



The Commonwealth of Massachusetts  
Office of the Attorney General  
One Ashburton Place  
Boston, Massachusetts 02108

## OPEN MEETING LAW COMPLAINT FORM

### Instructions for completing the Open Meeting Law Complaint Form

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

#### Instructions for filing a complaint:

- o Fill out the attached two-page form completely. Sign and date the second page. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
  - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
  - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
  - o Complaints may be filed by mail, by email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

#### Instructions for a public body that receives a complaint:

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address the allegations in the complaint. At the same time, the body must send the Attorney General a copy of the complaint and a copy of the response. The public body may delegate this responsibility to an individual member of the public body, its counsel, or a staff member, but only after the public body has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

#### Once the public body has responded to the complaint:

- o If you are not satisfied with the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, by email, or by hand, but only once you have waited for 30 days after filing the complaint with the public body. Mail may be sent to: The Division of Open Government, Office of the Attorney General, One Ashburton Place - 20<sup>th</sup> Floor, Boston, MA 02108. Emails may be sent to: [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by email at [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).



## OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

### Your Contact Information:

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Ext. \_\_\_\_\_

Email: \_\_\_\_\_

Organization or Media Affiliation (if any): \_\_\_\_\_

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual       Organization       Media

### Public Body that is the subject of this complaint:

City/Town       County       Regional/District       State

Name of Public Body (including city/  
town, county or region, if applicable): \_\_\_\_\_

Specific person(s), if any, you allege  
committed the violation: \_\_\_\_\_

Date of alleged violation: \_\_\_\_\_

## Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

## Review, sign, and submit your complaint

### **I. Disclosure of Your Complaint.**

**Public Record.** Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

**Publication to Website.** As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

### **II. Consulting With a Private Attorney.**

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

### **III. Submit Your Complaint to the Public Body.**

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

**Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_

*For Use By Public Body  
Date Received by Public Body:*

*For Use By AGO  
Date Received by AGO:*

Executive Session Meeting Minutes regarding Paper 365-25  
Tufts Construction, Inc. v. City of Malden  
September 30, 2025

Paper 365-25 Order: That the City Council will vote whether to go into Executive Session with legal counsel for the City regarding the matter of Tufts Construction, Inc., v. The City of Malden for the purpose 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 September 30, 2025, a motion was made by Councillor Sica, seconded by Councillor Crowe to enter into Executive Session to address Paper 365-25. Order was approved by a 9-1 roll call vote.

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

Nea- O'Malley

Absent- Simonelli

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

Absent was Councillor Simonelli

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

The meeting was called to order at 8:56 PM. Councillor O'Malley asked to be reflected as present in the attendance but also stated he wished to recuse himself from the meeting. He gave no reason or conflict of interest justification for wishing to be recused. Councillor O'Malley was asked to vacate the meeting room, to which he refused. He was told that he cannot be both present and recused at the same time. Again, he refused to leave or offer any reasoning. President Linehan asked to have this conflict reflected in the meeting minutes. Councillor O'Malley spent the rest of the meeting sitting in the corner taking notes.

Assistant City Solicitor Rumley advised the room that all members, under any and all conditions, are still obligated to adhere to the rules of Executive Session regarding confidentiality. Additionally, City Solicitor Alicia McNeil reminded 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.

There were no questions or comments posed pertaining to the laws of ES so Attorney McNeil proceeded.

The purpose of this evening's Executive Session is to discuss the packets of information that were anonymously sent to every Councillor regarding the lawsuit with Tufts Construction, Inc. Solicitor McNeil is concerned there are pieces of information included in these packets for which the

Councillors may require some understanding or context. As Mark Rumley is the lead attorney assigned to this case, he was asked to participate in this meeting.

It is the belief of the Solicitor's Office that the delivery of these packets borders on a violation of professional conduct. Further, deliveries made to the Council anonymously should not have been delivered to the members. If a member of the public wishes to bring an issue of city business to the attention of their elected representatives that constituent should make themselves known to the person they are addressing. Upon investigation, the City Solicitor's Office has determined who was responsible for the anonymous delivery. Those people are aware the City Council has the ability to make decisions regarding financial matters. It is the opinion of the legal team the objective of the delivery was to influence the actions of the deliberating body.

The background is this case was brought against the City of Malden and, specifically, City Engineer Yem Lip approximately four years ago by Tufts Construction, Inc. and personally by Peter Tufts, the company's President. Breach of contract, bad faith in contract, interference in advantageous business relationships and defamation are the complaints being made by Tufts. All of the intentional claims against the City of Malden were dismissed a couple years ago except breach of contract and interference in contractual relationships. The contract held with the city pertaining to this case is the 2018 W1 contract, on which Tufts had almost reached completion, and the 2019 W1 contract, which Tufts did not begin. A W1 contract has to do with water infrastructure in the streets.

A third-party corporation called Engineer Lip for a referral on Tufts Construction. Lip responded the company is typically on time and does good work, but Malden had difficulty with too many change orders and the rising contract price. Further Lip indicated Peter Tufts can be a hot head, which is the basis of the defamation claim. In September 2021, Malden terminated the 2018 W1 contract because Tufts had not done any work on it in quite some time. This letter of termination was sent by City Solicitor Fallon to Tufts Construction and to the company that held the bond on said contract. Tufts alleges he was unable to get bonding for contracts in any other city or town due to this contract termination. During the trial, it was discovered Tufts did in fact receive subsequent bonds.

Malden's legal team wanted to have entered into evidence that Peter Tufts was a convicted felon, dating back to October 2024 wherein he was convicted in United States District Court of both tax and mortgage fraud. After some pre-trial debate, Judge Hornstein ruled that the conviction would be allowed to be entered into evidence.

During cross examination of former Malden employee Glen Calla, who has a personal relationship with Peter Tufts, Attorney Zaheer Samee asked if Mr. Calla was aware a subpoena had been served by the United States Attorney on the City of Malden relative to Tufts Construction/Peter Tufts. The judge found the question not worded the particular way he had wanted it and did not allow the question. A couple days later, Attorney Rumley had Peter Tufts on cross examination and entered into evidence the information about Tufts' conviction on federal charges back in October 2024. In the second week of the trial, Yem Lip was on the stand being questioned by Attorney Samee.

At this point, there are three incidents Attorney Rumley wanted the Council to be made aware of before proceeding with what happened next during the trial:

1. Incident on Bainbridge Street at a Tufts Construction work site. Peter Tufts was yelling, using blue language with his crew in the open even as children are on their way to school. The officer providing the police detail asked Mr. Tufts to calm down the language: Mr. Tufts rejected that request in no uncertain terms. Again, the officer asked Mr. Tufts to calm down and filed a report on the incident.
2. A second incident on Main Street at a Tufts Construction work site involving a gas and a water leak. Mr. Tufts got into an argument with a resident. The officer providing the police detail intervened and again Mr. Tufts refused to listen. The situation escalated to the point of the officer putting Mr. Tufts in handcuffs. Given this situation unfolded at the time when National Grid employees were locked out during a labor dispute, and there was a gas leak in the neighborhood, the officer used his discretion to eventually let Mr. Tufts out of the handcuffs so he could attend to the work site. There is a police notation that a call was made to the station but there is no formal police report regarding this incident.
3. There was another incident mentioned when Mr. Tufts had a run in with the police on Kenmore Road. The specific details of which were not outlined during this executive session.

During the examination of Yem Lip by Attorney Samee, the questioning got very heated with several objections and interruptions by opposing council to Attorney Samee's line of questioning. In the heat of the moment there was confusion in the courtroom between all the differing accounts of Mr. Tufts' run-ins with the law. In the confusion the courtroom erupted, opposing council asked for a mistrial and the judge began questioning Attorney Samee. Judge did not issue an immediate mistrial but did say he would hear arguments in the morning and encouraged both sides to discuss settlement. The judge went as far as to offer his services as a mediator to this end. Malden agreed but Tufts' lawyers responded by saying they would respond to that offer at a later date. The next trial date is October 27, so there isn't a lot of time for them to decide if they wish to go into mediation.

Attorney Rumley contacted opposing council to ask for their settlement number. Opposing council was happy with the way the case was heading and did not want to settle; their number went from \$750,000 to \$1.5m. Despite being happy with the way the case was going, the next morning (August 6) opposing council argued for and was granted a mistrial, the judge calling Attorney Samee's line of questioning, serious misconduct. Afterwards opposing council filed motions for attorney fees in the amount of over \$200,000. Malden filed an objection, but Judge Hornstein ultimately allowed the motion in part. \$500 an hour per attorney for the court time hours totaling \$32,000.

It was also noted that after the mistrial was ruled, opposing counsel attempted to pull back the request; this wasn't allowed as the judge had already made his ruling. Tufts' legal team had alternative requests in their mistrial motion, one of which was an instruction to the jury that Malden was acting in bad faith. It became clear they were looking mostly to discredit Malden's legal team as opposed to actually achieving a mistrial, as now both sides must begin the entire process again.

The discussion then redirected back to the packets of information that were anonymously sent to every Councillor. Attorney Rumley had reached out to each Councillor to inquire if there was any contact made with anyone on this Council by the other party in this case. The opposing party making contact with those who are represented by legal council creates difficulties, especially if that

contact was made by an opposing attorney. The suspicion is that these packets were sent to attempt to influence the position of the city to raise the price of settlement on this case. The person who hand delivered the packets refused to identify themselves and told the constituent representative on the fourth floor the Council had requested the enclosed information. A claim denied by every Councillor when asked if they had made such a request.

Attorney Rumley went on to explain the details of a billing dispute between Tufts Construction and the City regarding rock removal on Webber Street, that is relevant to this case. Rock/ledge is excavated and removed at \$200/cu yd for loads over three cubic yards. Trench is billed at \$25/cu yd. Tufts billed Malden for almost the whole job being rock or ledge. The Engineering Department, who was supervising the job, stated much of what was billed for rock was actually trench. The difference in price was almost \$150,000.

Councillor Winslow inquired if a vote of the Council would be required to pay out the \$32,000 as ordered by Judge Hornstein. For now, there are no decisions being made on paying this out until after the appeal process has been exhausted.

Councillor Sica thanked the legal team for bringing this update to the Body, stating there is so much disinformation online about this case, it is good to have an accurate accounting of the situation. Attorney Rumley reminded the room that online commenting is often done in speculation by people who are not privy to all the facts. It is the responsible thing to do for parties connected to the case to withhold public comments.

Councillor Sica went on to say that she did receive phone calls from people involved with this case asking her for intervention. Councillor Sica stated that those phone calls were immediately reported to the Solicitor's Office. She further opined that if opposing counsel was so confident with their case, why would they be seeking relief from the City Council?

A motion was made by Councillor Crowe, seconded by Councillor Spadafora to exit Executive Session and adjourn the Council, motion passed by a 9-0 roll call vote, with Councillor O'Malley not voting.

Yea- Colón Hayes, Condon, Crowe, Linehan, McDonald, Sica, Spadafora, Taylor, and Winslow  
Nea- Zero

Absent- Simonelli

Executive Session was adjourned at 9:53 PM.

Minutes compiled by City Clerk Carol Ann Desiderio

At a duly posted Executive Session on February 3, 2026, a motion was made by Councillor Sica, seconded by Councillor O'Malley to approve and release the September 30, 2025 minutes whole and unredacted upon the court's acceptance of the settlement agreement between Tufts Construction and City of Malden. The motion passed by a unanimous roll call vote.

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

Nea- Zero

Absent- Zero

Minutes released from non-disclosure March 11, 2026.

Executive Session Meeting Minutes regarding Paper 39-26  
Tufts Construction, Inc. v. City of Malden  
January 20, 2026

Paper 39-26 Order: That the City Council will vote whether to go into Executive Session with legal counsel for the City regarding the matter of Tufts Construction, Inc., v. The City of Malden, Middlesex Superior Court Docket #2181CV01248, for the purpose of Exemption Three Massachusetts General Laws Chapter 30A Section 21(a)(3) for an update on recent developments regarding a tentative resolution to the civil action, 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 January 20, 2026, a motion was made by Councillor Sica, seconded by Councillor Luong to enter into Executive Session to address Paper 39-26. Order was approved by a 10-0 roll call vote.

Yea- Colón Hayes, Condon, Crowe, Linehan, Luong, McDonald, Sica, Simonelli, Taylor, and Winslow

Nea- zero

Absent- zero

Councillor O'Malley raised objection to the late posting of this meeting under the provisions of M.G.L. c. 30A, s. 20(b) as he does not believe movement in the Tufts lawsuit to be an emergency situation. He stated that the lawsuit was already known to the City and to members of the Council. Further, Councillor O'Malley stated there is no cause to enter into Executive Session because he has already heard from open court earlier in the afternoon that parties had agreed to a settlement.

Councillor O'Malley then left the dais, sat at the department head table and refused to respond to the Clerk during the call of the roll. Clerk Desiderio stated for the record that Councillor O'Malley did not wish to go on record with his vote. Nevertheless, Councillor O'Malley did enter into Executive Session with the rest of the Body upon adjournment of the open Council session.

In attendance were Councillors Colón Hayes, Condon, Crowe, Luong, Linehan, McDonald, O'Malley, Sica, Simonelli, Taylor, and Winslow.

Also in attendance was City Solicitor Alicia McNeil, Assistant City Solicitors Mark Rumley and Zaheer Samee, Special Assistant to the Mayor Maria Luise, Clerk of Committees Lisa Cagno, City Clerk Carol Ann Desiderio, and Attorney Jeff Blake from KP Law.

The meeting was called to order at 7:33 PM.

During the attendance roll call, Councillor O'Malley refused to speak when his name was called. There was some discussion about whether a member may be in attendance if they are refusing to participate and many questioned why Councillor O'Malley would have even joined the meeting.

City Solicitor Alicia McNeil reminded 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. Councillor O'Malley asked if this was true also for the public information that was discussed in open court earlier in the day. Attorney Rumley advised that what was said in open court is not privileged information and asked Councillor O'Malley if he was now present at this meeting. Councillor O'Malley responded, "That's none of your business." With this, the room erupted with shocked response to this exchange. Clerk Desiderio quieted the room and Attorney McNeil proceeded to introduce Attorney Jeff Blake from KP Law, who is aiding the legal team. She then turned the meeting over to lead counsel on this case, Attorney Rumley who presented to the Body on the status of the Tufts case after parties met in court earlier in the day.

Trial was set to begin on this day, Tuesday, January 20<sup>th</sup>. Last week there were a number of pre-trial motions that were before the court, too numerous to elaborate but they are online for public viewing. During the course of this lawsuit, the judge repeatedly encouraged parties to come to a resolution to the case. Judge Adam Hornstein, who heard the first trial, conducted mediation to the parties on October 14, 2025, which proved unsuccessful. The second trial was then assigned to Judge Michale Pineault (pronounced Pina).

Over the past weekend, various discussions were held between the attorneys for both sides, which resulted in a tentative agreement. Judge Pineault was made aware of the agreement but the actual structure of the settlement, with specific details, must still be worked out. Judge Pineault entered a nisi order for thirty days. The purpose of this meeting is to bring these terms to the Council, prior to anything moving forward, for a full update as to what is happening and what still must be done within the next month.

Attorney Rumley then turned the meeting over to Attorney Blake to explain the tentative agreement. During the mediation, Tufts' ask was \$4.5 mil; the City was at \$550,000. Tufts negotiated such a high number, perhaps because during the first trial they were able to submit for possible lost contract opportunities of \$194 mil. They had a breach of contract claim that allows for consequential damages and a tort claim of defamation which often comes with much higher damage amounts.

Last Friday, January 16, Malden's legal team went to court for pretrial motions, one of which argued to eliminate such high damage amounts. The Judge did not rule on that but did make it clear from the bench that he was skeptical about Tufts having those damages in their case. The concern with having such high amounts during a jury trial is that the ceiling being so high, it is difficult to anticipate how much the jury might award. Opposing counsel, realizing that number wouldn't be entertained for settlement, came down to \$1.7 mil. And if the payments were split over time, they would be expecting more. After much back and forth throughout the course of the weekend, both sides ultimately agreed to \$1.2 mil with the payment split up over three fiscal years. \$300,000 up front; \$450,000 in fiscal year '27; \$450,000 in fiscal year '28.

Tufts also asked Malden to release the 5% retainage that was withheld when the last contract had been terminated. The retainage was worth \$47,860.22. 5% holdback was written into the contract and represents the standard amount on most construction projects.

Tufts also requested for Malden to release the bond. When the 2019 W1 and the 2020 W1 contracts were terminated, then City Solicitor Kate Fallon sent notice to both Tufts Construction and the company that held the bond. The bond company interpreted that as a claim on the bond, but no

claim on the bond was actually ever made by Malden. The City has agreed to 'release' what they never did.

Councillor Simonelli asked how the negotiated amount went from \$550,000 to \$1.2 and if the difference in the amount reflects damages. Attorney Blake explained exposure, which is the risk of being held responsible in a lawsuit for financial loss. [REDACTED]

[REDACTED] Finding an amount that is acceptable to both sides, takes away the uncertainty of judgement amounts that could range anywhere from \$4 mil exposure to \$194 mil, that opposing counsel was originally proposing. This deal also has the added benefit of being divided up between multiple fiscal years, offering some relief to the city budget.

Councillor McDonald inquired if their recollection was correct that Peter Tufts was the same man reportedly yelling at his work crew in a vulgar way in front of children walking to school and giving the police detail a hard time with his generally bad behavior. Their recollection was correct and in fact, the police officer involved in that situation has since left the MPD and now resides in Florida, making his cooperation as a witness in this case difficult. That incident was only one example of what led City Engineer Yem Lip to characterize Peter Tufts as 'can be a hot head' to a third party who was seeking a job reference on the company. It should be noted, during that reference Mr. Lip also said Tufts Construction does good work and that Malden has no problem with the LSLR contracts the company did but that Mr. Tufts' relationship with residents can be 'strenuous'. Strenuous is the word Mr. Tufts considered to be defamatory.

Councillor McDonald asked if truth is a valid defense against defamation. Yes, but the City's argument to that point is inhibited by the absence of the former police officer. Chief Cronin, who was the Captain on duty at the time of this incident was not on scene as a witness at the time this all occurred. It is not enough to have supporting facts in the case; they have to be able to be proven and believed by a jury.

With that line of questioning over, Councillor Simonelli asked what was specifically being asked of the Body at this time. Attorney Blake explained that, as the Chief Executive Officer, Mayor Christenson has the authority to approve the settlement terms for the City. This meeting is to notify the Council of the current status and make them aware they will be asked to authorize the appropriations for the settlement payouts.

Attorney Blake was careful to point out that the mediation session was presided over by the judge who heard the first case. Judge Hornstein indicated that he and his clerk believe Peter Tufts believed was a very sympathetic plaintiff. This is a man who never finished high school, worked his way into his owning his own business, provided employment opportunities to several crew members. [REDACTED]

[REDACTED] The overall analysis of the case may be different if it were being tried in front of a judge but with all things considered, this settlement makes sense. Councillor Winslow also pointed out that another dilemma facing the city with a jury trial is that it looks like government versus a small business owner.

Councillor Linehan asked if the settlement payments would be made out of free cash. Councillor O'Malley stated his belief they would be paid out of the water and sewer enterprise fund. Councillor Colón Hayes asked for clarification on what happens next. Council approval is not needed to move forward but it will be necessary when the appropriation order comes down. There is no vote being asked for at this meeting.

Councillor O'Malley asked Attorney Rumley where he got his settlement authority. Mayor Christenson informed the legal team over the weekend as to what they had the authority to offer. That offer is not finalized until it was accepted and even then it is not finalized because there has to be a settlement agreement with terms in place. Councillor O'Malley argued the Mayor doesn't have settlement authority and that he is in this meeting for the purpose of legal ethics reasons. As discussion ensued between Attorney Rumley and Councillor O'Malley whether Councillor O'Malley is properly informed on this matter, a motion to adjourn was quickly made.

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

Yea- Colón Hayes, Condon, Crowe, Linehan, Luong, McDonald, Sica, Simonelli, Taylor, and Winslow

Nea- Zero

Absent- Zero

During the adjournment roll call, Councillor O'Malley refused to speak when his name was called. Executive Session was adjourned at 8:00 PM.

Minutes compiled by City Clerk Carol Ann Desiderio

At a duly posted Executive Session on February 3, 2026, a motion was made by Councillor O'Malley, seconded by Councillor Crowe, to approve and release the January 20, 2026 minutes as redacted, due to the determination that unredacted minutes would defeat the lawful purpose of M.G.L. c. 30A, s. 22(f), upon the court's acceptance of the settlement agreement between Tufts Construction and City of Malden. The motion passed by a unanimous roll call vote.

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

Nea- Zero

Absent- Zero

Minutes released from non-disclosure March 11, 2026.

Executive Session Meeting Minutes regarding Paper 77-26  
Review of Minutes Tufts Construction, Inc. v. City of Malden  
February 3, 2026

Paper 77-26 Order: That the City Council will vote whether to go into Executive Session with legal counsel for the City, in accordance with Exemption Seven Massachusetts General Laws Chapter 30A Section 21(a)(7), to comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements, in order to act on the periodic review of those Executive Session minutes listed herein to determine if release of records is appropriate at this time or if continued non-disclosure is warranted.

Council vote is required prior to release of the Executive Session minutes of the following dates:

- September 30, 2025, Paper 365-25
- January 20, 2026, Paper 39-26

(Roll Call Required)

During the City Council meeting on February 3, 2026, a motion was made by Councillor Sica, seconded by Councillor Taylor to enter into Executive Session to address Paper 77-26. Order was approved by a 10-0 roll call vote.

Yea- Colón Hayes, Condon, Crowe, Linehan, Luong, McDonald, Sica, Simonelli, Taylor, and Winslow

Nea- zero

Present- O'Malley

Absent- zero

In attendance were Councillors Colón Hayes, Condon, Crowe, Luong, Linehan, McDonald, O'Malley, Sica, Simonelli, Taylor, and Winslow.

Also in attendance was City Solicitor Alicia McNeil, Clerk of Committees Lisa Cagno, and City Clerk Carol Ann Desiderio.

The meeting was called to order at 7:14 PM.

This evening's review was initiated by an Open Meeting Law request made by Brian DeLacey of 1 Earl Street and Bruce Friedman of 8 Marvin Street, both of Malden. Councillor Crowe immediately opened discussion with the observation that even though a settlement had been reached, all provisions had not yet been finalized so it may not be said that this case is closed.

Clerk Desiderio displayed both sets of minutes on the screen of the conference room for those who didn't have the time to review prior to this meeting. No mention was made to indicate edits were necessary for September 30<sup>th</sup> minutes. One spelling error was identified and corrected on January 20<sup>th</sup> minutes.

City Solicitor Alicia McNeil's recommendation is that September 30, 2025 minutes may be released without redactions. The only concern came from Councillor McDonald who suggested holding the minutes in continued non-disclosure until the agreed upon settlement has been accepted by the judge and the case is officially closed. As the parties in this case had only 30 days to submit all provisions to the court, this non-disclosure wouldn't take too much longer but would protect the city's negotiating position were something to fall through last minute.

Without further discussion, a motion was made by Councillor Sica, seconded by Councillor O'Malley to release the September 30, 2025 minutes whole and unredacted upon the court's acceptance of the settlement agreement between Tufts Construction and City of Malden. The motion passed by a unanimous roll call vote.

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

Nea- Zero

Absent- Zero

City Solicitor Alicia McNeil's recommendation is that January 20, 2026 minutes may be released with only two sentences redacted. The redacted information speaks to strategy and could have an effect on the City's negotiating position in future litigation.

A motion was made by Councillor O'Malley, seconded by Councillor Crowe, to release the January 20, 2026 minutes as redacted, due to the determination that unredacted minutes would defeat the lawful purpose of M.G.L. c. 30A, s. 22(f), upon the court's acceptance of the settlement agreement between Tufts Construction and City of Malden. The motion passed by a unanimous roll call vote.

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

Nea- Zero

Absent- Zero

A motion was made by Councillor Crowe, seconded by Councillor Taylor to exit Executive Session and adjourn the Council, motion passed by an 11-0 roll call vote.

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

Nea- Zero

Absent- Zero

Executive Session was adjourned at 7:40 PM.

Minutes compiled by City Clerk Carol Ann Desiderio

At a duly posted Executive Session on February 17, 2026, a motion was made by Councillor Sica, seconded by Councillor Taylor to approve the above meeting minutes, motion passed by an 11-0 roll call vote.

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

Nea- zero

Absent- zero

During the same meeting, a motion was made by Councillor Sica, seconded by Councillor O'Malley to release the minutes from February 3, 2026 whole and unredacted upon the court's acceptance of the settlement agreement between Tufts Construction and City of Malden, motion passed by an 11-0 roll call vote.

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

Nea- Zero

Absent- Zero

Minutes released from non-disclosure March 11, 2026.

Executive Session Meeting Minutes regarding Paper 108-26  
Review of Minutes Benevolent Botanicals et al v. City of Malden  
February 17, 2026

Paper 102-26 Order: That the City Council will vote whether to go into Executive Session with legal counsel for the City, in accordance with Exemption Seven Massachusetts General Laws Chapter 30A Section 21(a)(7), to comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements, in order to act on the periodic review of those Executive Session minutes listed herein to determine if release of records is appropriate at this time or if continued non-disclosure is warranted.

Council vote is required prior to release of the Executive Session minutes of the following dates:

- February 3, 2026

Additionally, draft Executive Session minutes from February 3 and February 10, 2026 will be reviewed for final approval.

(Roll Call Required)

During the City Council meeting on February 17, 2026, a motion was made by Councillor Sica, seconded by Councillor Simonelli to enter into Executive Session to address Paper 108-26. Order was approved 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

In attendance were Councillors Colón Hayes, Condon, Crowe, Luong, Linehan, McDonald, O'Malley, Sica, Simonelli, Taylor, and Winslow.

Also in attendance was City Solicitor Alicia McNeil, Clerk of Committees Lisa Cagno, and City Clerk Carol Ann Desiderio.

The meeting was called to order at 7:48 PM.

This evening's review was initiated by an Open Meeting Law request made by Bruce Friedman of 8 Marvin Street, Malden to release the minutes from February 3, 2026 regarding the Tuft's Construction v. City of Malden lawsuit.

The meeting opened with City Solicitor McNeil introducing the two above noted sets of meeting minutes from previous Executive Sessions. She reminded the Body that both sets of minutes involve litigation strategy on cases that are not totally resolved within the court system and so are still confidential. The meeting of February 3<sup>rd</sup> was about the Tufts Construction lawsuit, February 10<sup>th</sup> about Benevolent Botanicals. Solicitor McNeil's recommendation is to keep February 3<sup>rd</sup> minutes in continued non-disclosure until the settlement agreement with Tufts has been accepted by the court. Additionally, to keep the February 10<sup>th</sup> minutes also in continued non-disclosure until the appeal process with Benevolent Botanicals has been decided, at which point all past ES minutes may be released.

For those Councillors who did not review the meeting minutes in advance of this session, City Clerk Desiderio brought them up on the screen for review. There were no questions about the minutes or requests for edits.

A motion was made by Councillor Sica, seconded by Councillor Taylor to approve the meeting minutes from February 3, 2026 regarding Tufts Construction, motion passed by an 11-0 roll call vote.

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

Nea- Zero

Absent- Zero

A motion was made by Councillor Sica, seconded by Councillor O'Malley to release the minutes from February 3, 2026 whole and unredacted upon the court's acceptance of the settlement agreement between Tufts Construction and City of Malden, motion passed by an 11-0 roll call vote.

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

Nea- Zero

Absent- Zero

Clerk Desiderio asked for and received confirmation from Solicitor McNeil that there was not anything written in the February 3<sup>rd</sup> minutes that would require redaction prior to release of the record. With that, the Clerk continued on with the review of minutes from February 10, displaying them on the screen for anyone who hadn't already examined them. There were no questions about the minutes or requests for edits.

A motion was made by Councillor O'Malley, seconded by Councillor Colón Hayes to approve the meeting minutes from February 10, 2026 regarding Benevolent Botanicals, motion passed by an 11-0 roll call vote.

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

Nea- Zero

Absent- Zero

Although the release of the February 10<sup>th</sup> minutes were not included in Mr. Friedman's records request that was the purpose of this evening's meeting, Councillor O'Malley made a motion to release these minutes for public consumption. Councillor Simonelli commented that the Benevolent Botanicals case hasn't fully closed. Councillor Winslow confirmed this to be accurate and that the Body is scheduled to discuss it further in Executive Session next week on February 24.

Councillor O'Malley argued that the Body cannot keep Executive Session minutes from being released if no privilege remains, which he believes is the case with the February 10<sup>th</sup> minutes. Councillor Winslow pointed out that these minutes contain litigation strategy as discussed in the last meeting, therefore the privilege does remain. Councillor O'Malley indicated he would entertain redactions but not full non-disclosure. Clerk Desiderio informed the room that the minutes in question are now also connected to an Open Meeting Law complaint that was filed by Councillor O'Malley, which will be posted on next week's agenda.

Councillors McDonald and Sica expressed support for releasing the February 10<sup>th</sup> minutes in conjunction with the established timeline determined for the entirety of the Benevolent Botanicals minutes but not by piece mail and out of context, and certainly not until the case has been fully settled with the court. Councillor O'Malley was not in agreement.

A motion was made by Councillor O'Malley, seconded by Councillor Colón Hayes to release the minutes from February 10, 2026, immediately subject to redactions as deemed appropriate by the City Solicitor, motion failed by a 3-8 roll call vote.

Yea- Colón Hayes, Condon, O'Malley

Nea- Crowe, Linehan, Luong, McDonald, Sica, Simonelli, Taylor, and Winslow

Absent- Zero

There was no further discussion.

A motion was made by Councillor O'Malley, seconded by Councillor Simonelli to exit Executive Session and adjourn the Council, motion passed by an 11-0 roll call vote.

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

Nea- Zero

Absent- Zero

Executive Session was adjourned at 8:08 PM.

Minutes compiled by City Clerk Carol Ann Desiderio

March 3, 2026 Communication from Council President Linehan: On February 19, 2026 a request was made by Bruce Friedman for the regular and executive session meeting minutes from the Malden City Council for the dates of February 10 and 17, 2026. Regular session minutes may be found in the Agenda Center of the City's website. In accordance with M.G. L. c. 30A, s. 22 (g) the public body's chair has conducted a review of the Executive Session minutes and has made the determination that those minutes from February 10 and 17 shall be approved and released in accordance with the completion of post-judgment actions on each of the respective court cases which were discussed during these sessions.

Minutes released from non-disclosure March 11, 2026.

Executive Session Meeting Minutes regarding Paper 102-26  
Review of Minutes Benevolent Botanicals et al v. City of Malden  
February 10, 2026

Paper 102-26 Order: That the City Council will vote whether to go into Executive Session with legal counsel for the City, in accordance with Exemption Seven Massachusetts General Laws Chapter 30A Section 21(a)(7), to comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements, in order to act on the periodic review of those Executive Session minutes listed herein to determine if release of records is appropriate at this time or if continued non-disclosure is warranted.

Council vote is required prior to release of the Executive Session minutes of the following dates:

- April 29, 2025, Paper 222-25
- March 11, 2025, Paper 142-25
- March 4, 2025, Paper 117-25
- February 25, 2025, Paper 116-25
- February 11, 2025, Paper 83-25
- February 4, 2025, Paper 61-25
- September 26, 2023, Paper 335-23
- September 12, 2023, Paper 316-23
- October 25, 2022, Paper 425-22

(Roll Call Required)

During the City Council meeting on February 10, 2026, a motion was made by Councillor Taylor, seconded by Councillor Simonelli to enter into Executive Session to address Paper 102-26. Order was approved 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

In attendance were Councillors Colón Hayes, Condon, Crowe, Luong, Linehan, McDonald, O'Malley, Sica, Simonelli, Taylor, and Winslow.

Also in attendance was City Solicitor Alicia McNeil, Clerk of Committees Lisa Cagno, and City Clerk Carol Ann Desiderio.

The meeting was called to order at 7:42 PM.

Prior to this evening's meeting seven of the nine sets of minutes, as indicated above, were approved to be finalized. The minutes from March 11, 2025 Paper 142-25, and April 29, 2025 Paper 222-25, are still in draft form.

A motion was made by Councillor O'Malley, seconded by Councillor Taylor to approve the meeting minutes, motion passed by a 11-0 roll call vote.

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

Nea- Zero

Absent- Zero

This evening's review was initiated by an Open Meeting Law request made by Brian DeLacey of 1 Earl Street, Malden. Discussion on this request was somewhat limited. Councillor Winslow noted that unless and until the Body knows if the City will appeal Judge Rubin's decision, they are unable to vote on whether to release the sets of ES minutes on the case.

Judge Rubin issued a decision in the case of Benevolent Botanicals et al v. City of Malden but the appeal process has not yet been decided or acted upon. The city has 30 days to file notice of intent to appeal. Up until the decision of whether or not to appeal is made, or the appeal period expires, attorney-client privilege remains intact. For these reasons, release of records would defeat the lawful purpose of the stated Executive Session.

City Solicitor Alicia McNeil informed the Body she has reviewed all nine sets of minutes and does not find any legal justification for any redactions, although at this time she is also not advocating releasing the records per the above noted concern.

Answering Councillor Winslow's question, Solicitor McNeil explained that if the city misses the 30-day window to file the notice of appeal, then they have no recourse for future action. She would like to file that notice as a place holder with the court and to afford her a proper amount of time to carefully review the 63-page decision. After such review, Solicitor McNeil will provide the Council with a written memo outlining any issues. Only after that time, would it be appropriate to release the minutes. Councillor Winslow asked for, and received, confirmation that Solicitor McNeil found no evidence in these nine sets of minutes that would betray legal strategy in future cases.

Councillor O'Malley, echoing a previous request by Councillor Colón Hayes, asked if the Body could post a separate order for Executive Session to discuss the court ruling and options for moving forward. Council President Linehan agreed there is a need for such a meeting, but the Legal Department needs time to pull all the information together, not just in regard to the court's 63-page decision but also what the ruling will mean for marijuana zoning in the city. Councillor O'Malley asked for this to be done sooner than later but Councillor Sica interjected it is premature to hold an Executive Session right away until all options for appeal may be considered. With that, the topic of conversation changed to avoid discussion on a matter that wasn't docketed for this session.

Councillor Colón Hayes reminded the City Clerk to include proper language in the response to Mr. DeLacey to indicate release of records would be pending court deadlines. Councillor McDonald inquired if it would be appropriate to make a motion for a standing order giving Council President authority to refuse release of minutes on any active litigation without the entire Body having to convene. Solicitor McNeil and Clerk Desiderio questioned if that is allowable per M.G.L. c. 30A, s. 22(g)(2). Solicitor McNeil stated she would research for clarification. At the March 11, 2025 Executive Session convened for this same exact request, a roll call vote of 10-0 empowered the Council President to reject any future requests made by Mr. DeLacey for release of Benevolent Botanicals ES minutes until the City Solicitor has determined the case is closed and the appeal process has been exhausted. This evening's situation is slightly different in that the case has been closed but the appeal is still pending, and there are two additional sets of minutes since that meeting was held.

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

A motion was made by Councillor McDonald, seconded by Councillor Sica to exit Executive Session and adjourn the Council, motion passed by an 11-0 roll call vote.

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

Nea- Zero

Absent- Zero

Executive Session was adjourned at 8:04 PM.

Minutes compiled by City Clerk Carol Ann Desiderio

At a duly posted Executive Session on February 17, 2026, a motion was made by Councillor O'Malley, seconded by Councillor Colón Hayes to approve the above meeting minutes, motion passed by an 11-0 roll call vote.

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

Nea- zero

Absent- zero

March 3, 2026 Communication from Council President Linehan: On February 19, 2026 a request was made by Bruce Friedman for the regular and executive session meeting minutes from the Malden City Council for the dates of February 10 and 17, 2026. Regular session minutes may be found in the Agenda Center of the City's website. In accordance with M.G. L. c. 30A, s. 22 (g) the public body's chair has conducted a review of the Executive Session minutes and has made the determination that those minutes from February 10 and 17 shall be approved and released in accordance with the completion of post-judgment actions on each of the respective court cases which were discussed during these sessions.

Minutes released from non-disclosure March 11, 2026.

Executive Session Meeting Minutes regarding Paper 116-25  
Benevolent Botanicals et al v. City of Malden  
February 25, 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 25, 2025, a motion was made by Councillor Colón Hayes, seconded by Councillor Sica to enter into Executive Session, order was approved by a 10-0 roll call vote.

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

Nea- Zero

Absent- Spadafora

The meeting was called to order at 8:25 PM. In attendance were Councillors Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Sica, Simonelli, Taylor, and Winslow.

Also in attendance was City Clerk Carol Ann Desiderio, Clerk of Committees Lisa Cagno, and City Solicitor Alicia McNeil.

Absent- Spadafora

Before the meeting began, Councillor Sica started off with a motion to adjourn based on her belief that recent Executive Sessions (ES) regarding the suit between Benevolent Botanicals (BB) and the City have not been kept confidential. She is claiming the discussion should not be had if it cannot be protected by attorney/client confidentiality.

Councillor Sica stated she has seen social media posts from one of the BB owners that sounded as if he was aware of happenings from previous sessions. She further stated that approximately six hours earlier there was a post on Reddit from a sitting City Councillor asking the public for their thoughts on this lawsuit. The Councillor in question further wrote online about her support for a settlement offer and how she intends to vote on the issue. Councillor Sica read directly from the posts to make her claim.

Councillor Sica explicitly explained how upsetting she finds this breach and how important it is for Councillors to not overshare with the public on matters of confidentiality. She is not comfortable discussing this topic further at this time and does not believe she may speak candidly on the subject. Her proposal is to adjourn the meeting and allow the Legal Department to move forward as they see fit regarding this evening's topic.

Councillor O'Malley commented there is a concern that generally has been shared that discussions had in ES are not staying within the City Council but may be getting shared with others, including the opposing party.

Councillor Colón Hayes asked for the opportunity to respond to the accusation. She explained how she posts Council information and asks for feedback from her constituents every week. That post was not about ES but a court case that has been ongoing for many years and she has posted about it many times. Councillor Colón Hayes also noted the post wasn't just on Reddit but also on Facebook. Just because she wrote what she wrote does not indicate that the public is aware this was a topic during ES. She said she would like to hear from Attorney McNeil about the legality of posting her opinion and voting position online.

Councillor O'Malley mediated between the two Councillors who were engaged in heated debate. There was much discussion that publicly stating how one intends on voting can be considered, or may lead to, swaying the opinion of others, serial deliberation, an indication that the Body is discussing settlements in ES, and tips the hand of the City's litigation position.

Attorney McNeil said this is the first she is hearing of this online chatter but it is certainly a violation. She can see how people would decide they do not wish to enter into ES because the other side knows this ES is happening and so by Councillor Colón Hayes' postings, combined with the comments made by BB's owner, it becomes clear what is being discussed in these meetings. Explained in that way, Councillor Colón Hayes acknowledged her mistake.

Councillor Simonelli vacated the meeting at 8:27 PM.

A motion was made by Councillor Sica, seconded by Councillor Condon to exit Executive Session, motion failed by an 3-6 roll call vote.

Yea- Condon, Crowe, Sica

Nea- Colón Hayes, Linehan, McDonald, O'Malley, Taylor, Winslow

Absent- Simonelli, Spadafora

Councillor Sica vacated the meeting at 8:36 PM.

Councillor Colón Hayes asked for a moment to apologize to the Body. She is very open with her constituents, and it never crossed her mind that these posts would create a problem. Councillor Winslow stated open meeting law training is very clear that posting on social media could be interpreted as serial deliberation. Councillor McDonald asked if the commentary disadvantages the Council or creates a legal barrier to further discussion. Attorney McNeil said it is a problem as far as open meeting law but does not pose a legal barrier to further discussion or negotiation in the case. However, it does tip the City's hand. She further reiterated there is a purposeful reason why she starts every ES with a statement of confidentiality; for reasons exactly such as this.

With that, Councillor McDonald tried to move the conversation forward by asking what happened during the past two weeks while the judge gave BB the opportunity to file their motion with answers to her line of questioning in court on February 7. Benevolent filed a memorandum in support of second supplemental motion for sanctions, which is fifteen pages long. Councillor O'Malley passed

out copies for the Body's review. A PDF of the same may be found attached to the end of this document.

Councillor O'Malley opened discussion on this point with a review of the fiduciary responsibility the Council has to the residents of Malden. Difficult financial decisions must be made without regard to politics. He is of the opinion that Malden should offer 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. He does not want to see this trial go to judgement and risk losing the case. Nor does he want to risk being penalized monetarily in amounts that are larger than what BB is currently asking for. He would rather see the suit turn into a revenue-raising business opportunity for the benefit of the city. Councillor Linehan doesn't disagree with this line of thinking but also noted the Council had the option to do that years ago. Her struggle is between settling with BB and having that look like an admission of guilt and losing the case and having a large court ordered payout. She is very concerned the city may have detrimental financial consequences due to what could end up being labeled a bad ordinance.

Councillor McDonald is in support of seeing this case through to finality, as it sets a bad precedent to do otherwise. They would like to authorize Attorney McNeil to negotiate up to the amount she is already authorized for, \$50,000. They believe any applicant that has made it through the CLEC process should have the opportunity to be heard by the Council. They also feel the timing of Councillor Colón Hayes' posts puts the city at a disadvantage from a negotiation standpoint.

So too is Councillor Condon in support of going to judgement. He was adamant that Malden should not pay for any settlement if they are not in the wrong. If the judge rules Malden is in the wrong, the City will pay accordingly but he doesn't believe Malden is in the wrong and therefore should not willingly pay out any cash settlement.

One consideration at hand if the city were to settle this case, is any other businesses that could have opened a marijuana establishment but didn't try because they knew our zoning ordinance wouldn't allow for their suggested location without a variance. Is the city setting a precedent for future lawsuits?

Councillor Crowe takes issue with the suggestion of having the court order the city to either issue the special permit without a hearing or the settlement offer allowing for the hearing without the Council being able to consider the buffer zones accordingly. Businesses cannot just be allowed to bypass city ordinances and/or procedures based on the threat of lawsuits. This disregards not only the Board of Appeal but also the opinions of the neighborhood. Regarding the argument that if a petitioner makes it through the CLEC process, they deserve to be heard by the Council, Councillor Crowe argues the CLEC process is only there to make sure the petitioner has all their necessary documentation in order. This is similar to the way any petition is reviewed by the Clerk's office prior to receiving a date to be placed on Council agenda. It's not a guarantee the petition will be granted. Attorney McNeil commented that CLEC is indeed not a decision-making body. Rather they are there to review if the applicant is financially liable, has a suitable location, and if their location is in an area that requires a variance.

Councillor Taylor is of the opinion that BB's settlement offer is much of a reach, given they think they might lose but are still going to attempt to receive money and a special permit from the city. She also wonders overall what settling says about the Council's collective voice when pushed against a wall by a company who displays enough time and money to wait out this judgement. She does think the zoning ordinance could be more inclusive but her bigger concern is most businesses don't just sue if they can't find a parcel appropriate for their business plan. Rather, they continue on looking at other locations and cities.

Councillor Winslow made a motion to enter into a settlement agreement which would result in a judgement by the court to issue Benevolent a special permit and to authorize the City Solicitor to go up to her settlement authority of \$50,000 in exchange for both the underlying case and the sanctions being dismissed with prejudice. There was much discussion on whether a judge can even issue an order making Malden grant a special permit. The motion failed for a second.

Councillor Taylor asked Attorney McNeil straight out what she would do if the decision was solely up to her. Attorney McNeil responded, the city has argued some very valid points, and she would continue with the litigation. Malden has some issues with their case but so does the Benevolent team; that happens in any litigation. Malden has already had nine applicants qualify for five licenses with three gone: two businesses currently open and one about to open in the spring. The judge did a walk-through of the area and saw first-hand how Malden's zoning districts overlap with residential in every area. Attorney McNeil believes in moving forward with the suit.

The City Solicitor was instructed to tell Benevolent the Council needs more time to deliberate.

A motion was made by Councillor Taylor, seconded by Councillor Linehan to table the discussion for one week to March 4, motion passed by an 8-0 roll call vote.

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

Nea- Zero

Absent- Sica, Simonelli, Spadafora

A motion was made by Councillor Linehan, seconded by Councillor Condon to exit Executive Session and adjourn the Council, motion passed by an 8-0 roll call vote.

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

Nea- Zero

Absent- Sica, Simonelli, Spadafora

Executive Session was adjourned at 9:44 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 McDonald, seconded by Councillor Crowe to table the above minutes secondary to Councillor Colón Hayes not being in attendance to vote given the significant amount of discussion that revolved around her in the first half of the meeting, 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

Double click on the PDF on page four to open the entire file.

Date Filed: 2/19/2025 4:01 PM  
Land Court  
Docket Number: 22 MISC 000076

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

LAND COURT DEPARTMENT  
CIVIL ACTION NO. 22MISC000076

BENEVOLENT BOTANICALS LLC and  
926 EASTERN AVENUE, LLC,

Plaintiffs,

v.

CITY OF MALDEN,

Defendant.

**PLAINTIFFS' MEMORANDUM  
IN SUPPORT OF SECOND  
SUPPLEMENTAL MOTION  
FOR SANCTIONS**

SERVED VIA E-MAIL

During the February 7, 2025 hearing on Plaintiffs' Motion and Supplemental Motion for Sanctions,<sup>1</sup> this Court specifically requested Plaintiffs supplement their prior motions and provide this Court with: (i) a copy of the deposition notice they served upon Defendant City of Malden ("Malden") pursuant to Mass. R. Civ. P. 30(b)(6);<sup>2</sup> (ii) per this Court's docket entry, identification of the "specific late-produced documents that would have aided plaintiffs in the preparation and the reasons therefor;" and (iii) the "case law supporting the requested relief." Plaintiffs therefore submit this memorandum to respond to this Court's request and demonstrate why the sanctions requested by Plaintiffs, including the costs authenticated by the affidavits attached hereto as Exhibits 2 and 3, are more than proper.

**I. IDENTIFYING SPECIFIC LATE PRODUCED DOCUMENTS THAT WOULD HAVE AIDED PLAINTIFFS IN THE PREPARATION OF THEIR CASE**

The 657 pages of documents that Malden withheld during this litigation and did not produce until days before – and/or weeks after – trial contained the missing pieces necessary for

<sup>1</sup> Plaintiffs hereby incorporate the arguments made in those pleadings.

<sup>2</sup> Plaintiffs have attached this deposition notice to this memorandum as Exhibit 1.

At a duly posted Executive Session on March 11, 2025, a motion was made by Councillor Crowe, seconded by Councillor Taylor to approve the above meeting minutes, 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.

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 25<sup>th</sup>.

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 "Memmola", 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.

Executive Session Meeting Minutes regarding Paper 142-25  
Review of OML Complaint Against Karen Colón Hayes Regarding Benevolent Botanicals  
March 11, 2025

Paper 142-25 Order: The City Council will vote whether to go into Executive Session with Legal Counsel in accordance with Exemption One, Massachusetts General Laws Chapter 30A Section 21(a)(1), and Exemption Seven, Massachusetts General Laws Chapter 30A Section 21(a)(7), to comply with or act under the authority of any general or special law, specifically to comply with the provisions of Massachusetts General Laws Chapter 30A Section 23(b), to act on the pending Open Meeting Law Complaint filed by Jadeane Sica of 12 Cleveland Street on February 27, 2025 against the City Council related to the February 25, 2025 duly posted Executive Session on the matter of Benevolent Botanicals and 926 Eastern Avenue v. The City of Malden where such discussion in open meeting may have a detrimental effect on the litigation position of the City.  
(Roll Call Required)

During the City Council meeting on March 11, 2025, a motion was made by Councillor Simonelli, seconded by Councillor Crowe to enter into Executive Session to address Paper 142-25, order was approved by an 8-2 roll call vote.

Yea- Crowe, Linehan, McDonald, Sica, Simonelli, Spadafora, Taylor, and Winslow

Nea- Colón Hayes, O'Malley

Absent- Condon

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

Absent was Condon

Also in attendance was City Clerk Carol Ann Desiderio and Assistant City Solicitor Zaheer Samee.

The meeting was called to order at 8:40 PM. The business as outlined below took place from 8:40 to approximately 9:25. The remaining 15 minutes of the meeting addressed Paper 143-25. Those meeting minutes are outlined in a separate document titled "143-25 Executive Session to Review Minutes for Release".

The meeting opened with Council President O'Malley giving a synopsis as to how the Body came to require a meeting to discuss an Open Meeting Law complaint. During the Executive Session (ES) of February 25, 2025 Councillor Sica brought to the Council's attention that Councillor Colón Hayes had posted on various social media platforms about a possible settlement agreement with Benevolent Botanicals (BB). Councillor Sica vacated the February 25<sup>th</sup> meeting after stating she was not comfortable going into ES if the agenda topics aren't remaining confidential. On February 27<sup>th</sup>, Councillor Sica filed an OML complaint with the City and the Council now must determine how they will respond and do so by March 19.

One option is for the Council to respond to the complaint on their own behalf. This option is allowable but not always ideal. The Council may instead opt to authorize the City Solicitor's Office to conduct an investigation and present a report that the Council will vote on whether or not to submit on their behalf to the complainant and Attorney General.

Councillor Simonelli expressed his deep feeling that each person in this room is one of eleven. He acknowledges that everybody makes mistakes, but this discussion is reflective of deeper

interpersonal relational struggles among the eleven. Councillor Simonelli wishes for the Body to be able to resolve these issues in-house. Breaking ES confidentiality is a serious matter but he doesn't wish to see anyone get in trouble.

Councillor Colón Hayes expressed gratitude for Councillor Simonelli's sentiment. She further expressed time spent in reflection since the last Executive Session meeting has made her come to the realization that she has not done anything improper. Despite having apologized for her actions during the meeting of February 25, 2025 Councillor Colón Hayes is now requesting the Solicitor's Office complete an investigation and issue a determination as to the legality of her actions as well as a guideline on what is and isn't allowed to be posted on social media.

Councillor Linehan first commented she is in agreement with Councillor Simonelli's sentiments. Then went on to say she was conflicted as to whether this conversation should have taken place in open session. It is important to do as much business as possible before the public but in this case, she is supportive of using this time provided to dive into difficult conversations so that everybody understands what was wrong. Colleagues reporting each other is not a good look for the Body but the law is in place for a reason. This opportunity allows the Council to receive guidance, document it, and come to a common understanding.

Councillor Winslow recognizes how difficult it is to keep work related issues confidential even from closest family members but as an attorney, the value of confidentiality was taught from the very beginning of school. This responsibility should be taken seriously and never be taken for granted. To do so is a breach of ethics. The reason Solicitor McNeil opens every ES discussion with a disclaimer speaking to confidentiality is precisely because the Council has as much responsibility to the City's business as does an attorney to their client.

Councillor McDonald broke down the situation into two different areas of concern: 1) whether commenting on social media is a violation of open meeting law and 2) is breaking confidentiality from ES a violation of the same? They are of the opinion that no violation of serial deliberation happened because a quorum of the Body did not see the social media posts in question. Councillors Spadafora and Linehan countered that argument with what they had been taught in past OML trainings, that it doesn't matter if enough people had seen it, but rather the potential was there that a quorum could have. This is similar to the way the Body has been trained never to 'reply all' to any email notification. A potential for serial deliberation exists when information is shared in a manner that could be seen by the entire Body.

To their second point, Councillor McDonald does believe there was a breach of confidentiality, which did damage the City's negotiating position of the case. Considering both these points together, they see this as very concerning issue but not necessarily an OML violation.

Councillor Sica expressed her opinion that there is no excuse not to uphold the oath that is taken as an elected official. She does believe this to be a violation of OML because the law states, "The open meeting law defines deliberation as an oral or written communication through any medium.... Note that the expression of an opinion on matters within the Body's jurisdiction to a quorum to a public body is a deliberation, even if no other body member responds to it." This complaint isn't about Councillor Colón Hayes posting meeting agendas to social media as an alert to the public, as she has claimed. This complaint is about posting details of ES meeting discussions and her position that she plans to vote to settle the lawsuit as well as inviting members of the public to enter into an online

conversation about the matter. Any member of the public who has been paying attention to the Benevolent Botanicals case and saw Councillor Colón Hayes' online posts could have correctly assumed the Body was convening in ES to discuss a settlement offer.

Councillors Colón Hayes and Sica vigorously debated the merits of their own competing arguments, but the one thing they agreed on is that they both are supportive of having a thorough investigation into the complaint with a legal opinion of whether any violation exists.

A motion was made by Councillor Colón Hayes, seconded by Councillor Sica that the Solicitor's Office will complete an investigation of the complaint and report findings back to the Council. 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

Clerk Desiderio notified the Council that 14 business days from when the complaint was filed is March 19, which does not give Attorney Samee much time to complete his investigation. As the complainant, Councillor Sica agreed to extend the deadline to April to receive a response.

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

Executive Session was adjourned at 9:40 PM.

Minutes compiled by City Clerk Carol Ann Desiderio

At a duly posted Executive Session on February 10, 2026, a motion was made by Councillor O'Malley, seconded by Councillor Taylor to approve the above meeting minutes, motion passed by an 11-0 roll call vote.

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

Nea- zero

Absent- zero

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.



Executive Session Meeting Minutes regarding Paper 222-25  
Response to OML Complaint Against Karen Colón Hayes Regarding Benevolent Botanicals  
April 29, 2025

Order: The City Council will vote whether to go into Executive Session with Legal Counsel in accordance with Exemption One, Massachusetts General Laws Chapter 30A Section 21(a)(1), and Exemption Seven, Massachusetts General Laws Chapter 30A Section 21(a)(7), to comply with or act under the authority of any general or special law, specifically to comply with the provisions of Massachusetts General Laws Chapter 30A Section 23(b), to act on the pending Open Meeting Law Complaint filed by Jadeane Sica of 12 Cleveland Street on February 27, 2025 against the City Council related to the February 25, 2025 duly posted Executive Session on the matter of Benevolent Botanicals and 926 Eastern Avenue v. The City of Malden where such discussion in open meeting may have a detrimental effect on the litigation position of the City.  
(Roll Call Required)

During the City Council meeting on April 29, 2025, a motion was made by Councillor Colón Hayes, seconded by Councillor Sica to enter into Executive Session, order was approved by a 11-0 roll call vote.

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

The meeting was called to order at 8:28 PM. In attendance were Councillors Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Sica, Simonelli, Taylor, and Winslow.  
Also in attendance was Assistant City Clerk Morgan Hunte, Clerk of Committees Lisa Cagno, City Solicitor Alicia McNeil, and Assistant City Solicitor Zaheer Samee.  
Absent- Spadafora

Councillor O'Malley began by stating the purpose of this meeting is to review the response drafted Attorney Samee to the Open Meeting Law Complaint filed by Councillor Sica and to vote on the response to the complainant and Attorney General.

City Solicitor Alicia A. McNeil gave a reminder to all parties present that Executive Session (ES) must remain in confidence only between the parties who are in attendance. She proceeded to explain that Attorney Samee was tasked with investigating and drafting this response to the Open Meeting Law Complaint. She had received feedback from Councillor Colón Hayes that in her opinion there were some things in the response that shouldn't be included.

Councillor Colón Hayes did agree with the findings of the investigation Attorney Samee conducted. However, she expressed her opinion that the third section of the draft response shouldn't be included in the response as it's not related to the Open Meeting Law but would be beneficial to the City Council as a separate guideline for all to follow.

Councillor Sica expressed her opinion that the third section should remain in the response as it relates to part of her complaint. She went on to say the part where it states that she testified at a hearing shouldn't be included because it's irrelevant to the Open Meeting Law Complaint.

Councillor McDonald had concerns about how the response was written. They felt this response was written more as a memo to the City Council from the Legal Department and less as a response to the complainant from the City Council drafted by the Legal Department. Compared to previous City Council responses to past Open Meeting Law complaints, they found the format of this one confusing.

Councillor Sica respectfully disagreed with Attorney Samee's drafted response, being in the opinion that the Open Meeting Law was violated by Councillor Colón Hayes. She then read a few slides regarding Open Meeting Law and social media from a presentation about the Open Meeting Law made by KP Law.

<https://www.mma.org/resource/navigating-public-records-and-open-meeting-laws/> (17:25)

Based on the guidance provided by KP Law, Councillor Sica is of the belief that Councillor Colón Hayes' post on social media was a violation of the Open Meeting Law.

Councillor Linehan agreed that the response could be simplified to exclude the irrelevant information pointed out by other Councillors. Her main issue with the draft response was the mention of what's said on social media can or cannot reach a quorum which goes against training on the Open Meeting Law the Council has had previously. She felt if something can be posted on social media it should be assumed that a quorum could be able to view it. Stating otherwise in the response could potentially set a bad precedent.

Councillor O'Malley read aloud the first two sections of the drafted Open Meeting Law response.

Attorney Samee agreed with the concerns Councillor McDonald had about the response being written with advice to the Council in some parts. He proposed he could do a revision to take out the advice from section three so it could be a memo to go along with the response as a separate document instead.

Councillor Taylor stated the City Council needs a guideline on what from Executive Session needs to remain confidential.

Solicitor McNeil reiterated that everything spoken in Executive Session must remain confidential otherwise there would be no purpose for going into Executive Session.

Councillor Simonelli agreed everything must remain confidential in Executive Session. He proposed creating certain Executive Session rules and consequences for violations of those rules. He went on to state he disagreed with the draft response and is of the belief that the Open Meeting Law was violated.

Attorney Samee stated the guidance to the City Council as outlined in section three of the drafted response needed to be included so there is more clarity to the Body on how to avoid these situations in the future. He explained of these situations make the job of the Solicitor's Office harder. Councillor Colón Hayes reiterated that she didn't speak about matters discussed in Executive Session with anyone. She agreed with revision of the response and creating norms for Executive Session.

Councillor McDonald also agreed with the Body needing norms for Executive Session and added there should be guidelines about what can and can't go on social media. Councillor McDonald then made a motion to have the Solicitor's Office revise the response to the Open Meeting Law Complaint to only include the introduction, sections one and two, and the parts of the conclusion that relate to the Open Meeting Law Complaint of the draft response. Further, section 3 of the draft response be expanded to be memorandum to the City Council regarding Executive Session decorum. The motion was seconded by Councillor Colón Hayes and carried by an 8-2 roll call vote. Yea- Colón Hayes, Crowe, Linehan, McDonald, Simonelli, Spadafora, Taylor, Winslow, and O'Malley  
Nea- Condon, Sica  
Absent- Spadafora

A motion was made by Councillor Sica, seconded by Councillor Crowe to exit Executive Session, motion carried by a 10-0 roll call vote.  
Yea- Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Sica, Simonelli, Taylor, and Winslow  
Nea- Zero  
Absent- Spadafora  
Executive Session was adjourned at 9:15 PM  
Minutes compiled by Assistant City Clerk Morgan Hunte

At a duly posted Executive Session on February 10, 2026, a motion was made by Councillor O'Malley, seconded by Councillor Taylor to approve the above meeting minutes, motion passed by an 11-0 roll call vote.  
Yea- Colón Hayes, Condon, Crowe, Linehan, Luong, McDonald, O'Malley, Sica, Simonelli, Taylor, and Winslow  
Nea- zero  
Absent- zero

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.

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.

Executive Session Meeting Minutes regarding Paper 316-23  
Benevolent Botanicals et al v. City of Malden  
September 12, 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 Committee of the Whole on September 12, 2023, a motion was made by Councillor Crowe, seconded by Councillor Simonelli to enter into Executive Session, order was approved by a 10-0 roll call vote.

Yea- Colón Hayes, Condon, Crowe, Linehan, McDonald, Sica, Simonelli, Spadafora, Winslow, and Murphy.

Nea- Zero

Absent- O'Malley

In attendance were Councillors Colón Hayes, Condon, Crowe, Linehan, McDonald, Sica, Simonelli, Spadafora, Winslow, and Murphy. Councillor O'Malley was 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 (BB) on August 30 with an offer of compromise to resolve the matter. As a means to offer context to this communication there are a few points to consider:

1. The first lawsuit alleges the City's buffer zone ordinance is too restrictive and it violates State statute. This is a very clear-cut suit.
2. The second lawsuit involves the Special Permit process. BB alleges they provided all necessary information to the Building Commissioner to begin their application process and Council action was not taken within the allotted time frame as required to grant or deny the Special Permit. This assumption is what led BB to file a Constructive Approval. The City's argument against this allegation is that our ordinance is very clear that in order to get an application before the City Council, it must be a proper application approved by the Building

Commissioner. This application is not proper because it does not contain the buffer zone variance needed. BB went to the Board of Appeal (BOA) to get a variance, but it was denied.

3. BB has three licenses they are allowed from Cannabis Licensing and Enforcement Commission (CLEC); a retail license, a cultivation license, and a manufacturing license.
4. At this point, Constructive Approval has already been argued, awaiting decision. The first case has not been argued and the briefs are not in yet; expecting a date by the end of the year.

Attorney McNeil then read, in part, from an email received from BB which states,

“Benevolent Botanicals and 926 Eastern Avenue seek to resolve the two matters before land court with the City of Malden. As an offer of compromise and in an effort to resolve these two matters, BB is willing to forgo pursuit of a cultivation special permit for a four-year period beginning from the effective date of any settlement agreement. In exchange BB asks that it be heard by the City Council on its application for the remaining special permit, and the City of Malden grant the special permit and enter into community host agreement with BB by the end of the calendar year, December 31, 2023. Additionally, as discussed BB and 926 Eastern Avenue agree to have this settlement and the subsequent approvals be based either on the special permit action or the constructive approval action. We are amenable to discussing the details of this process should the City agree to these terms. If the City agrees to these terms and should the land court enter judgement in BB’s favor while the parties finalize the terms of the settlement agreement, BB agrees to honor the settlement agreement. We, of course, ask that the City would do the same should a judgement enter into it’s favor during the interim period. We believe that this proposal is mutually beneficial as it negates any of the concerns about BB being located near residential properties since there would be no risk of any odor from cultivation and would allow BB to operate and support the Malden economy. That said, we are willing to consider any counter offer the City may propose.”

Other points that were brought up by BB to Attorney McNeil are that if BB did receive their other two licenses and not the cultivation license, they would be doing a build out. After four years, it would not make sense for them to then go back and do another build out to include cultivation, so realistically, they probably would not apply for a cultivation license in the future. Once BB receives the host agreement, they would dismiss their lawsuit. And to reiterate they want a hearing on the special permit by the end of the year and it must be approved per this agreement. They remain open to hearing any counter offers.

Councillor Sica reminded the room that a judge has already upheld the Board of Appeal decision denying the variance, so the City really has no room to accept this offer because the application is still not complete, and doing so would set a precedent for future entities who may wish to forego the process.

Councillor Spadafora noted this offer is asking for a guarantee of an affirmative Council vote and no one can guarantee the vote of the Council.

Councillor Condon asked for confirmation that the variance is governed by where the land ends, not the building. It was confirmed that the buffer zone is based on the property lines. With this being the case, there is not much BB can do even without the cultivation being done in the rear of the building. Even with the back of the building not in use, it does not change the requirements written in City ordinances. Councillor Crowe commented that not having a cultivation license may open BB up to being able to appear again in front of BOA as this is a significant change in their original petition and whereas the cultivation piece of the plan was the BOA's biggest sticking point, originally.

Councillor Winslow asked Attorney McNeil to explain the City's position against the first lawsuit that alleges the City's buffer zone ordinance is too restrictive and it violates State statute. Attorney McNeil believes this is a novel case because marijuana is novel. The argument is that as a City, Malden has a right to zone our city. We know our city and its needs better than the State does; the State has no mandate that we can't have a buffer zone and it doesn't matter that our ordinance is stricter than another city or town because we are uniquely Malden.

Councillor McDonald asked if the Council has the ability to overrule the BOA? If not, then the Council isn't even in the position to have a conversation with BB unless and until they are able to get approved by BOA. Attorney McNeil responded that a court of law can overrule the BOA's decision. Also, that BB had an opportunity to appeal the land court's decision but chose not to. The body is not going to debate whether the BOA decision was correct or not because its already been decided by a court of law. When asked about the standard the land court uses in determining cases such as this, Attorney McNeil explained they look at whether the decision was arbitrary and capricious or if BOA followed what the ordinance states. It is rare for the land court to override the BOA if the ordinance was correctly followed. Functionally, there is no mechanism to overturn a reasonable judgment by a BOA unless it were ordered by the court. With all of this being established, Councillor McDonald stated he does not see how the Body can entertain this proposal by BB.

Councillor Colón Hayes asked if the Council would be in a better position to consider this proposal if BB agreed to take out the four-year cultivation contingency. The response was no because that still doesn't account for the lack of buffer zone variance. BB went through CLEC to obtain licenses in 2022. If this case goes to trial, it won't be until 2024, making them two years into this process. This proposal likely is an attempt to control lawyer fees for a case they originally expected to be settled within 90 days.

Councillor Murphy summed up where she understands the process to be as of right now so far as BB is concerned. BB would have to revise their application to remove cultivation and reapply to BOA with this significantly different plan if it is deemed to be significantly different. But if the time frame for the four-year stipulation begins at the time of a settlement agreement, it still may take them two years to build out and get up and running. Even if the Council was willing and/or able to entertain the special permit guarantee, BB would not have been in business long enough to consider if they are good neighbors or a successful business to be then considering the additional cultivation aspect.

Councillor Spadafora stated there is no clear path for the Council to consider this proposal. His biggest concern from what he is hearing in the room right now is that some Councillors agree with BOA for their decision and others do not, but he doesn't wish to set precedent on this issue. The Body cannot support the BOA only when rulings are to their liking and then overrule BOA when their decisions go against what the Body was hoping to hear. We might as well not even have rules for zoning if we aren't going to adhere to them.

Attorney McNeil was given instructions to respond back to this offer with an explanation that the Council cannot agree to this proposal as the ordinance is clear that a variance is needed for a proper application to be considered. The Body cannot make a promise for a guaranteed affirmative Council vote on a special permit and acceptance into a community host agreement, sight unseen. It is not within the Body's jurisdiction to consider this offer. No instruction was given for a counteroffer.

With the close of discussion, a motion was made by Councillor Spadafora, seconded by Councillor Sica to exit Executive Session, motion passed by a 10-0 roll call vote.

Yea- Colón Hayes, Condon, Crowe, Linehan, McDonald, Sica, Simonelli, Spadafora, Winslow, and Murphy.

Nea- Zero

Absent- Councillor O'Malley was absent.

Executive Session was adjourned at 9:11 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.

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.

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 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.

Executive Session Meeting Minutes regarding Paper 61-25  
Benevolent Botanicals et al v. City of Malden  
February 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 Committee of the Whole on February 4, 2025, a motion was made by Councillor Simonelli, seconded by Councillor Winslow to enter into Executive Session, order was approved by a 11-0 roll call vote.

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

The meeting was called to order at 7:40 PM. In attendance were Councillors Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Sica, Simonelli, Spadafora, Taylor, and Winslow. 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 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 has closing arguments on this case on Friday, February 7 and City Solicitor Alicia A. McNeil felt it necessary to review with Council prior. Additionally, she received communication from Benevolent Botanicals and 926 Eastern Avenue (BB) on today's date with an offer of compromise to resolve the matter of sanctions.

The trial has already been had, all that is left is closing arguments, however, BB has filed a motion for sanctions. Prior to the trial, approximately September, BB had inadvertently through a FOIA request, discovered an email from someone asking GIS Manager Steve Fama for zoning maps. That led them to realize the maps had not been produced as evidence. Solicitor McNeil spoke with Fama, obtained the maps in question and produced them to BB's lawyers. Their legal team filed sanctions against Malden on two counts: maps were not produced with evidence and Fama was not on the witness list as a person who was involved with information in this trial. BB additionally found a GIS expert to testify regarding distances and the surrounding area of the establishment. McNeil argued that Fama wouldn't have specific information on this case in the same way a secretary in a legal firm

wouldn't have intimate knowledge that would require being listed on the discovery list. Benevolent filed an additional motion for missing meeting minutes of the City's cannabis review committee. Upon investigation, Solicitor McNeil discovered there were extensive notes she was previously unaware of from this cannabis review committee from 2018. She produced those notes to Benevolent. The court is encouraging both sides to find a mutual resolution. BB is arguing that if they were aware of Steve Fama, they would not have had to hire a GIS expert to support their case.

Knowing the Council was scheduled to meet on this subject matter in Executive Session on this date, BB offered a confidential settlement offer dated February 4, 2025 as a means of dropping the sanctions only, not to settle the entire case. A decision on this offer, or a counter-offer, must be submitted by 1:00 PM tomorrow, Wednesday, February 5. The offer to withdraw motion for sanctions is contingent upon the satisfaction of the following:

1. The parties will enter into a written agreement within 30 days, at which time the City of Malden will pay Benevolent Botanicals LLC ("Benevolent") and 926 Eastern Avenue LLC \$100,000 for attorneys' fees incurred in connection with the motion for sanctions and supplemental motion for sanctions;
2. The written agreement shall provide that City of Malden must allow for Benevolent's special permit application to be sent to the City Council within 10 days of Plaintiffs and the City of Malden entering into this agreement;
3. The written agreement shall also provide that City Council must open a special permit hearing on Benevolent's special permit application within 30 days of receipt of Benevolent's application and close the hearing within 60 days;
4. As part of the written agreement, the City of Malden shall stipulate that, as part of the City Council's consideration of the special permit application, that the way by which the City of Malden measures its buffer zones (i.e., nearest property line to nearest property line) is violative of G.L. c. 94G and therefore the City Council cannot use the distance between Benevolent's proposed location and any residential property within said buffer zone as a basis for denying the issuance of a special permit to Benevolent; and
5. The Parties will proceed with the hearing on the motion for sanctions and conduct the closing arguments this Friday, February 7, 2025. Should an agreement be reached and a written agreement executed, only at that time will the Parties inform the Court about an agreement, at which time it will request a stay on the Court's consideration of this matter pending the outcome of the special permit hearing beyond applicable appeals.

Solicitor McNeil noted the underlining issue of the main case is the buffer zone, which is why they are demanding Malden stipulate the City is measuring the buffer zone in violation of 94G.

Council President summarized for the Body that this case has been passed down through three different City Solicitors. As difficult as it is to inherit a case mid-trial, it's more so difficult to know what can't be known, such as discovery of the maps and meeting minutes. Back in 2018 Fama was asked to produce maps showing the difference between 150' and 75' buffer zones. Two Solicitors ago, there was a decision made that buffer zones are not dimensional controls. If they were considered dimensional controls, zoning relief would have been an option for applications such as BB's. All of this happened prior to Solicitor McNeil's time with the City.

At this time, Benevolent Botanicals does not even have a complete application that is appropriate for submission to the Council Special Permit process because they were denied a variance from the Board of Appeal on the buffer zone. This denial was upheld in court. This is why part of their settlement demands the Council allow for the special permit application with 30 days; without this stipulation there is no way their application may move forward.

Councillor Crowe asked for explanation on how M.G.L. c. 94G is calculated. 94G only has one buffer zone. Initially, when the law was first enacted, that buffer zone when from property line to property line and it was only for schools. Long after Malden's ordinance was passed, the statute was changed to measure from geometric center to geometric center but remains relevant to only schools.

Councillor Winslow inquired about the standard of review the court will be using. How important would the maps have been to BB's case? Is it to the judge's discretion to determine if the \$100,000 is justified? Further, the City has always been clear on the buffer zone ordinance running from property line to property line, it was the State that changed their measurements. Solicitor McNeil does not imagine the court will rule the lack of maps as immaterial. The court will have to determine that if the maps were omitted, then how important were they to the case? There is also the risk the court could rule against the entire case, whereas this settlement offer is only for the sanctions. When the State statute on buffer zones was amended, 94G was meant to be a recommendation for cities while writing ordinances. One of the settlement demands is Malden admits to being in violation of 94G.

Councillor Crowe commented at the time the ordinance was written, some people wanted no buffer zone and Planning Board recommended 150'. The 75-foot zone may be considered a compromise between the two. Dimensional control relief is based on how a situation (ie: parking) applies to the parcel itself whereas buffer zones are in consideration of how a situation applies to surrounding parcels. She does still believe the zone should be measured from property line to property line and does not believe Malden's zoning ordinance is too restrictive. We already have three businesses open or about to open.

Councillor Sica agreed. She has been actively involved with this ordinance since 2018. She is confident in being able to win this case. The court has not ruled that Malden's buffer zones are too restrictive. Indeed, Melrose, Medford, Saugus, and Quincy all have zoning more restrictive than Malden. Councillor Sica stated Quincy's buffer zone is 1,500 feet from residential houses, whereas Malden is only 75 feet. Medford only offers one small area in the city where cannabis establishments are allowed. Melrose only allows it on Route 99. Saugus only allows it on Broadway. Malden has many more locations available. Although CLEC did initially approve BB's application to move forward in the process, so too have several other applicants that didn't work out for one reason or another. Possibly seven or eight businesses were approved by CLEC and only three have made it in front of the Council for a special permit. Councillor Sica is of the belief this attorney filed for sanctions specifically to create leverage to push through the special permit application. At this point, she supports rejecting the settlement offer and moving on to closing arguments.

It was brought to the attention of the Body by Councillor Spadafora that a person affiliated with Benevolent Botanicals had utilized social media to make public accusations of perjury against city staff as well as several indecent comments about and towards members of the Council. He asked for

consideration if this is the type of business owner Malden wants in their community. Solicitor McNeil had to call opposing counsel to report these comments, as she stated, that are not only untrue but disgusting and completely inappropriate and she insisted counsel speak with his client to take the comments down.

Councillor McDonald surveyed the room to determine if there is any piece of a settlement the Body would entertain. The consensus of the room is that there is no support for payout of \$100,000 or to admit any guilt. Councillor O'Malley is amenable to allowing BB to appear before the Council. Councillor Taylor inquired what happens if they come before the Council and the application still gets rejected? How does that open the City up to further litigation? Councillor O'Malley asked if there is a way to issue the special permit without any settlement or admission of guilt (94G) without having a determination on file? Councillor McDonald believes the heart of BB's case is that they felt misled by what Malden's zoning would or would not allow and they (McDonald) would be willing to entertain a hearing before the City Council with no promises on how the vote would go. They asked if there is support in the room for such a proposal.

A motion was made by Councillor Sica, seconded by Councillor Simonelli to reject the settlement offer, motion passed by an 11-0 roll call vote.

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

After the vote but before a motion to adjourn, Councillor McDonald asked about Solicitor McNeil's level of confidence in this case. She believes the City has a good chance in this case for many of the reasons that have already been discussed during this meeting. With this, Councillor McDonald sought discussion about making a counter-offer. A suggestion was made to offer BB a hearing for a special permit in exchange for dropping not just the sanctions but the entire case.

A motion was made by Councillor Sica, seconded by Councillor Simonelli to exit Executive Session and adjourn the Council, motion failed by an 3-8 roll call vote.

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

A motion was made by Councillor McDonald, seconded by Councillor Linehan, to authorize Solicitor McNeil to make a counter-offer to agree to hear the special permit application with no promise to grant, in exchange for dropping the entire case with no conditions attached, motion passed by a 6-5 roll call vote.

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

A motion was made by Councillor Sica, seconded by Councillor Simonelli to exit Executive Session and adjourn the Council, motion passed by an 11-0 roll call vote.

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

Executive Session was adjourned at 9:19 PM.

Minutes compiled by City Clerk Carol Ann Desiderio

At a duly posted Executive Session on February 11, 2025, a motion was made by Councillor Colón Hayes, seconded by Councillor Winslow to approve the above meeting minutes, 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

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.

**Alicia McNeil**

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**From:** Adam G. Gutbezahl <agg@riw.com>  
**Sent:** Tuesday, February 4, 2025 1:27 PM  
**To:** Alicia McNeil  
**Cc:** Michael D. Rosen  
**Subject:** RF: Motion for Sanctions \*\*For Potential Settlement Purposes Only\*\*

**CONFIDENTIAL SETTLEMENT COMMUNICATION PURSUANT TO MASS. G. EVID. § 40B**

All:

Thank you for reaching out. Plaintiffs are willing to withdraw their motion for sanctions upon satisfaction of the following:

- 1) The parties will enter into a written agreement within 30 days, at which time the City of Malden will pay Benevolent Botanicals LLC ("Benevolent") and 926 Eastern Avenue LLC \$100,000 for attorneys' fees incurred in connection with the motion for sanctions and supplemental motion for sanctions;
- 2) The written agreement shall provide that City of Malden must allow for Benevolent's special permit application to be sent to the City Council within 10 days of Plaintiffs and the City of Malden entering into this agreement;
- 3) The written agreement shall also provide that City Council must open a special permit hearing on Benevolent's special permit application within 30 days of receipt of Benevolent's application and close the hearing within 60 days;
- 4) As part of the written agreement, the City of Malden shall stipulate that, as part of the City Council's consideration of the special permit application, that the way by which the City of Malden measures its buffer zones (i.e., nearest property line to nearest property line) is violative of G.L. c. 94G and therefore the City Council cannot use the distance between Benevolent's proposed location and any residential property within said buffer zone as a basis for denying the issuance of a special permit to Benevolent; and
- 5) The Parties will proceed with the hearing on the motion for sanctions and conduct the closing arguments this Friday, February 7, 2025. Should an agreement be reached and a written agreement executed, only at that time will the Parties inform the Court about an agreement, at which time it will request a stay on the Court's consideration of this matter pending the outcome of the special permit hearing beyond applicable appeals.

Plaintiffs believe that, given the seriousness of the conduct resulting in their pursuit of sanctions, this is an eminently reasonable compromise on their part. That said, our clients are willing to consider a reasonable counter-offer from the City of Malden. We understand that the City Council is conducting an executive session tonight, during which session the above may be discussed. Michael and I are happy to make ourselves available should that be of assistance to you or the City Council. Nonetheless, we respectfully ask that you let us know by 1:00 p.m. tomorrow whether the City agrees to these terms and/or proposes an alternative resolution. Until the parties have executed a mutually agreed upon written agreement, please know that Plaintiffs reserve all of their rights and waive none.

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1

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.