

Executive Session Meeting Minutes regarding Paper 335-23
Benevolent Botanicals et al v. City of Malden
September 26, 2023

Order: That the City Council will vote to go into Executive Session with legal counsel for the City 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 Council meeting on September 26, 2023, a motion was made by Councillor Sica seconded by Councillor Condon to enter into Executive Session, order was approved by a 9-0 roll call vote.

Yea- Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Sica, Spadafora, Winslow
Nea- Zero

Absent- Councillors Murphy and Simonelli were absent.

In attendance were Councillors Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Sica, Spadafora, Winslow.

Councillors Murphy and Simonelli were absent.

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

The meeting opened with Acting 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. 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.

The reason for this evening's meeting is because the Legal Department received communication from Benevolent Botanicals and 926 Eastern Avenue, LLC (BB) with another settlement proposal since the last meeting of September 12, 2023. A copy of the proposal is attached to the last page of this document. The proposal is rather lengthy and includes five main contingencies. Attorney McNeil read the proposal into the record of this meeting but for purposes of these minutes, the proposal may be found attached to this document.

After the reading of the proposal, Acting Council President Spadafora opened the room for questions. Councillor McDonald immediately noted of the five contingencies, none of them specifically noted the Council was mandated to approve the paper introducing an amendment to MCC 12.12.190(F)(1). It was established that if the City were to accept this offer, but the Council voted against said amendment change, BB would resume litigation, as is evidenced by item three of the five items outlined. The proposal also calls for the issuance of all permits, approvals, and a host

community agreement. Councillor Spadafora pointed out that City Council does not have authority to speak for all Boards, Commission, and/or Departments involved in issuing what is being called for in this arrangement.

Councillor Sica observed neither this settlement offer, nor the last one, are issues appropriate for discussing or voting on during Executive Session. Further, if there is any Member of Council who wishes to put forth such an amendment, it is unlikely to be ordained since that was previously done and the votes were not there to support the paper. She views both offers to be a waste of the Council's time as they do not have jurisdiction to approve either the terms or the time frames demanded of said terms. Also, this settlement offer is again asking the Council to sidestep the Board of Appeal but the BOA decision is the one thing the court has upheld so far in this case. Councillor Condon opined BB is aware the City is not in the position to accept such terms and they are only offering these settlements so they may appeal to the Courts that Malden is unwilling to work towards compromise.

Councillor Linehan is not opposed to reconsideration of where the lines for buffer zones are drawn as a future discussion but now, in the middle of this lawsuit, does not seem like the appropriate time for such action. Councillor O'Malley agrees that in the future the ordinance needs to be looked at again, but he is not advocating acceptance of this offer.

Attorney McNeil gave great care in explaining the only State mandated buffer zone is one regarding schools. Any other buffer zones the City wishes to implement are done so at the City's own discretion. Residential, religious, etc., reasons for buffer zones are allowable according to State statute. When Malden's ordinance was originally enacted, the school buffer zone was from property line to property line. The State has since changed the buffer for schools from the geometric center of the school to the geometric center of the marijuana establishment. We may but are not required to make any such change with our other marijuana buffer zones. Additionally, all other buffer zones within Malden right now, are also measured from property line to property line. Such examples include setbacks, pools, decks, etc.

A motion was made by Councillor O'Malley, seconded by Councillor Sica, to instruct Attorney McNeil to refuse this settlement offer and to inform BB that the Council will not entertain any future offers which ask the Body to presuppose any terms outside of their authority or jurisdiction.

The motion passed by the following roll call vote:

Yea- Colón Hayes, Condon, Crowe, Linehan, McDonald, Sica, Spadafora, Winslow

Nea- Zero

Abstain- O'Malley

Absent- Murphy, Simonelli

With the close of discussion, a motion was made by Councillor Sica, seconded by Councillor O'Malley to exit Executive Session, motion passed by the following roll call vote:

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

Nea- Zero

Absent- Murphy, Simonelli

Executive Session was adjourned at 8:02 PM.

Minutes compiled by City Clerk Carol Ann Desiderio.

Benevolent agrees to forego pursuit of a cultivation special permit for a four-year period, beginning from the effective date of any settlement agreement. In exchange, our clients ask that the City Council take the following actions:

1. Within one week of signing the settlement agreement, have at least one member of the City Council introduce a paper to amend Section 12.12.190(F)(1) of the Malden Code as follows:

"The location of Marijuana Establishment shall comply with the following buffer zones, all distances as measured from the Geometric center of the proposed Marijuana Establishment to the closest entrance of a property that, as of the date of filing of the petition for a special permit for the Marijuana

Establishment, is lawfully used for the following; provided, that if there is an impassable barrier within these distances, then the buffer zone distance shall be measured along the center of the shortest publicly-accessible pedestrian travel path from the geometric center of the proposed Marijuana Establishment to the geometric center of the nearest property type listed below."

2. Within three weeks of the above paper being filed, have the City Council and Planning Board hold the necessary hearings for full and complete consideration of said paper.
3. Within three weeks of the City Council and Planning Board holding the foregoing hearings, have the City Council vote to ordain said paper.
4. Should the City Council ordain the paper, then within three weeks of ordaining said paper, have the City Council hold a hearing on Benevolent's special permit application, with the understanding that Benevolent shall not be required to submit a new special permit application and that the application previously submitted in July 2022 shall be given full operative effect as a timely application.
5. Should the City Council approve Benevolent's special permit application, then the City will negotiate and vote on a Community Host Agreement with Benevolent within 30 days of the vote on Benevolent's special permit application.

In exchange for the foregoing, Benevolent and 926 Eastern Avenue, LLC agree to submit joint motions with the City to stay the two matters presently before the Land Court for a period of roughly 90 days as the process outlined above moves forward and, upon completion of the settlement terms, including the issuance of all permits, approvals, and an HCA, file stipulations to dismiss the two matters.

We believe that these settlement terms benefit all involved parties. As the City may know, Section 12.12.190 was drafted and ordained prior to the present iteration of 935 CMR 500. The paper proposed in this settlement offer would ensure that the City and Section 12.12.190 fully complies with state regulations (in particular, 935 CMR 500.110(3)). We are more than happy to discuss this offer with you in further detail should you have any questions. Should it be helpful for the discussion, I am also happy to personally appear at an Executive Session for the sole purpose of extending the offer and answering questions members of the City Council may have about the offer. As a member of the Wayland Select Board, I fully appreciate the sanctity of Executive Session, and therefore would certainly excuse myself in advance of any deliberation or discussion of the offer.

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.