

Executive Session Meeting Minutes regarding Paper 296-24
Robert Zeraschi v. City of Malden
June 25, 2024

Order: That the City Council will vote to go into Executive Session with legal counsel for the City regarding the matter of Zeraschi 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 June 25, 2024, a motion was made by Councillor Condon, seconded by Councillor O'Malley to enter into Executive Session, order was approved by a 10-0 roll call vote.
Yea- Colón Hayes, Condon, Crowe, McDonald, O'Malley, Sica, Simonelli, Spadafora, Taylor, Winslow
Nea- Zero
Absent- Zero
Did not vote- Linehan

In attendance during the Executive Session were Councillors Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Sica, Spadafora, Taylor, Winslow.
Absent- Simonelli

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

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. The City of Malden has active cases ongoing 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 during the Executive Session of April 30, 2024, the Council asked City Solicitor Alicia McNeil for an opinion on if the appeal on Zeraschi v. City of Malden was worthy of moving forward.

Robert Zeraschi owns the open-air parking lot located at 235 Washington Street across from Oak Grove Train Station. When Malden voted to increase the open-air lot application fee from \$50 to \$100 per spot, paid annually, Zeraschi refused to comply with the application process. This led to \$100,000 in compliance tickets, which Zeraschi refused to pay, opting instead to bring the City to court. The ruling came down against the City, with the judge stating the \$100 is more of a tax than it is a regulatory fee. Solicitor McNeil submitted a notice of appeal, which had to be done within thirty days, as a matter of preserving the City's rights.

During this evening's update, Solicitor McNeil expressed her support for moving forward with the appeal. If this ruling is allowed to stand, it may set precedence for other fees the City charges for certain services, leading Malden to lose other streams of revenue. This is a point that was raised by

Councillor McDonald during the last meeting and Solicitor McNeil is in full agreement with the concern. As the notice of appeal has already been filed, Solicitor McNeil is now waiting for the local court to send the case up to the Superior Court, as which point the process will be able to progress.

Councillor Spadafora commented on how the City has a number of different fees, licenses, applications, permits, inspections, etc., that are charged for so how is it the City may not charge what it is charging for parking lots? Councillor Sica stated Malden is the only one of the surrounding cities that charges a fee for open-air parking lots and the ordinance will ultimately need to be changed to accommodate this court ruling. One option would be to stop charging fees on open-air parking lots, another option would be to bring the fee back down from \$100 to \$50.

The court ruled that the only reason Malden raised the per spot parking fee was as a revenue grab, not because costs demanded the rise in price. This determination was based on court review of the video of the City Council meeting when the vote was taken.

Councillor Taylor argues there is justification to increase fees annually to remain in line with the rising cost of business. Councillor McDonald believes it is an unreasonable standard by the court to unitize every single fee assessed by the City. He instead believes what the court is saying is that the increase was arbitrary and capricious, but it is worth not having this determination built into case law now. He supports following through with this appeal process.

Councillor O'Malley agreed that the rising cost of fees are now and can be justified by the runaway costs currently happening with pension obligations, healthcare, inflation, etc. All expenses in the city budget are increasing, which can be identified and applied to the cost of fees and permits throughout the city. It was then pointed out to Councillor O'Malley that this particular argument is moot because that part of the case was already ruled on and failed on appeal. We are not able to provide any new evidence.

Solicitor McNeil's explained that it is allowable for the City to raise their fees so long as it is explained and justified by the cost of doing business, not just for the sole purpose of charging more for it's own sake.

Councillor McDonald asked if the record could reflect the Body's appreciation to Solicitor McNeil for her defense in this matter.

The purpose of this Executive Session was for informational purposes only. There is no ask and therefore no need for a vote.

With the close of discussion, a motion was made by Councillor Crowe, seconded by Councillor McDonald to exit Executive Session, motion passed by the following roll call vote:

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

Nea- Zero

Absent- Simonelli

Executive Session was adjourned at 10:55 PM.

Minutes compiled by 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.

Pursuant to M.G.L. c. 30A, s. 22(g)(1), and with the approval of Council President Linehan and City Solicitor McNeil, a periodic review of fifteen sets of Executive Session minutes was completed to determine if a number of minutes warranted continued non-disclosure. As of April 9, 2026 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 meetings of 4/20/2021, 3/8/2022, 2/28/2023, 4/30/2024, **6/25/2024**, 7/24/2024, and 3/11/2025.

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