for a variance. Yes, if they properly qualified for one. That was the biggest argument made against the city. The biggest argument made against the plaintiff was regarding the standard of if a prudent businessman would continue to move forward to apply for a business license in the City of Malden. Attorney McNeil was able to have the plaintiff testify under oath that he is a prudent businessman and is still interested in doing business in the City of Malden.

Councillor O'Malley has a less than positive interpretation of the judge's comments on Friday and is concerned about how she may rule. Attorney McNeil's view is that the judge had difficult questions for both sides, but Malden has some very strong arguments. As to sanctions, the judge asked BB how the maps negatively harmed their case. BB could not associate any of the maps to direct harm caused to them. The court was clear that BB wanted the judge to order Malden to issue a special permit, monetary award, and to rule that Malden's ordinance is in violation of M.G.L. c. 94G. The judge was not willing to do that without at least some association of how BB was harmed. The judge told BB they cannot overreach on what they are asking for. She gave them more time to write up a motion as to how the documents in question are relevant to them and how their business was harmed. The City will also receive time to respond to that motion. Two weeks will be given for both sides. Attorney McNeil strongly feels the judge is not leaning towards issuing them all their demands.

Councillor Spadafora asked who are the owners of Benevolent Botanicals? Stee McMorris, President; Gary Oshry, Vice President, Michale Clebnik, CEO. Warren Lynch testified in court to owning only a minute percentage of the company; he is necessary for the social equity status. Councillor Spadafora opened up a line of discussion about BB's original application. In the application it is stated the company looked at 150 properties in the city and they were rejected for being too expensive, not because the zoning was too restrictive. The application also reports that Lynch owns 26% ownership and 50% control. Lynch has publicly stated he has removed himself from day-to-day operations of the business and only owns 1%. Majority ownership is required for the social equity exclusion. That brought up an entire line of questions about who is qualifying for the permit, is the application still accurate, is BB required to update the application with CLEC, with the State, can/should the City grant any license without an updated document.

Lynch's opening statement in court stated he was CEO, the reason BB was getting social equity status, and that he held 50% control. However, when Attorney McNeil called opposing counsel regarding indecent comments made on social media by Warren Lynch toward city staff and elected officials, the attorney commented Lynch isn't his client.

Councillor Spadafora noted the Council wouldn't issue even a taxi license to an applicant who had an inaccurate or out-of-date application. Councillor Crowe agreed with this assessment and reminded the Body that even at this evening's special permit hearing on another marijuana shop, public comment was made that no permits should be issued until clarification is offered on company ownership.

Councillor Taylor commented that the next month (two weeks' time issued to each side to respond to court's questions) gives Malden time to consider any counter offer. She does not want to feel in a position of being forced into a decision by 1:00 tomorrow afternoon.

Councillor O'Malley is concerned that the longer this trial goes on, the more expensive it will become; the risk should be weighed against the reward. He does not want to see this trial go to a judgement on the merits because if Malden loses, it may open the city up to damages in this suit and other entities suing for licenses and/or special permits in the future. Councillor O'Malley would rather see Malden come to a mutual agreement with BB before the court rules.

Attorney McNeil explained that this trial calls for a declaratory judgement. The court cannot order the Council to issue a special permit. If anything, the court would mandate the City to reevaluate their zoning ordinance.

Councillor McDonald asked if there are any other cases in the city's history wherein a variance petition was denied due to buffer zone violations. No person in the room commented that they could recall such a situation. Councillor McDonald opined that this case creates precedent specifically around the issue of buffer zones. If so, it seems reasonable enough to them to consider a counteroffer that moves the situation forward. They do not believe that Malden is totally in the wrong but this has been a draining case and this is the point of legal negotiations. Not to get everything one wants but rather to make the problem end.

Councillor Crowe noted that the plaintiffs' counteroffer hadn't changed at all from their original settlement offer with the exception that the monetary award was decreased by \$30,000. Further, the Council should not be mandated on what they may and may not give consideration to when deciding a special permit. Item number four of their offer states plaintiffs will agree to enter into a stipulation of dismissal to end litigation, *should* (emphasis added) the Council grant a special permit to Benevolent, and even then, only after the end of any period applicable for appeals. Item number four basically demands the city issue the special permit. Multiple members of the Council expressed concern that if even if they agree to hear the special permit, litigation will continue if not granted, regardless of the reason so where does negotiating in good faith really get them?

Councillor Spadafora made a motion to table this discussion for two weeks. Councillor McDonald is in agreement with this so that Malden has the chance to review the documentation BB files to respond to court's questions regarding clarification on the motion for sanctions. BB's counteroffer is neither accepted nor rejected during this two week tabling motion.

A motion was made by Councillor Spadafora, seconded by Councillor Simonelli to table the discussion for two weeks, motion passed by a 10-0 roll call vote.

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

Nea- Zero

Absent- Sica

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

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

Nea- Zero

Absent- Sica

Executive Session was adjourned at 10:46 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 Spadafora, seconded by Councillor Linehan to approve the above meeting minutes, motion passed by a 9-0 roll call vote.

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

Nea- Zero

Absent- Colón Hayes, Simonelli

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.

Thank you for the message and the update. We have spoken with our clients about this counteroffer. Plaintiffs respectfully reject this counteroffer. That said, our clients (and we) greatly appreciate the willingness of the City to consider potential resolution here. In that vein, our clients have authorized us to come back to the City with a renewed offer, which constitutes a significant compromise on their part. While Plaintiffs remain extremely confident that judgment will be entered in their favor and that significant sanctions will likely be imposed upon the City, they are willing to resolve this matter upon satisfaction of the following:

- 1) The City will accept the special permit application previously submitted by Malden, and the City Council will hold a hearing on that application no later than March 18, 2025. The City Council will also close the hearing no later than April 15, 2025 and file its decision with the City Clerk no later than April 22, 2025.
- 2) In exchange for the City Council holding the special permit hearing, Plaintiffs agree to file a joint motion to the Land Court seeking to stay the litigation, with the joint motion be filed only upon evidence that the special permit hearing has been properly noticed.
- 3) As part of the City Council's special permit hearing, the City Council will agree that the distance between any residential use and Benevolent's proposed location at 926 Eastern Avenue (or the distance of the proposed location to any other land use protected by a buffer zone) cannot form the basis for denying the issuance of a special permit to Benevolent.
- 4) Should the City Council grant a special permit to Benevolent, then, after the end of the period for any applicable appeals for the issuance of said permit, Plaintiffs will agree to enter into a stipulation of dismissal to end this litigation.
- 5) The City will make a payment of \$70,000 to Plaintiffs, simultaneous with the filing of the joint motion to stay, to reimburse them for a portion of the costs and attorneys' fees they incurred in connection with the motion for sanctions.