

Executive Session Meeting Minutes regarding Paper 117-25
Benevolent Botanicals et al v. City of Malden
March 4, 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 March 4, 2025, a motion was made by Councillor Sica, seconded by Councillor McDonald to enter into Executive Session, order was approved by an 8-0 roll call vote.

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

Nea- Zero

Absent- Colón Hayes, Simonelli

Councillor Taylor was in attendance but not in the Chamber at the time this vote was taken.

The meeting was called to order at 7:23 PM. In attendance were Councillors Condon, Crowe, Linehan, McDonald, O'Malley, Sica, Spadafora, Taylor, and Winslow.

Absent was Colón Hayes, Simonelli

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.

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.

Attorney McNeil reported that after the last Executive Session meeting she had spoken with opposing counsel asking to give the Body another week to deliberate on the current settlement offer. He expressed frustration at having to wait and said they needed a response by tomorrow, March 5. If they don't receive a response by then, the offer will be removed from the table. That doesn't mean the Council cannot reinstate a settlement if they so choose.

In the last meeting, Councillor O'Malley expressed his interest in offering 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. On this date, Attorney McNeil clarified that special permits are mandated by State law and always require public hearings. Therefore, she is of the opinion that Malden cannot just hand the special permit to Benevolent Botanicals (BB) in accordance with Councillor O'Malley's strategy. Attorney McNeil does not anticipate the judge

would even consider such an order as she has stated the case record must be very clear because it is her strong belief this case will be appealed, no matter how she rules. Even if this scenario to grant the special permit was attempted, the abutter retains the right to oppose the special permit.

Councillor O'Malley also asked Attorney McNeil to research who in the city is authorized to initiate lawsuits. After reviewing Malden's ordinances and charter, as well as looking at other cities' and town's policies, she was unable to find an answer to this question. Prior to this, she was under the impression it was the Legal Department who typically initiated lawsuits. This happens very infrequently as the City is more often the defendant instead of the initiator.

Councillor Sica explained to the room that in this particular case, the City is not at risk of losing large sums of money in damages if the case was lost, as some have previously stated. The judge will be making a declaratory judgement, which serves as a remedial tool without awarding damages. The recouping of their attorney's fees isn't mandated but rather will be up to the judge. Even in the event the judgement goes to appeal, it isn't costing Malden any more in legal fees as it does for BB. The Solicitor's Office works on salary, not an hourly rate. This case has come so far already, it is nearing the end, and the city should see it through to judgement.

Councillor Spadafora summarized that BB isn't going to accept any counteroffer that doesn't include an issuance of a special permit. Or at least a hearing that doesn't allow for the buffer zone to be considered as part of the decision-making process, which is the same thing because item number four of the settlement indicates Plaintiffs will agree to enter into a stipulation of dismissal to end this litigation *should* (emphasis added) the City Council grant a special permit to Benevolent. It was further stated that opposing counsel was authorized to reject any offer that doesn't also include a monetary award. Attorney McNeil again reviewed for the Body the terms of the plaintiffs' offer, which are attached to the last page of this document.

Special Assistant to the Mayor Maria Luise spoke on behalf of Mayor Christenson when she announced the Mayor's position is to stand by the advice he is receiving from the Solicitor's Office. Mayor Christenson will not sign a settlement that is handing BB a special permit or giving them a hearing that stipulates the Body may not consider any certain criteria. In his eyes, it's an abuse of power. Any settlement offer that goes over what is in the Solicitor's budget to negotiate, the Mayor will have to appropriate funds and if he doesn't agree with the settlement, he will not do that, unless and until he is advised to do so by Attorney McNeil.

Councillor O'Malley said the question is yet unanswered if the Mayor is required to sign off on any or every settlement offer. This is the reason he requested Attorney McNeil to research the answer as to who is authorized to initiate and settle cases on behalf of the city. To him it is not clear. Maria Luise stated at the end of the day, when lawsuits are brought against the city, it is the mayor who gets deposed, signs the interrogatories, submits the request for production of documents, and Mayor Christenson has been required in the past to sign settlements. Further, when she was practicing representing other cities, such as Lowell and Everett, the mayor always signed off on the settlement agreements. And, if there was a settlement that needed an appropriation the agreement would always stipulate it was pending approval of appropriation by both the Mayor and the City Council. This is the process of checks and balances. Attorney McNeil agreed, the mayor must sign off on settlements. For the sake of full disclosure, Councillor O'Malley informed the Body that he did have

a conversation with Mayor Christenson, using his best judgment not to say anything out of turn, but to express some of his observations throughout this process.

Councillor Spadafora observed the Council has spent more time on this case than when the Patrolman's Union wanted to sue the city for \$10 million. Back then nobody was pushing as hard for a settlement. When they did finally decide to settle, Mayor Christenson did not approve and Malden ended up winning that case. Especially since this is a declaratory case the worst-case scenario is that the court will send BB back to come before the Council at which point a vote will be taken. No settlement offer should be entertained. Let the court sort it out and if BB prevails, they can then come before the Council.

A motion was made by Councillor Sica, seconded by Councillor Winslow to reject the current settlement offer from BB. 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

Councillor Sica confirmed that no counteroffer will be sent back to opposing counsel. That point was confirmed. Attorney McNeil offered a point of information that if the city did decide to settle with Benevolent, it could very well affect the Driss case, which is coming up on March 18.

Councillor McDonald reiterated the last substantive point that was rejected from this offer was to not consider the buffer zone while deliberating the special permit. They then inquired if Mayor Christenson opposes this settlement offer on ethical or legal grounds. Maria Luise said the plaintiff setting the criteria on which the City Council will vote a special permit is out of line if not illegal. Also, BB are demanding a provision that is only allowed for their business and not all marijuana establishments to open within the 75' buffer zone. Councillor McDonald asked if the Council is allowed to issue a special permit under these grounds even if they wanted to. If not, then a response should be issued explaining so. They are not comfortable refusing the settlement offer without a proper explanation and wishes to show the Body gave careful consideration to the offer in good faith.

Councillor O'Malley stated the City of Malden does have specific examples of making settlement offers that do allow specific properties to open without complying with zoning, citing the Memmola Agreement. His point was countered, the only reason that was allowed is because the zoning was changed in the middle of that company's project which caused a hardship, so the MRA settled, allowing the company to utilize the zoning in effect to their original building project.

Councillor O'Malley drew a parallel from that example to this that marijuana establishments were initially told they could get zoning relief from the City Council as part of the special permit process but then were told by the Building Commissioner and CLEC to get a variance before the Board of Appeal. Councillor O'Malley is suggesting that when the ordinance was written, it did not fully reflect what the Council intended. Councillor Spadafora argued that there was no confusion on his part when that ordinance was written and it fell much in line with other cities that were writing similar ordinances at that time. The owners of BB were fully aware of the process as the ordinance

was being written because they were in attendance at every sub-committee meeting during that time frame.

Attorney McNeil was instructed to express to the plaintiff that the Council did not purposefully keep them waiting for no good reason but gave significant consideration to their provisions and what may have potentially been counteroffered but ultimately could not come up with an agreement.

A motion was made by Councillor Spadafora, seconded by Councillor Linehan to approve the Executive Session meeting minutes from February 11, 2025, Paper 83-25 regarding Benevolent Botanicals (BB) and 926 Eastern Avenue v. The City of Malden. 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

A motion was made by Councillor McDonald, seconded by Councillor Crowe to table the Executive Session meeting minutes from February 25, 2025, Paper 116-25 regarding Benevolent Botanicals (BB) and 926 Eastern Avenue v. The City of Malden until Councillor Colón Hayes is in attendance to review. 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

Councillor O'Malley announced another good reason for tabling these minutes until Councillor Colón Hayes is in attendance is that the Executive Session on February 25 is subject to an Open Meeting Law complaint filed by Councillor Sica related to Councillor Colón Hayes' posts about potential topics the Body discussed both prior to and at this meeting of the 25th.

A motion was made by Councillor Sica, seconded by Councillor Spadafora to exit Executive Session and adjourn the Council, 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

Executive Session was adjourned at 8:01 PM.

Minutes compiled by City Clerk Carol Ann Desiderio

At a duly posted Executive Session on March 11, 2025, a motion was made by Councillor Spadafora, seconded by Councillor Sica to approve the above meeting minutes, as amended with the proper spelling of "Memmolá", 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.

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.