



**CITY OF MARLBOROUGH  
OFFICE OF CITY CLERK  
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**JULY 24, 2017**

Regular meeting of the City Council held on Monday, July 24, 2017 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Ossing, Juaire, Oram, Robey, Delano, Doucette, Elder, Tunnera, Irish and Landers. Meeting adjourned at 9:44 PM.

ORDERED: That the Minutes of the City Council meeting JUNE 19, 2017, **FILE**; adopted.

ORDERED: That the PUBLIC HEARING Petition from NGrid to install 1 new pole and 1 new midspan pole along Boundary Street in which pole installs are part of a project to increase system reliability, hearing recessed at 8:08 PM.

**MOTION made by Councilor Landers to remove Petition below from the Public Services Committee and Suspend the Rules to vote to Approve – Carries**

ORDERED: That the Petition from NGrid to install 1 new pole and 1 new midspan pole along Boundary Street in which the pole installs are part of a project to increase system reliability, **APPROVED**; adopted.

**Councilor Elder requested to be recorded in opposition.**

ORDERED: That the PUBLIC HEARING On the Application for Special Permit from Bohler Engineering on behalf of McDonald's USA, LLC to modify the existing drive-thru and associated menu boards and propose a new side-by-side drive-thru and menu boards to optimize circulation and restaurant operations at 250 Maple Street, hearing recessed at 8:22 PM.

ORDERED: That the PUBLIC HEARING On the Application for Special Permit from Walker Realty LLC for Proposed Veterinary Hospital use in the Hospitality and Recreation Mixed Use Overlay District (HRMUOD), 58 Apex Drive hearing recessed at 8:32 PM.

ORDERED: Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as most recently amended, be further amended as follows.

1. In Section 650-35.A(2), by deleting “43.6 acres” and replacing with “45.2 acres”.
2. By Amending Exhibit A of Section 650-35 to include the following additional parcels:
  - Assessors Map 78, Parcel 14A
  - Assessors Map 78, Parcel 23
3. In Section 650-35.E(1)(i), adding the following language to the end of the Section:

“except that nothing in this Section shall be deemed to prohibit or limit the existing drive-through facility on Assessors Map 78, Parcel 23, nor to prohibit or limit the existing dedicated driveway with a curb cut onto a public way located on Assessors Map 78, Parcel 23, all as the same may be altered or amended from time to time, the same being preexisting conditions which shall continue to be allowed notwithstanding anything contained in the HRMUOD to the contrary.”
4. In Section 650-35.E(1)(j), adding the following language to the end of the Section:

“except that nothing in this Section shall be deemed to prohibit or limit the existing drive-through facility on Assessors Map 78, Parcel 14A, nor to prohibit or limit the existing dedicated driveway with a curb cut onto a public way located on Assessor Map 78, Parcel 14A, all as the same may be altered or amended from time to time, the same being preexisting conditions which shall continue to be allowed notwithstanding anything contained in the HRMUOD to the contrary.”
5. In Section 650-35.E(2)(a.), adding the following language to the end of the Section:

“expressly excluding drive-through facilities located on Assessors Map 78, Parcel 23, which facilities are existing and shall not require a Special Permit under this Section.”
6. In Section 650-35.E(2)(b.), adding the following language to the end of the Section:

“expressly excluding drive-through facilities located on Assessors Map 78, Parcel 14A, which facilities are existing and shall not require a Special Permit under this Section.”
7. In Section 650-35.E(2)(d.), adding the following language to the end of the Section:

“, excluding so-called Dry Cleaning drop stores where no dry cleaning is performed on premise, which shall be permitted in the HRMUOD as of right.”

Refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE PUBLIC HEARING FOR MONDAY AUGUST 28, 2017**; adopted.

ORDERED: At a regular meeting of the Marlborough City Council on JULY 24, 2017, the following proposed amendment to the Code of the City of Marlborough, be further amended as follows:

Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as amended, be further amended by amending Chapter 125, Section 6, Salary Schedule as follows:

Position	Effective Date	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
		Start	6 months of service	1 year of service	2 years of service	3 yrs. of service	4 yrs. of service	5 yrs. of service
Principal Assessor	July 1, 2017	\$91,405.26	\$93,233.10	\$95,098.68	\$96,999.96	\$98,940.00	\$100,918.80	\$102,937.38

Refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That a petition to the General Court, accompanied by a bill for a special law relating to the city of Marlborough to be filed with an attested copy of this order, be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

**An Act exempting positions in the Department of Public Works for the City of Marlborough from the Civil Service Law.**

SECTION 1. Notwithstanding any general or special law to the contrary, all positions in the Department of Public Works in the City of Marlborough shall be exempt from the provisions of chapter 31 of the General Laws.

SECTION 2. This act shall not impair the civil service status of a person holding a position described in section 1 on the effective date of this act.

SECTION 3. This act shall take effect upon its passage.

**APPROVED**; adopted.

ORDERED: That the Communication from Chief Procurement Officer, Beverly Sleeper re: MA Interlocal Insurance Association (MIIA) 2017 rewards in the amount of \$52,389.00, **FILE**; adopted.

ORDERED:

**Confirmatory Eminent Domain Order of Taking**

WHEREAS, the City Council of the City of Marlborough by the Eminent Domain Order of Taking, Order No. 16-1006431A dated February 8, 2016, recorded with the Middlesex South County Registry of Deeds in Book 66881, Page 431, (“Original Taking”) determined that the public welfare and safety necessitated that certain sewer improvements be made to the Sudbury Street area, and that said improvements required the taking by eminent domain of permanent sewer easements in certain parcels of land located on Harper Circle and Sudbury Street as more particularly described therein; and,

WHEREAS, said Original Taking was made in order to promote the public welfare, safety and necessity, it being necessary to take by Eminent Domain said permanent sewer easements in, on, under, over, across and through the therein described land; and,

WHEREAS, the Original Taking was intended to include a permanent sewer easement which varies in width from 35-foot wide to 25-foot wide as shown on a plan entitled “Easement Plan of Land In Marlborough, Massachusetts; Prepared For City of Marlborough; May 18, 2016; By: Bryant Associates, Inc. 90 Canal Street, Suite 301, Boston, MA 02114, Scale 1”=40”” (the “Correct Plan”) to which plan reference may be made for a more particular description, said plan to be recorded herewith; and,

WHEREAS, the Original Taking instead relied on a plan which depicted a 35-foot wide permanent sewer easement for the entire length of said easement, being entitled “Easement Plan of Land In Marlborough, Massachusetts;” Prepared For City of Marlborough & AECOM; April 15, 2013; By: Bryant Associates, Inc. 90 Canal Street, Suite 301, Boston, MA 02114, Scale 1”=40’; Sheet 2 of 3” and recorded with the Middlesex South County Registry of Deeds as Plan 159 of 2016 (the “Incorrect Plan”); and,

WHEREAS, the City of Marlborough has agreed to execute a confirmatory taking, *nunc pro tunc*, the purpose of which is to confirm the City’s legal interest in said permanent sewer easement which varies from 35-foot wide to 25-foot wide and concomitantly to modify the Incorrect Plan by recording the Correct Plan herewith, said confirmation and modification being required by the inadvertent inclusion of more land than was necessary to the herein described purposes of the permanent sewer easement in the Origin Taking and Incorrect Plan; and,

WHEREAS, the City of Marlborough anticipates therefor no award of damages to owners additional to those of the Original Taking and restated herein, and that notwithstanding the reduction in total square footage of land so taken, the City of Marlborough not shall not reduce the award of damages to said owners from those amounts provided in the Original Taking; and

NOW, THEREFORE, IT IS HEREBY ORDERED that the City Council of the City of Marlborough, acting in accordance with the power and authority conferred by the City Charter, Division 1, Section 30, Massachusetts General Laws, Chapter 79 and every power and authority thereto enabling, does hereby confirm, *nunc pro tunc*, it's taking by Eminent Domain said permanent sewer easements in the following described land and all trees and brush thereon.

### **DESCRIPTION OF LAND TAKEN**

- 1. Property H – Permanent Sewer Easement:** A certain parcel of land located on the North Easterly side of Harper Circle in Marlborough, Middlesex County, Massachusetts and being shown as Proposed Easement H on a plan, entitled “Easement Plan Of Land In Marlborough, Massachusetts; Prepared For City of Marlborough; May 18, 2016; By: Bryant Associates, Inc. 90 Canal Street, Suite 301, Boston, MA 02114, Scale 1”=40’,” said plan to be recorded with the Middlesex South District Registry of Deeds together with an attested copy of this Confirmatory Order.

Meaning and intending to take and taking by Eminent Domain a permanent sewer easement, shown as Proposed Easement H as described in the aforementioned plan, which is a portion of the land as described in the deed recorded at the Middlesex South District Registry of Deeds in Book 27774, Page 119.

**OWNERS:** Stephen A. Silen and Pirjo Silen  
49 Harper Circle

The land consisting of Proposed Easement H as referred to in the description above is also shown on the City of Marlborough Assessors Map as a portion of Parcel 81 on Map 23. The total land area being taken consists of 8,776 +/- square feet.

- 2. Property I – Permanent Sewer Easement:** A certain parcel of land located on the Westerly side of Sudbury Street in Marlborough, Middlesex County, Massachusetts and being shown as Proposed Easement I on a plan, entitled “Easement Plan Of Land In Marlborough, Massachusetts; Prepared For City of Marlborough; May 18, 2016; By: Bryant Associates, Inc. 90 Canal Street, Suite 301, Boston, MA 02114, Scale 1”=40’,” said plan to be recorded with the Middlesex South District Registry of Deeds together with an attested copy of this Confirmatory Order.

Meaning and intending to take and taking by Eminent Domain a permanent sewer easement, shown as Proposed Easement I as described in the aforementioned plan, which is a portion of the land as described in the deed recorded at the Middlesex South District Registry of Deeds in Book 14954, Page 388.

**OWNERS:** John D. Nicholson, Jr. and Claire G. Nicholson  
302 Sudbury Street

The land consisting of Proposed Easement I as referred to in the description above is also shown on the City of Marlborough Assessors Map as a portion of Parcel 10 on Map 23. The total land area being taken consists of 4,092 +/- square feet.

3. The ownership of said parcels and each of them are supposed to be as stated herein, but said easements and each of them are hereby taken whether the ownership is as stated herein or otherwise.
4. This Confirmatory Eminent Domain Order of Taking confirms, *nunc pro tunc*, the Eminent Domain Order of Taking, recorded at the Middlesex South County Registry of Deeds in Book 66881, Page 431, and makes clear that said aforementioned plan entitled, "Easement Plan Of Land In Marlborough, Massachusetts; Prepared For City of Marlborough & AECOM; April 15, 2013; By: Bryant Associates, Inc. 90 Canal Street, Suite 301, Boston, MA 02114, Scale 1"=40'; Sheet 2 of 3," recorded with the Middlesex South County Registry of Deeds as Plan 159 of 2016, and the square footages of the areas so taken as shown on said Eminent Domain Order of Taking, are hereby modified, for reasons more fully described herein, pursuant to a plan entitled "Easement Plan Of Land In Marlborough, Massachusetts; Prepared For City of Marlborough; May 18, 2016; By: Bryant Associates, Inc. 90 Canal Street, Suite 301, Boston, MA 02114, Scale 1"=40," said plan to be recorded together with a certified copy of this Confirmatory Eminent Domain Order of Taking.

**AWARDS**

The City Council hereby repeats the following awards of damages by the Eminent Domain Order of Taking to the owner or owners of record, said awards of damages having been tendered by the City of Marlborough to said owner or owners of record pursuant to the Eminent Domain Order of Taking, no additional award of damages being anticipated pursuant to this Confirmatory Eminent Domain Order of Taking:

<u>OWNER</u>	<u>MARLBOROUGH ASSESSORS MAP/PARCEL</u>	<u>AREA</u> (reduced from the Eminent Domain Order of Taking)	<u>AWARD</u> (unchanged from the Eminent Domain Order of Taking)
Stephen A. Silen and Pirjo Silen	23/81	8,776 <u>±</u> SF	\$7,645.00
John D. Nicholson, Jr. and Claire G. Nicholson	23/10	4,092 <u>±</u> SF	\$7,585.00

**APPROVED;** adopted.

**Yea: 11-Nay: 0**

**Yea: Clancy, Delano, Doucette, Elder, Tunnera, Irish, Landers, Juaire, Oram, Ossing & Robey.**

ORDERED: That Pursuant to MGL c. 30B, § 16 (e)(2), the City Council of the City of Marlborough hereby determines that advertising for the proposed purchase of a parcel of land will not benefit the City's interest because of the unique qualities and location of the property as hereinafter defined:

The parcel identified on the Assessors Map of the City of Marlborough as Map 69 Parcel 235, containing 0.37 acres or 16,117.2 S.F., more or less, located at 28 Witherbee Street, Marlborough, MA, and further identified in a deed recorded in the Middlesex South District Registry of Deeds at Book 25364, Page 378. The persons having a beneficial interest in this parcel, as tenants by the entirety, are Paulo S. Ribeiro and Katherine R. Ribeiro;

The above-identified parcel satisfies the requirements of said M.G.L. c. 30B, § 16 (e)(2), because:

(i) the parcel is uniquely situated because it is located within close proximity to the existing Marlborough Public Library, which does not currently have sufficient parking to meet the requirements of the Board of Library Commissioners in relation to the proposed renovation and addition project; (ii) the only way to increase the amount of parking is to purchase parcels uniquely located either adjacent to, or within close proximity of, the Marlborough Public Library; and (iii) the proposed acquisition of the subject parcel will increase parking for access to, and increased usage of, the Marlborough Public Library. In addition, the acquisition of the parcel would potentially provide more design flexibility for the proposed renovation and addition to the Marlborough Public Library.

It is further ordered that the Mayor is authorized to negotiate and enter into a purchase and sale agreement for the above-identified parcel, subject to the following conditions: (i) that, in accordance with M.G.L. c. 43, § 30, the purchase price of any parcel shall not exceed 25% of the average assessed value of the parcel during the previous three years; (ii) that the City's performance under any purchase and sales agreement will be contingent upon a favorable vote of the City Council authorizing the City to acquire the parcel for the amount stated in the purchase and sales agreement; and (iii) that the City's performance under any purchase and sales agreement will be contingent upon a favorable vote of the City Council authorizing the appropriation of sufficient funds for the purchase of the parcel. As of this date, the average assessed value of the above-described parcel for the previous three years has been calculated as \$383,600.

Refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That pursuant to Mass. Gen. Laws c. 43, § 30, the City Council, by a two-thirds vote of all its members hereby authorizes the additional use of the \$75,000 appropriated by Order No. 16006760B from the Undesignated Fund (Account Number 10000-35900), said amount having been appropriated for purposes of binding offers by the City on purchase and sales agreements for the four (4) parcels described in Order No. 16006760A and Order No. 16006760B and relating to the proposed renovation and construction of an addition to the Marlborough Public Library and the need for additional public parking thereat, for like purposes, which are

- (1) a binding offer by the City on a purchase and sales agreement concerning a parcel, said additional parcel being the subject of Order No. 17-\_\_\_\_\_ and described below:

The parcel identified on the Assessors Map of the City of Marlborough as Map 69 Parcel 235, containing 0.37 acres or 16, 117.2 square feet of land, located at 28 Witherbee Street, Marlborough, MA, and further identified in a deed recorded in the Middlesex South District Registry of Deeds at Book 25364, Page 378. The persons having a beneficial interest in this parcel are Paulo S. Ribeiro and Katherine R. Ribeiro.

and

- (2) a binding offer or offers on any additional purchase and sales agreement(s) for parcels relating to said above-described purposes without the need for any additional vote or votes of the City Council regarding the use of said \$75,000, conditional upon an affirmative vote or votes of the City Council authorizing the Mayor to enter into said additional purchase and sales agreement(s).

Refer to **FINANCE COMMITTEE**.

ORDERED: That the Housing Study Report compiled by RKG Associates, Inc., refer to **URBAN AFFAIRS COMMITTEE**; adopted.



ORDERED: THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING SUBMITTED FOR ITS OWN CONSIDERATION CHANGES IN THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, TO FURTHER AMEND CHAPTER 650, NOW ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED AS FOLLOWS:

- I. Section 650-5, entitled “Definitions; word usage,” is hereby amended as follows:
- a. By deleting in subsection B the definition of “BREW PUB” in its entirety and inserting in place thereof the following definition:

**BREW PUB**

A facility which is licensed by the United States Alcohol and Tobacco Tax Trade Bureau and the Commonwealth of Massachusetts, under the relevant statutes including M.G.L. c. 138, § 19D, to manufacture malt beverages and which is also authorized by the City and the Commonwealth of Massachusetts to serve alcoholic beverages. The facility may have a restaurant or serve food prepared on site, but shall comply with all applicable Board of Health requirements for kitchens and common victualler licenses; provided, however, that in such a case only beer, spirit or wine products manufactured by the facility, and none by other manufacturers, may be sold, unless an on-premises pouring license has been obtained under M.G.L. c. 138, § 12. Nothing contained herein shall prohibit the facility from having a bring-your-own-food policy.

- b. By inserting in subsection B the following new definitions:

**WINERY, BREWERY, OR DISTILLERY WITH TASTING ROOM**

A facility licensed under, respectively, M.G.L. c. 138, §§ 19B, 19C and 19E and which is located in a building where the primary use is for the production and distribution of vinous, malt, or spirituous beverages, with the option of a tasting room. Any such facility may provide, at no charge and limited in size as set forth in M.G.L. c. 138, samples of beverages it manufactures on its premises and for this purpose shall have a Commonwealth of Massachusetts issued Farmer Series Pouring Permit. The facility may host marketing events, special events, and/or factory tours. The facility may only sell beverages produced by, and commercial goods branded by, the winery, brewery, or distillery. The facility may sell permitted beverages to consumers for consumption off-premises. The facility may have a restaurant or serve food prepared on site, but shall comply with all applicable Board of Health requirements for kitchens and common victualler licenses; provided, however, that in such a case only beer, spirit or wine products manufactured by the facility, and none by other manufacturers, may be sold, unless an on-premises pouring license has been obtained under M.G.L. c. 138, § 12. Nothing contained herein shall prohibit the facility from having a bring-your-own-food policy.

TASTING ROOM

A room attached to either a winery, brewery, or distillery, and permitted as an accessory use thereto, that allows patrons to sample or consume wine, beer, and other alcoholic beverages that are produced on the premises in accordance with M.G.L. c. 138. A tasting room is not to exceed 25 percent of the gross square footage of the winery, brewery, or distillery.

II. Section 650-17, entitled "Table of Uses," is hereby amended as follows:

- a. By regulating business uses so as to allow, as of right, a brew pub in the Business (B), Commercial Automotive (CA), Limited Industrial (LI), Industrial (I) and Marlborough Village (MV) districts, as follows:

	RR	A1	A2	A3	RB	RC	RCR	B	CA	LI	I	MV
Brew pub	N	N	N	N	N	N	N	Y	Y	Y	Y	Y

and

- b. by regulating business uses so as to allow, as of right, a winery, brewery, or distillery with tasting room in the Business (B), Commercial Automotive (CA), Limited Industrial (LI), Industrial (I) and Marlborough Village (MV) districts, as follows:

	RR	A1	A2	A3	RB	RC	RCR	B	CA	LI	I	MV
Winery, brewery, or distillery with tasting room	N	N	N	N	N	N	N	Y	Y	Y	Y	Y

Refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE PUBLIC HEARING FOR MONDAY AUGUST 28, 2017**; adopted.

ORDERED: That Financial Disclosure from Recreation Director, Charles Thebedo, pertinent to a municipal employee (Daniel Rudzinsky) who seeks to provide services to the Recreation Department, **APPROVED**; adopted.

ORDERED: That the Application for Livery License, Katsunori Tanaka, d/b/a Global Limousine & Tour Services, LLC, 17 Eager Court, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Communication from Nicholas Harron, re: applicant's formal request for waiver pursuant to Section 650-35H.(8) to allow for three building signs for the proposed Evvica Cucina restaurant located at 142 Apex Drive, Order No. 16/17-1006443R, refer to **URBAN AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Communication from Attorney Eriksen, Walker Realty LLC, re: revised color rendering for proposed building 7 to be constructed at 58 Apex Drive with previously approved elevation attached, Order No. 16/17-1006443R, refer to **URBAN AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Communication from Attorney Eriksen, Walker Realty LLC, re: Apex Center Landscaping Plan, Order No. 16/17-1006443R, refer to **URBAN AFFAIRS COMMITTEE**; adopted.

ORDERED: Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as most recently amended, be further amended by adding a new Section 650-36 as follows:

## ARTICLE VI

### §650-36 – RAIL TRAIL OVERLAY DISTRICT

#### A. Purpose and Objectives

- (1) The Assabet River Rail Trail Overlay District (herein, the “ARRTOD”) allows the application of supplemental land use controls within the boundaries of a certain overlay district as an alternative to land use controls that exist in the underlying district(s). The establishment goals of the ARRTOD are to enhance land use development and encourage desired growth patterns for the benefit of the public health, safety and welfare, by promoting pedestrian and bicycle friendly development complimentary to the Assabet River Rail Trail.
- (2) For the purposes of this section, the ARRTOD shall be superimposed on the other districts existing at the time of the adoption of this Section, and shall include all parcels of real estate that, as of July 1, 2017, either abutted the Assabet River Rail Trail or were held in common ownership with parcels that abutted the Assabet River Rail Trail.

#### B. Authority of Permit Granting Authority

- (1) The City Council shall be the Permit Granting Authority for Special Permit Approval in the ARRTOD. In all instances, a development which proceeds under the ARRTOD is subject to Site Plan Approval in accordance §270-2 of the Marlborough City Code.
- (2) The City Council may, by special permit in accordance with Section 650-59, permit a “Rail Trail Development”, defined in Subsection C, on any lot or combination of lots located in the ARRTOD (a “Development Parcel”) provided that:
  - a. A portion of the Development Parcel contained a non-residential use in operation as of July 1, 2017.
  - b. The Development Parcel has a minimum area of 1.5 acres.
  - c. The Rail Trail Development compliments the Assabet River Rail Trail by improving the appearance of the Development Parcel as seen from the Assabet River Rail Trail, encourages the use of the Assabet River Rail Trail, and provides certain public amenities (including, but not limited to, landscaping, trash receptacles, public safety enhancements, or other benefits) that enhance the Assabet River Rail Trail.

C. Eligible Uses, Dimensional Controls:

- (1) A Rail Trail Development shall include any use allowed in the underlying zoning district, either as of right or by special permit, in addition to the following:
  - a. Retail sales and services, up to 5,000 square feet of gross floor area per establishment.
  - b. Restaurant, café with or without table service (including outside seating and service) without drive-thru, up to 5,000 square feet of gross floor area per establishment.
  - c. Residential uses, with such density as seemed appropriate by the City Council.
- (2) A Rail Trail Development may include multiple uses, which may be commingled into a single structure or structures or may be located in multiple separate structures on one building lot.
- (3) A Rail Trail Development shall be subject to the dimensional, parking and landscaping requirements of the underlying zoning district and for the use or combination of uses of the Rail Trail Development, provided, however, that the City Council may elect to vary dimensional and parking requirements by Special Permit if, in the City Council's opinion, such change shall result in an improved project and will not nullify or substantially derogate from the intent or purpose of this Section. This authority shall continue subsequent to initial occupancy.

Refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE PUBLIC HEARING FOR MONDAY SEPTEMBER 11, 2017;** adopted.

**ORDERED:** Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as most recently amended, be further amended by amending certain provisions of (new text underlined, deleted text in strikethrough):

§ 650-12 Nonconforming uses.

- A. No building or other structure nor any land shall be used nor shall any building or other structure or part thereof be erected or altered except in conformity with the provisions of this chapter and any amendments thereof which apply to the district in which the building, structure or premises shall be located; provided, however, that this chapter shall not apply to the existing use of any building or structure or of land to the extent to which it was lawfully used at the time of the adoption of this chapter.

- B. This chapter shall apply to any change of use thereof and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration or for its use for the same purpose to a substantially greater extent, provided that the City Council determines, by the grant of a special permit, that expansion or alteration of a nonconforming use or structure is not substantially more detrimental to the neighborhood than the existing nonconforming use, except that no special permit is needed if the alteration or expansion is to a nonconforming single- or two-family dwelling and said alteration or expansion does not increase the nonconforming nature of the dwelling, and subject, however, to the following provisions:
- (1) Such use has not been abandoned for a period of two years or more, except in the case of land used for agriculture, horticulture or floriculture for a period of less than five years.
  - (2) Such use is not enlarged to more than 25% of the floor and ground areas of use existing at the time of adoption of the original Zoning Ordinance, or any amendments thereto, **except that the City Council may waive this requirement in the case of a nonconforming contractor's yard use, outdoor storage use, or other similar use where the outdoor aspect of the use is itself nonconforming and not accessory to an indoor use, and** ~~than that~~ any nonconforming farm may be enlarged up to the total area owned by the nonconforming farmer at the time of adoption of this chapter, and there shall be no limit as to the expansion of farm buildings.
  - (3) In case the use is destroyed or damaged by fire, explosion or other catastrophe to not greater than 75% of the fair market value of the building or structure, exclusive of foundation, based upon replacement cost immediately prior to such damage, the structure or use may be restored or rebuilt at the same location and used as previously, provided that:
    - (a) The building, structure or use of land as restored or rebuilt shall be no greater in floor or land area than the maximum permitted under Subsection B(3)(b) of this section.
    - (b) The restoration or rebuilding shall conform to this chapter so far as practicable and shall be completed within two years of the catastrophe, unless approved by the City Council in writing in accordance with Article VIII.
  - (4) The building or structure is completed if a permit for construction was granted prior to the adoption of this chapter and construction is accomplished within two years after the date of adoption of this chapter.

- (5) The provisions of the above Subsection B(1), (2) and (4) shall not apply to a single-family dwelling.

Be and is herewith **WITHDRAWN PER REQUEST OF MIRICK O'CONNELL ON BEHALF OF APPLICANT, DAVID SKARIN.**

ORDERED: That the Communication from Framingham State University re: complimentary copy of *Greater MetroWest Economic Profile 2017*, **FILE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY AUGUST 28, 2017** as **DATE FOR PUBLIC HEARING** On the Petition of NGrid to install 7 new poles and removing 5 poles along Boston Post Road West. Pole installs are part of a project to accommodate the expansion of Boston Post Road West, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY AUGUST 28, 2017** as **DATE FOR PUBLIC HEARING** On the Petition of NGrid to install 1 new pole along Hayes Memorial Drive Pole installs are part of a project to accommodate the expansion of Boundary Street & Rt. 20-Boston Post Road West, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY AUGUST 28, 2017** as **DATE FOR PUBLIC HEARING** On the Petition of NGrid to install 2 new poles and remove 1 pole along Boundary Street Pole installs are part of a project to accommodate the expansion of Boundary Street refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Communication from Central Mass Mosquito Control Project re: investigating resident's complaints about mosquitos on the following dates: July: 7, 12, 19 & 26 & August 2, 9, 16, 23, & 30, **FILE**; adopted.

ORDERED: That the Minutes Conservation Commission, May 18, 2017, **FILE**; adopted.

ORDERED: That the Minutes School Committee, May 23 & June 13, 2017, **FILE**; adopted.

ORDERED: That the Minutes Assabet Valley Regional Technical High School Committee, June 6, 2017, **FILE**; adopted.

ORDERED: That the Minutes Board of Assessors, May 23, 2017, **FILE**; adopted.

ORDERED: That the Minutes Commission on Disabilities, March 7, April 4, & May 2, 2017, **FILE**; adopted.

ORDERED: That the Minutes Traffic Commission, May 30 2017, **FILE**; adopted.

ORDERED: That the Minutes Planning Board, June 5, 2017, **FILE**; adopted.

ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.

- a. Christine Flagg, 23 East Street, Sudbury, pothole or other road defect.

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

**Marlboro City Council Finance Committee  
Monday July 17, 2017  
In Council Chambers**

Present: Chairman Ossing; Finance Committee Members Councilors Robey, Oram, Doucette and Irish. Councilors Clancy and Landers were also in attendance. The meeting convened at 7:03 PM.

- 1. Order No. 17-1006955 - MWRA Lead Loan Program \$5,000,000.00 Bond:** The Finance Committee reviewed the Mayor's letter dated June 15, 2017 requesting the approval of a bond for \$5,000,000.00 to enable the City of Marlboro to borrow funds from the Massachusetts Water Resources Authority (MWRA) to replace all the remaining water service lines that contain lead in Marlboro. The bond was advertised on July 1, 2017. The Finance Committee voted 5 - 0 to approve the bond.

**The Finance Committee agreed to support suspending the rules at the July 24, 2017 City Council meeting to approve the \$5,000,000.00 bond.**

The Finance Committee adjourned at 7:43 PM.

Councilor Robey reported the following out of the Legislative and Legal Affairs Committee:

Tuesday, June 20, 2017, 2017, 6:00 PM – In Council Chambers  
Minutes and Report

Present: Chairman Katie Robey, Councilor Delano, Councilor Juare, & Councilor Clancy. Also attending was Cynthia Panagore-Griffin, Assistant City Solicitor.

**Order No. 17-1006949-The Marlborough City Council review the merits of a Zoning Moratorium for recreational marijuana establishments in the City of Marlborough for a period of eighteen months to ensure that the City's current zoning ordinance offers appropriate zoning protections to neighborhoods in all sections of the City; and, moreover, until the Massachusetts Legislature completes its review of the ballot initiative that led to the legalization of marijuana in the Commonwealth.**

Discussion was held on the merits of a moratorium, pointing out it wasn't intended as a denial of establishments coming to the city. The solicitor had provided a draft copy of the zoning amendment with a blank line to indicate the expiration date of the moratorium. Upon further review, it was decided to recommend the moratorium end on June 30, 2018.

**Councilor Delano moved to recommend approval of the Zoning Amendment to establish a moratorium on Recreational Marijuana until June 30, 2018. The motion was seconded and carried 3-0. It was agreed to ask for a Suspension of Rules at the July 24<sup>th</sup> City Council meeting to advertise the Zoning Amendment.**

It was moved and seconded to adjourn; motion carried 3-0. The meeting adjourned at 6:30 PM.

**Councilor Tunnera orally reported out of the Personnel Committee, Order No. 17-1006839A, Appointment of Alan Slattery to the Historical Commission for a term to expire three years from date of City Council confirmation and to Suspend the Rules to Approve.**

Councilor Delano reported the following out of the Urban Affairs Committee:

Meeting Name: City Council Urban Affairs Committee

Date: July 17, 2017

Location: City Council Chamber, 2<sup>nd</sup> Floor, City Hall, 140 Main Street

Convened: 5:32 PM – Adjourned: 6:58 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Elder, Juaire, Tunnera and Landers; and Councilors Clancy, Doucette, and Robey; **Tim Hippensteele (General Manager, Hilton Garden Inn); Kevin Eriksen (Attorney, Walker Realty LLC); Joe Trolla (Ryan Development)**

**Order No. 17-1006958 - Communication from City Code Officer regarding Additional Sign Request from Hilton Garden Inn, 170 Forest Street, to add signage for the restaurant, BLVD. The Urban Affairs Committee met with Tim Hippensteele, General Manager of Hilton Garden Inn, for the review of an additional sign request for their restaurant, Boulevard Kitchen and Bar, on the side of the Hilton Garden Inn located at 170 Forest Street. The Hilton Garden Inn was looking for exposure for their restaurant as there is no visible signage from the road. They presented two options to the Urban Affairs Committee with their preference being the internally lit, vertical sign on the side of the building. It would be approximately four feet wide by ten feet high, turned off by 11:00 PM each evening, and would conform to any limits imposed by the City regarding its intensity. Motion made by Councilor Elder, seconded by Chair, to approve one additional wall sign on the Forest Street side of the Hilton Garden Inn building as presented. The motion carried 5-0.**

**Order No. 16/17-1006443R - Communication from Walker Realty LLC regarding Revised Color Renderings for proposed office building to be constructed at 11 Apex Drive. The Urban Affairs Committee met with Kevin Eriksen and Joe Trolla, appearing on behalf of Walker Realty LLC, for a discussion of the revised color rendering for the proposed office building located at 11 Apex Drive. The revised elevation replaces the elevation previously approved in November of 2016. The basic structure and footprint of the building remained the same however the portico was removed and the exterior coloring was updated to better blend with the design of the entire Apex Center complex. Motion made by Councilor Elder, seconded by Chair, to approve the revised color rendering for the office building being constructed at 11 Apex Drive. The motion carried 4-1.**



**Order No. 17-1006443R - Communication from Walker Realty LLC regarding Waiver pursuant to Section 650-35H of the HRMUOD to allow for three building signs for the proposed 110 Grill to be constructed at 115 Apex Drive.** The Urban Affairs Committee met with Kevin Eriksen, appearing on behalf of Walker Realty LLC, for a discussion of a waiver to allow for three building signs for the proposed 110 Grill located at 115 Apex Drive. Mr. Eriksen explained the HRMUOD has a section specifically dedicated to wall signage, §650-35H (1), which allows two (2) wall signs as of right and any additional signs beyond that requires a waiver from the City Council. They submitted their typical 110 Grill wall signage package which can be viewed throughout their locations within Massachusetts and New Hampshire with the closest location being in Hudson, MA. **Motion made by Councilor Elder, seconded by Chair, to approve the third sign for the 110 Grill as requested by Walker Realty LLC. The motion carried 5-0.**

**Motion made and seconded to adjourn. The motion carried 5-0. The meeting adjourned at 6:58 PM.**

**Suspension of the Rules requested – granted**

ORDERED:

**WATER SERVICE LINE REPLACEMENT BOND**

That the sum of \$5,000,000 (five million dollars) be and is hereby appropriated for financing the engineering and construction of the replacement of water service lines containing lead piping through the Massachusetts Water Resources Authority (MWRA) Lead Loan Program (LLP).

That to meet said appropriations the Comptroller/Treasurer, with the approval of the Mayor, is authorized to borrow all or a portion of the \$5,000,000.00 under and pursuant to the provisions of Chapter 44, Section 8(3) of the Massachusetts General Laws, as amended and supplemented, or any other enabling authority, and to issue bonds or notes of the City of Marlborough therefor. Further that the Comptroller/Treasurer, with the approval of the Mayor, is authorized to borrow all or a portion of the foregoing amount from the MWRA and in connection therewith, to enter into a loan agreement and/or security agreement with the MWRA relative to such loan, and the Commissioner of Public Works, with the approval of the Mayor, is authorized to contract for and expend any Federal, State or other aide available for the project, including any grant related to such program from the MWRA, and the Mayor and/or the Comptroller/Treasurer, with the approval of the Mayor, are authorized to take any other action necessary to carry out this project.

Any premium received by the City upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

**APPROVED;** adopted.

**Yea: 11-Nay: 0**

**Yea: Clancy, Delano, Doucette, Elder, Tunnera, Irish, Landers, Juairé, Oram, Ossing & Robey**

**Suspension of the Rules requested – granted**

ORDERED: THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING SUBMITTED FOR ITS OWN CONSIDERATION CHANGES IN THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, TO FURTHER AMEND CHAPTER 650, NOW ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY ADDING THERETO AS FOLLOWS:

1. Section 650-5, entitled “Definitions; Word Usage,” is hereby amended by adding to said Section the following definition:

MARIJUANA ESTABLISHMENT: a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.

MARIJUANA RETAILER: an entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.

2. A new Section 650-37, entitled “TEMPORARY MORATORIUM ON RECREATIONAL MARIJUANA ESTABLISHMENTS AND MARIJUANA RETAILERS,” is hereby added, as follows:

650-37 TEMPORARY MORATORIUM ON RECREATIONAL MARIJUANA ESTABLISHMENTS AND RETAILERS

A. Purpose

By vote of the state election on November 8, 2016, the voters of the Commonwealth approved a law, Chapter 334 of the Acts of 2016, which regulates the cultivation, distribution, possession, and use of marijuana for recreational purposes. By act of the Legislature, Chapter 351 of the Acts of 2016, the Cannabis Control Commission must issue initial regulations by March 15, 2018 and begin accepting applications for licenses by April 1, 2018. The Cannabis Control Commission must also adopt final regulations by July 1, 2018.

Pursuant to section 3 of chapter 94G of the Massachusetts General Laws, a municipality may adopt zoning regulations that impose reasonable safeguards on the operation of marijuana establishments. Chapter 334 of the Acts of 2016 also established the Cannabis Advisory Board to, among other things, advise on the preparation of regulations. It is expected that the Legislature, the Cannabis Control Commission, and the Cannabis Advisory Board’s will provide guidance to the City concerning the regulation of recreational marijuana establishments and marijuana retailers.

**B. Temporary Moratorium**

The regulation of recreational marijuana establishments and marijuana retailers raises complex and novel legal, planning, and public safety issues. The City intends to adopt a temporary moratorium on the use of land and structures in the City for the purpose of recreational marijuana establishments and marijuana retailers. The temporary moratorium will provide the City with time to study, plan, consider and promulgate ordinances to address said complex and novel issues, including but not limited to assessing and incorporating State regulations, in a manner consistent with sound land use planning goals and objectives.

For the reasons sets forth above, and notwithstanding any other provision of the Zoning Ordinance to the contrary, the City hereby adopts a temporary moratorium on the use of land or structures for or by recreational marijuana establishments and marijuana retailers, as herein defined. During the moratorium period, the City shall undertake a planning process to address the potential impacts of recreational marijuana in the City; consider Cannabis Control Commission regulations regarding recreational marijuana establishments and marijuana retailers and related uses; consider such guidance as may be provided by the Legislature, the Cannabis Control Commission, and the Cannabis Advisory Board; determine whether the City shall restrict any or all recreational marijuana establishments and marijuana retailers through any available legal means, adopt provisions of the Zoning Code to address the impact and operation of recreational marijuana establishments, marijuana retailers and related uses; and consider such other and further matters as set forth in M.G.L. c. 94G, § 3 and M.G.L. c. 64N, § 3. The moratorium shall be in effect through July 1, 2018.

Refer to **PLANNING BOARD AND ADVERTISE PUBLIC HEARING FOR SEPTEMBER 11, 2017**; adopted.

**Councilor Elder opposed.**

**ORDERED:** That the Appointment of Alan Slattery to the Historical Commission for a term to expire three years from date of City Council confirmation, **APPROVED**; adopted.

**Councilor Elder opposed.**

ORDERED: Be it ordained by the City Council of the City of Marlborough, acting upon a recommendation of the Mayor, that the Code of the City of Marlborough (hereinafter, the "City Code"), as amended, be further amended as follows:

- I. The City Code is hereby amended in its entirety by deleting the words "Chief Engineer" as said words appear throughout the City Code, and inserting in place thereof, throughout the entirety of the City Code, the words "Fire Chief."
- II. Chapter 74 is hereby amended by deleting the words "Assistant Engineer" as said words appear throughout Chapter 74, and inserting in place thereof, throughout the entirety of Chapter 74, the words "Assistant Chief."
- III. Chapter 74 is hereby amended by deleting the following sections:
  - (i.) § 74-6 Number of call members
  - (ii.) § 74-24 Board of Engineers reorganized
  - (iii.) § 74-25 Intermittent firefighters
- IV. Section 74-5, entitled "Permanent Department Force," is hereby amended as follows:
  - (i.) By deleting paragraph A in its entirety and inserting in place thereof the following paragraph.
    - A. The permanent force of the Fire Department shall consist of a Fire Chief; Assistant Chiefs; Battalion Chiefs; Captains; Lieutenants; and as many firefighters as the Mayor and City Council may from time to time order.
  - (ii.) By deleting paragraph C in its entirety and inserting in place thereof the following paragraph:
    - C. The Assistant Chiefs shall assist the Fire Chief in the command of the Department.
  - (iii.) By deleting paragraph D in its entirety, thereby revoking Order No. 07-1001476A, dated May 21, 2007, by which order the City Council accepted M.G.L. c. 31, § 58A which statute prohibits a person, other than a veteran, from having his or her name certified to original appointment to the position of firefighter if such person has reached his or her 32<sup>nd</sup> birthday on the date of the entrance examination. Said revocation shall not affect any civil service or contractual rights that may have come into existence between the City and any current or retired employee thereof as a result of the original acceptance of said law.

- V. Section 74-10, entitled “Command of members” is hereby amended as follows:
- (i.) By deleting paragraph A in its entirety and inserting in place thereof the following paragraph:
    - A. The Fire Chief shall have sole and absolute control and command of all the members of the Department and of all persons at fires or whenever the Department is on duty.
  - (ii.) By deleting paragraph B in its entirety.
- VI. Section 125-17, entitled “Overtime Pay,” is hereby amended in paragraph D by deleting the words “First Assistant Engineer and Second Assistant Engineer” and inserting in place thereof the words “Assistant Chiefs.”

**APPROVED;** adopted.

**First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain; adopted. No objection to passage in one evening.**

ORDERED: That the Fiscal Year 2018-2022 Capital Plan, **FILE**; adopted.

ORDERED: That the Application for Renewal of Junk Dealer’s License, Gerald Dumais, d/b/a/ Dumais & Sons Second Hand Store, 65 Mechanic St, **APPROVED**; adopted.

ORDERED: That the Mayor be requested to issue a letter of interest in developing TransitX in the City of Marlborough; **APPROVED**; adopted.

**Yea: 6-Nay: 5**

**Yea: Doucette, Tunnera, Irish, Landers, Juair, & Oram**

**Nay: Clancy, Delano, Elder, Ossing & Robey**

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:44 PM.