

178-21

## EXECUTIVE SESSION MEETING MINUTES 4-20-21

The Council voted to go into executive session at their Council Meeting on April 20, 2021. The vote was on paper 178-21, "The City Council will vote to go into executive session with legal counsel for the City, in regard to the matter of Jack Owens et al v. City of Malden, for the purposes of Exemption Three, MGL 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 litigating position of the City, if so declared by the Chair, and to admit Maria Luise , Special Assistant to the Mayor.

It was so voted by roll call vote in open session : Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (y), Spadafora (y), Winslow (y), Anderson (y) 10-0. Absent: Sica

The executive session was joined by City Solicitor Kate Fallon, Maria Luise and John Clifford from the firm, Clifford & Kenny and executive session began at 7:15 P.M.

Council President Anderson opened discussion up with allowing Maria Luise to give background for the executive session. Ms. Luise told the council that they needed to be updated on the case with trial setting to start May 5<sup>th</sup> and the firm that has handled the case up to this point, Clifford & Kenny recommending to hire a firm, Seyfarth & Shaw that specializes in this type of court case. This has all come to a head in the last week. The case is the police union's allegation that the city has not paid the correct detail rate, thus in violation of federal and state labor laws. The case has been in court for awhile and the city has had several meetings with the union.

Attorney Clifford told the council that the suit began in 2019 with 7 patrolman and has been joined by about 100 more and the amount could be \$5,000,000 if the city were to lose the case. There are two types of details, third party details and city details. City details would be a Malden High School football game, third party details would be street details, the Boston Gas strike details. City details would be a small part of the case. Attorney Clifford's position is that they have been paid exactly what they are supposed to be paid and the court should have thrown out the third party claim. The patrolman's counsel is looking for a broad judgement which would be about \$2,000,000 and with interest and penalties bringing the judgement to around \$5,000,000. Seyfarth & Shaw is a nationwide known firm for a case like this and has recently won a case against Somerville that was similar. Attorney Clifford believes that a specialist firm is needed because of the amount of money involved. Attorney Clifford stated the document of wages is very important in the City's case.

Councillor Winslow asked about the fee arrangement, is on contingency or a set fee.

Ms. Luise answered that it was an hourly fee by a blended rate not separating the rate of a Partner and a paralegal. The rate would be \$565 per hour. In Ms. Luise's opinion this rate was in line with what the firm handles and Attorney Clifford stated the level of expertise of the firm warrants the hourly rate.

Attorney Clifford stated it's ironic the detail board sets the detail rate and they are saying the details have been underpaid.

Councillor Condon asked if the same lawyers that were successful against Somerville would be handling Malden' case ? Attorney Clifford answered that it is unknown but its the same team. Attorney Clifford also stated the judge in the case has forced the trial and the new firm has a lot of experience with the judge.

Councillor Spadafora asked for a breakdown of the \$5,000,000. Attorney Clifford said that the city adds a 10% administrative fee to the detail rate. If the Detail Board sets the hourly rate of \$59, the City adds the administrative fee bringing the billed amount to \$65. The 10% amounts to approximately \$2,00,000 and the other \$3,000,000 is penalties and interest. The union feels they should receive the entire \$65. The detail board hires and supervises the detail clerk.

Councillor Murphy stated this is the first time she has heard about the 10%. She does remember the City transferring \$100,000 to the detail account so wages could be paid. Councillor Murphy asked how the 10% gets allocated by the city and if Ms. Luise could tell the council what the administration is recommending.

Attorney Clifford answered that the 10% goes into the general fund. It was a \$1 per hour but Mayor Howard changed it to 10%. Aside from administrations costs it also covers the cost of litigation. The City was not obligated to transfer the \$100,000 to the detail account.

Ms. Luise stated it is the administration's position that the city is not in violation of any laws and has never been involved with setting the detail rate.

Councillor Murphy asked Ms. Luise if there was an amount the administration was looking for if the new firm were to be retained. Ms. Luise said Mr. Ranaghan is working on the figure but it would be approximately in the \$300,000 range.

Council President Anderson stated this is very disappointing.

Councillor O'Malley asked if we could recoup our legal costs, Attorney Clifford answered, no. Councillor O'Malley asked if we had to allow third party details, Attorney Clifford answered, that would be unchartered waters.

Councillor Camell stated that \$2,000,000 in details with the 10% would mean there was \$20,000,000 billed in paid details.

Ms. Luise told the Council that Mr. Ranaghan would be sending a transfer request down to be docketed.

Councillor DeMaria asked if Seyforth & Shaw was ready, Ms. Luise answered, yes.

Councillor Crowe asked why are they only going back two years, if the 10% administrative fee began around 2008. Attorney Clifford answered that two years in the statute of limitations unless the city was found in "willful violation" and then a third year would be added.

Councillor Murphy asked for guidance from City Solicitor Fallon how the topic can be discussed in open session once the transfer is on the docket. City Solicitor Fallon recommended that Attorney Clifford provide something that could be discussed in open session. Do not get into litigation strategy. It is an emergency for the purpose to engage outside trial counsel and name the date the City is proceeding to trial.

Councillor Condon made a motion to adjourn executive session, seconded by Councillor Camell, it was so voted by roll call vote; Camell (y), Condon (y), Crowe (y), Demaria (y), Linehan (y), Murphy(y), O'Malley (y), Spadafora (y), Winslow (y), Anderson (y), Sica-Absent

Meeting adjourned at 8:20 P.M., Minutes submitted by Clerk Greg Lucey

Pursuant to M.G.L. c. 30A, s. 22(g)(1), and with the approval of Council President Linehan and City Solicitor McNeil, on March 9, 2026 eleven members of the Malden City Council were offered a one-month period of time to review seven sets of executive session minutes 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 if needed a date would be set to meet in Executive Session for further discussion. Otherwise, if there were no objections, Council President Linehan would be tasked with the approval of said minutes on behalf of the Full Council.

After the one-month review period had expired, on April 9 Council President Linehan authorized the approval of all seven draft executive session minutes. Among those drafts, this set was included.

Concurrently, a periodic review was completed to determine if a number of minutes warranted continued non-disclosure. Council President Linehan, under the advice of counsel from Solicitor McNeil, has now ordered the City Clerk to release the executive session minutes from the meetings of **4/20/2021**, 3/8/2022, 2/28/2023, 4/30/2024, 6/25/2024, 7/24/2024, and 3/11/2025.

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