



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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JUNE 3, 2013

Regular meeting of the City Council held on Monday, JUNE 3, 2013 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors Present: Pope, Ossing, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, and Landers. Meeting adjourned at 9:07 PM.

ORDERED: That the minutes of the City Council Meeting MAY 20, 2013, **FILE**; adopted.

ORDERED: That the **PUBLIC HEARING** on the Petition from National Grid to:

- a) Locate manholes, wires, and ducts, including the necessary sustaining & protecting fixtures, along and across the following public way: Houde St. and Peltier St. Approximately 535 ft. north of the center line of the intersection of Houde St. and Peltier St. and continuing approximately 515 ft. in a southerly direction.
- b) Locate manholes, wires, and ducts, including the necessary sustaining fixtures along the following public way: Houde St. and Duca Dr. Approximately 150 ft. west of the centerline and continuing approximately 130 ft. in a east direction. Heavy duty hand holes #12, 11 and conduit on Duca Dr. and Houde St.
- c) Erect and maintain poles and wires to be placed thereon, together with such sustaining and protecting fixtures as said companies may deem necessary to be owned and used in common by your petitioners, in the following public way or ways: Evelina Dr. and Peltier St. Petition to install two new heavy duty hand holes on Bergeron Rd. between houses 64 & 56 and between houses 34 and 20. This petition is also to install 2-3" conduits to the souther side on Bergeron Rd. from Evelina Dr. to 20 Bergeron Rd.
- d) Locate manholes, wires, and ducts, including the necessary sustaining & protecting fixtures, along and across the following public way: Houde St. and Rogers Ave. Approximately 195 ft. west of the centerline of the intersection of Houde St. and Rogers Ave. Heavy duty hand holes #10, #5 Rogers Ave. and 2-3" conduits on Rogers Ave. and Houde St.,
Order No. 13-1005447, all were heard who wish to be heard, hearing recessed at 8:12 p.m.; adopted.

Councilors Present: Ossing, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy & Landers.

Councilor Pope abstained

ORDERED: That the Communication from Tim Cummings, Executive Director of the Marlborough Economic Development Corporation re: Mass Development/Urban Land Institute's Program, refer to **URBAN AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Communication from Assabet Valley Regional Vocational School District Building Committee re: Permitting Fees Pertinent to the Repair Project, **FILE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, JULY 8, 2013**, as date for a **PUBLIC HEARING** for the Application for Special Permit from Attorney Mitrakas on behalf of 587 Bolton St., Inc. to serve food outdoors as the Bolton St. Tavern is located in an LI zone, 587 Bolton St., refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the Minutes, Planning Board, May 6, 2013, **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, April 30, 2013, **FILE**; adopted.

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

A. Donna Eanuzzo, 11 Thomas Dr., residential mailbox claim 2(a)

Reports of Committees:

Councilor Landers reported the following out of Public Services Committee:

Order No. 13-1005372 - Application for Junk Dealer's License by Michael Komapovsky, d/b/a Assrus Art Gallery, 305 Lincoln Street.

-REFER TO PUBLIC SERVICES

Motion made by Councilor Clancy, seconded by Jenkins, to recommend approval. 3-0

Order No. 13-1005343 - Application for FUEL STORAGE LICENSE by Partners HealthCare System, Inc., off of Forest Street to store 60,000 gallons above ground diesel fuel.

-REFER TO PUBLIC SERVICES

PUBLIC HEARING: MARCH 25, 2013

Motion made by Councilor Clancy, seconded by Jenkins, to recommend approval. 3-0

Order No. 13-1005407 - Renewal of Junk Dealer's License, Tony Bitar, Hannoush Jewelers, 601 Donald Lynch Blvd.

-REFER TO PUBLIC SERVICES

Motion made by Councilor Jenkins, seconded by Clancy, to recommend approval. 3-0

Order No. 13-1005408 - Renewal of Junk Dealer's License, Roman Kimyagarov, Arthur & Sons Shoe Repair, 107 Main Street.

-REFER TO PUBLIC SERVICES

Motion made by Councilor Jenkins, seconded by Clancy, to recommend approval. 3-0

Order No. 13-1005427 - Application of Best Buy Store #1966, 601 Donald Lynch Blvd for Renewal of Junk Dealer's License.

-REFER TO PUBLIC SERVICES

Motion made by Councilor Clancy, seconded by Jenkins, to recommend approval pending receipt of satisfactory CORI from the Chief of Police. 3-0

Reports of Committees cont'd:

Order No. 13-1005428 - Application of Best Buy Store #820, 769 Donald Lynch Blvd for Renewal of Junk Dealer's License.

-REFER TO PUBLIC SERVICES

Motion made by Councilor Clancy, seconded by Jenkins, to recommend approval pending receipt of satisfactory CORI from the Chief of Police. 3-0

Councilor Elder orally updated City Council pertinent to the Cumberland Farms Fuel Storage License Application, Order No. 12/13-1005083A.

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

Present: Chairman Elder, Councilor Clancy, Councilor Robey, Councilor Landers, Councilor Tunnera, Council President Pope, Councilor Jenkins, Councilor Delano, Councilor Oram

Order No. 12/13-1005108 - Solicitor Rider updated the Committee on the prospective changes in the Indian Hill Property (Fafard). Solicitor Rider gave his legal opinion that the motion he was proposing benefited the city for various reasons and he stated legally we wouldn't need a public hearing. The Solicitor gave updates to questions the Committee asked of him at its last meeting. Councilor Clancy said the Conservation Committee agreed with the changes the Solicitor is proposing. President Pope said she had some concerns about the slope but it appears to have been addressed by Target. Councilor Clancy read the Solicitor's following proposed motion and it was approved 5-0.

Motion-

That no formal application to modify the City Council's 1987 special permit concerning the Indian Hill development is required to be filed by the developer, Indian Development Corp., relative to the prospective change in the City's legal interest in a 20-acre open space parcel located at Indian Hill, from a conservation restriction to acquiring the fee interest in that 20-acre parcel, which fee acquisition would also include the City's acquisition of an approximately 10' wide pedestrian access easement appurtenant to the 20-acre parcel and connecting it to Callahan State Park; and

That the Mayor is authorized to execute an agreement with the developer for relocating the said pedestrian access easement.

Reports of Committees cont'd:

Members Present: Chairman Elder; Councilors Clancy, Robey, Tunnera and Landers

Order No. 13-1005341 - Application for Special Permit, Bohler Engineering on behalf of McDonald's Restaurant to improve the aesthetics and operational efficiencies of their restaurant which includes updates to the drive-thru at 155 Boston Post Road West
-REFER TO URBAN AFFAIRS - PUBLIC HEARING: APRIL 8, 2013

The Committee discussed the proposed changes, including changing the drive-through to two lanes and small cosmetic changes, with representatives of McDonald's from Bohler Engineering. Initial safety concerns were adequately addressed. Chairman Elder asked the petitioners if they anticipate more traffic and/or accidents at the merging of the two lanes, and the petitioners replied in the negative. Councilor Clancy asked a few questions about the exterior changes and staffing. In addition to changes to the drive-through window, the restaurant will get a facelift that will improve the appearance of the building and provide improved aesthetics for the area which is close to the westerly entrance to the city.

The Committee did not receive any negative comments on the proposal.

The Committee discussed the proposed decision with the petitioner, changing minor details.

The Committee discussed the standard language for signage in special permits.

Motion by Councilor Clancy and seconded to recommend approval of the Special Permit for a drive through window as requested by Bohler Engineering on behalf of McDonald's Restaurant and to suspend the rules to forward the proposed decision to the City Solicitor to place on the June 17, 2013 regular meeting in proper legal form. Vote 5-0

Suspension of Rules requested – granted

ORDERED: That the Petition from National Grid to install conduit from manhole 15-22 to pole 50, Simarano Dr. and pole 50, D'Angelo Dr. and two pole installations on Simarano and D'Angelo Dr., **APPROVED WITH THE FOLLOWING CONDITIONS;** adopted.

- 1) The installation of said poles (2 on Simarano and 2 on D'Angelo) should not interfere with the driveway and/or parking lot for impacted properties.
- 2) The proponent is proposing to install 2 – 5” conduits through the intersection which may or may not impact the signalized intersection. The issues associated with these crossing must be vetted during the Road Opening Permit process with the DPW.
- 3) The last issue is the standard language that for work of this sort, can you please make sure that the Chair of the Committee gets the following comments from the Engineering Division concerning the subject project:
 - a) Any necessary easements are to be obtained from affected property owners and shown on proposed plans.
 - b) A street opening permit must be applied for by the proposed contractor performing the work.
 - c) The contractor performing the work must obtain a street opening bond with the City of Marlborough for an amount to be determined by the City Engineer.
 - d) The contractor is to provide the Engineering Division preconstruction photos of driveways, sidewalks, lawn areas, and roadway areas impacted by all construction activities.
 - e) The contractor is to coordinate with the affected residents to have irrigation systems flagged before trenching begins and provide them a timetable of the proposed work.
 - f) A proper staging area is to be located/acquired before work commences – material and equipment is not to be parked/stockpiled within the city right of way.
 - g) The contractor is to ensure residents are always able to enter and exit their driveways (have necessary steel plating on site and accessible).
 - h) Ensure construction safety controls are established (signage, drums, police details, etc...) and are in accordance with the latest MUTCD standards.
 - i) Trench backfilling, compacting, temporary, and final paving are to be done in accordance with the City of Marlborough standard trenching details.
 - j) Trenches are to be paved or completely backfilled and compacted at the end of each work day. Trenches are never to be left unattended.
 - k) Post construction loaming and seeding are to be done in accordance with the 1995 MHD Standard Specifications sections 751 & 765.
 - l) Any disturbed curbing is to be replaced.

Suspension of Rules requested – granted

ORDERED: That Chairman Delano introduced a new Communication from Assistant City Solicitor Cynthia Panagore Griffin pertinent to an Amendment to the OPEB Trust Agreement, **MOVE TO ITEM 15, APPROVED;** adopted.

Suspension of Rules requested – granted

ORDERED: That the Application for Special Permit, Bohler Engineering on behalf of McDonald’s Restaurant, to improve the aesthetics and operational efficiencies of their restaurant which includes updates to the drive-thru at 155 Boston Post Road West, refer **TO THE CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FOR THE JUNE 17, 2013 CITY COUNCIL AGENDA, APPROVED;** adopted.

Suspension of Rules requested – granted

ORDERED: That the Communication from the Planning Board re: their favorable recommendation of the Zoning Amendment for Proposed Moratorium, Medical Marijuana Treatment Center, **TABLED UNTIL JUNE 17, 2013, APPROVED;** adopted.

ORDERED: That the MEDC (Marlborough Economic Development Corporation) transfer request in the amount of \$499,000.00 which moves funds from Economic Development to MEDC Funding to fully fund the operations of the MEDC for FY14, **APPROVED;** adopted.

FROM:

Acct. 27000099-42440 \$499,000.00
Economic Development

TO:

Acct. # 11740006-53950 \$499,000.00
MEDC Funding

ORDERED: That the Employee Retirement transfer requests in the amount of \$96,569.40 which moves funds from and to various accounts as noted below to cover costs associated with the retirement of three employees, be and is herewith **APPROVED;** adopted.

BUDGET TRANSFERS --									
DEPT:		Various				FISCAL YEAR:			
FROM ACCOUNT:						TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$454,218.00	\$9,898.00	11990006	51500	Fringe	\$9,898.00	11410002	50550	Head Clerk	\$11,877.00
		Reason: Retirement Payout of Vacation							
	\$17,816.40	11990006	51500	Fringe	\$17,816.40	11410003	51920	Sick Leave	\$0.00
		Reason: Retirement Payout Sick Leave							
	\$5,353.00	11990006	51500	Fringe	\$5,353.00	11440002	50770	Senior Clerk	\$13,492.00
		Reason: Retirement Payout of Vacation							
	\$51,138.00	11990006	51500	Fringe	\$51,138.00	12100003	51920	Sick Leave	\$23,881.00
		Reason: Retirement Payout Sick Leave							
	\$12,364.00	11990006	51500	Fringe	\$12,364.00	12100001	50820	Sargeant	\$205,937.00
		Reason: Retirement Payout of Vacation							
	\$96,569.40	Total			\$96,569.40	Total			

ORDERED: That the Employee Retirement Benefits transfer request in the amount of \$28,834.20 which moves funds from and to various accounts as noted on the attached spreadsheet which will fund the unused sick leave and vacation payouts associated with the retirement of a long term employee of the City, **APPROVED**; adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT:		Fringe				FISCAL YEAR:			
FROM ACCOUNT:						TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$454,218.00	\$18,736.20	11990006	51500	Fringe	\$18,736.20	11330001	50015	Comptroller	\$14,689.54
		Reason: Retirement Payout of Vacation							
	\$1,000.00	11990006	51500	Fringe	\$1,000.00	11330003	51920	Sick Leave	\$0.00
		Reason: Retirement Payout Sick Leave							
	\$6,245.00	11990006	51500	Fringe	\$6,245.00	11330002	50062	Finance Asst.	\$25,886.09
		Reason: Employee Resignation Payout Vacation Time							
	\$2,853.00	11990006	51500	Fringe	\$2,853.00	11330003	51920	Sick Leave	\$0.00
		Reason: Employee Resignation Payout Sick Time							
	\$28,834.20	Total			\$28,834.20	Total			

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 125, ENTITLED "PERSONNEL," AS FOLLOWS: **APPROVED**; adopted.

POSITION	EFFECTIVE DATE	MINIMUM	STEP 1	STEP 2	MAXIMUM
		1 st 6 mos.	2 nd 6 mos.	Next 12 mos.	
Comptroller/Treasurer	7/1/13	101,695.70	105,763.28	109,994.07	114,393.83

Councilor Seymour abstained

MOTION by Councilor Ossing to RECONSIDER the approval of the Comptroller/Treasurer Salary Ordinance **AND ORDER ADVERTISED**; Carries.

Councilor Seymour abstained

ORDERED: That the FY14 budget of \$132,182,328.00 which represents a 4.3% increase from the FY13 budget or an increase of \$4,452,474.00, **APPROVED WITH ATTACHMENTS 1-3**; adopted.

Councilor Elder requested to be recorded in opposition.

ORDERED: That the Fuel Efficient Vehicle Police Amendment as follows, **APPROVED**; adopted.

City of Marlborough
FUEL EFFICIENT VEHICLE POLICY

POLICY STATEMENT

In an effort to reduce the City of Marlborough's fuel consumption and energy costs over the next 5 years the City hereby adopts a policy, where practicable, to purchase only fuel efficient vehicles to meet this goal.

PURPOSE

To establish a requirement that the City of Marlborough, use reasonable efforts, to purchase only fuel efficient vehicles for municipal/school use whenever such vehicles are commercially available and practicable.

APPLICABILITY

This policy applies to all divisions and departments of the City of Marlborough.

GUIDELINES

All departments / divisions shall purchase only fuel-efficient vehicles for municipal use whenever such vehicles are commercially available and practicable.

The City of Marlborough will maintain an annual vehicle inventory for ALL vehicles and a plan for replacing non-exempt vehicles with vehicles that meet, at a minimum, the fuel efficiency ratings contained in the most recent guidance for Criteria 4 published by the MA Department of Energy Resources' Green Communities Division. This Green Communities' Guidance for Criteria 4 must be checked for updates prior to ordering replacement vehicles; go to: <http://www.mass.gov/eea/docs/doer/green-communities/grant-program/gc-criterion4-guidance.pdf>.

Exemptions

Heavy-duty vehicles such as fire-trucks, ambulances, and public works trucks are exempt from this criterion

Police cruisers are exempt from this criterion. However, municipalities must use reasonable efforts to purchasing fuel efficient cruisers when they become commercially available and practicable. Police department administrative vehicles must meet fuel efficient requirements.

ORDERED: That the provisions of Section 20 of Chapter 32B of the General Laws of the Commonwealth of Massachusetts, entitled Other Post-Employment Benefits Liability Trust Fund, be and is hereby accepted by the City Council for the City of Marlborough, and further, that the City Council for the City of Marlborough hereby establishes an Other Post-Employment Benefits ("OPEB") Trust under the terms and conditions provided below: be and is herewith **APPROVED**; adopted

**CITY OF MARLBOROUGH
OTHER POST-EMPLOYMENT BENEFITS ("OPEB") TRUST
TRUST AGREEMENT**

This TRUST AGREEMENT is made this ___day of _____, 2013 by and between the City of Marlborough (the "City"), acting through its City Council and the duly serving members of the Board of Trustees of the City of Marlborough OPEB Trust (the "Trustees").

WITNESSETH:

WHEREAS, the City Council has established certain other post-employment benefits ("OPEB"), other than pensions, for eligible former employees of the City; and

WHEREAS, the City Council wishes to establish an irrevocable trust (the "Trust") for the purpose of funding OPEB obligations as required to be reported under General Accounting Standards Board ("GASB") Statements 43 and 45; and

WHEREAS, the Trust is established by the City Council with the intention that it qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Internal Revenue Code of 1986 and Regulations issued thereunder and as a trust for OPEB under M.G.L. c. 32B, § 20;

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants hereinafter set forth, the City, the City Council, and the Trustees hereby agree as follows.

ARTICLE 1
DEFINITIONS

As used herein, the following terms shall have the following meanings:

- 1.1. "City" means the City of Marlborough.
- 1.2. "Code" means the Internal Revenue Code of 1986, as amended from time to time.
- 1.3. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time and any successor statute.

1.4. "GASB 43 and 45," shall mean Government Accounting Standards Board, Statement No. 43 and Statement No. 45, Accounting and Financial Reporting by Employers for Post-Employment Benefits Other Than Pensions.

1.5. "Other post-employment benefits" or "OPEB," shall mean post-employment benefits other than pensions as that term is defined in GASB 43 and 45 including post-employment healthcare benefits, regardless of the type of plan that provides them, and all post-employment benefits provided separately from a pension plan, excluding benefits defined as termination offers and benefits.

1.6. "PRIT" means the Pension Reserves Investment Trust which is managed by the Pension Reserves Management Board of the commonwealth of Massachusetts.

1.7. "Retired Employee" means those persons who have retired from employment with the City and who are qualified to receive retirement benefits pursuant to M.G.L. c. 32 or as otherwise provided by law.

1.8. "Trust" means the City of Marlborough OPEB Trust as hereby established.

1.9. "Trustee" means the duly serving members of the Board of Trustees of the City of Marlborough OPEB Trust, and any successor Trustee appointed as provided pursuant to Article 5.

1.10. "Trust Fund" means all the money and property, of every kind and character, including principal and income, held by the Trustee under the Trust.

ARTICLE 2 **PURPOSE**

2.1. The Trust is created for the sole purpose of providing funding for OPEB, as determined by the City, or as may be required by collective bargaining agreement, or by any general or special law providing for such benefits, for the exclusive benefit of the City's Retired Employees and their eligible dependents, and for defraying the reasonable administrative, legal, actuarial and other expenses of the Trust. The assets held in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein.

2.2. It is intended that the Trust shall constitute a so-called "Qualified OPEB Trust" according to the standards set forth in GASB 43 and 45, and that it further qualify as an Integral Part Trust for all purposes under Article 115(c) of the Code or under any comparable provision of future legislation that amends, alters, or supersedes the Code.

ARTICLE 3
ESTABLISHMENT OF TRUST

3.1. In order to implement and carry out the provisions of M.G.L. c. 32B, § 20, the City Council hereby establishes this Trust which shall be known as the "City of Marlborough OPEB Trust."

3.2. The Trust shall be irrevocable, and no Trust funds shall revert to the City until all OPEB owed to retired City employees have been satisfied or defeased.

3.3. The principal location of the Trust shall be Marlborough City Hall, 140 Main Street, Marlborough, Massachusetts 01752.

3.4. The Trustees hereby accept the trusts imposed upon them by this Trust Agreement and agree to perform said trusts as a fiduciary duty in accordance with the terms and conditions of this Trust Agreement.

3.5. The Trustees shall hold legal title to all property of the Trust, and neither the City, nor any employee, official, or agent of the City, nor any individual, shall have any right, title or interest to the Trust.

3.6. The Trust shall consist of such sums of money as shall from time to time be paid or delivered to the Trustees by the City, which sums, together with all earnings, profits, increments and accruals thereon, without distinction between principal and income, shall constitute the Trust hereby created and established. Nothing in this Agreement requires the City to make contributions to the Trust to fund OPEB. Any obligation of the City to pay or fund benefits shall be determined in accordance with applicable law and any agreement to provide OPEB.

ARTICLE 4
TRUST FUNDING

4.1. The Trust Fund shall be credited with all amounts appropriated or otherwise made available to the City and employees of the City as a construction to the Trust for the purposes of meeting the current and future OPEB costs payable by the City, or any other funds donated or granted specifically to the City for the Trust, or to the Trust directly.

4.2. The Trustees shall be accountable for all delivered contributions, but shall have no duty to determine that the amounts received are adequate to provide the OPEB Benefits determined by the City.

4.3. The Trustees shall have no duty, expressed or implied, to compel any contribution to be made by the City, but shall be responsible only for property received by the Trustees under this Trust Agreement.

4.4. The City shall have no obligation to make contributions to the Trust to fund OPEB, and the size of the Trust may not be sufficient at any one time to meet the City's OPEB liabilities. This Trust Agreement shall not constitute a pledge of the City's full faith and credit or taxing power for the purpose of paying OPEB, and no retiree or beneficiary may compel the exercise of taxing power by the City for such purposes. The obligation of the City to pay or fund OPEB obligations, if any, shall be determined by the City or applicable law. Distributions of assets in the Trust are not debts of the City within the meaning of any constitutional or statutory limitation or restriction.

4.5. Earnings or interest accruing from investment of the Trust shall be credited to the Trust. Amounts in the Trust Fund, including earnings or interest, shall be held for the exclusive purpose of, and shall be expended only for, the payment of the costs payable by the City for OPEB obligations to Retired Employees and their dependents, and defraying the reasonable expenses of administering any plan providing OPEB Benefits as provided for in this Trust Agreement.

4.6. Amounts in the Trust Fund shall in no event be subject to the claims of the City's general creditors. The Trust Fund shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of the City, or of retirees or dependents who are entitled to OPEB.

ARTICLE 5 **TRUSTEES**

5.1. The Trust shall be administered by the Board of Trustees (the "Board") which shall be comprised of five (5) members, including the City Treasurer, the City Auditor, the Finance Director of the Marlborough Public School Department, one (1) member of the City Council who shall be designated by the President of the City Council; for a term of two years, and one (1) member who shall be appointed by the Mayor for a term of 3 years. The terms of members designated by the President of the City Council and by the Mayor shall commence upon said designation. The President of the City Council and the Mayor shall notify the City Council of the designation of members to the Board.

5.2. Each Board member shall, for purposes of this Trust, be deemed a trustee ("Trustee").

5.3. Whenever a change occurs in the membership of the Board, the legal title to property held by this Trust shall automatically pass to those duly elected successor Trustees.

5.4. Each future Trustee shall accept the office of Trustee and the terms and conditions of this Trust Agreement in writing.

5.5. Upon leaving office, a Trustee shall promptly and without unreasonable delay, deliver to the Trust's principal office any and all records, documents, or other documents in his possession or under his control belonging to the Trust.

5.6. The Trustees shall be special municipal employees for purposes of M.G.L. c. 268A and shall be subject to the restrictions and prohibitions set forth therein.

ARTICLE 6
POWERS OF THE TRUSTEES

6.1. The Trustees shall have the power to control and manage the Trust and the Trust Fund and to perform such acts, enter into such contracts, engage in such proceedings, and generally to exercise any and all rights and privileges, although not specifically mentioned herein, as the Trustees may deem necessary or advisable to administer the Trust and the Trust Fund or to carry out the purposes of this Trust. In addition to the powers set forth elsewhere in this Agreement, the powers of the Trustees, in connection with their managing and controlling the Trust and its General Fund, shall include, but shall not be limited to, the following:

6.1.2. To receive, hold, manage, invest and reinvest all monies which at any time form part of the Trust, whether principal or income, provided however that there shall be no investment directly in mortgages or in collateral loans and further provided that the Trustees shall comply with the provisions of Article 7 of this Trust Agreement, applicable law and any investment policy adopted by the Trustees concerning the investment and management of Trust assets.

6.1.3. To hold cash, uninvested, for such length of time as the Trustees may determine without liability for interest thereon.

6.1.4. To employ suitable agents, advisors and counsel as the Trustees may deem necessary and advisable for the efficient operation and administration of the Trust, to delegate duties and powers hereunder to such agents, advisors and counsel, and to charge the expense thereof to the Trust. The Trustees are entitled to rely upon and may act upon the opinion or advice of any attorney approved by the Trustees in the exercise of reasonable care. The Trustees shall not be responsible for any loss or damage resulting from any action or non-action made in good faith reliance upon such opinion or advice. All delegated authority shall be specifically defined in any by-laws adopted by the Trustees or the written minutes of the Trustees' meetings.

6.1.5. To hire employees or independent contractors as the Trustees may deem necessary or advisable to render the services required and permitted for the proper operation of the Trust, and to charge the expense thereof to the Trust.

6.1.6. To continue to have and to exercise, after the termination of the Trust and until final distribution, all of the title, powers, discretions, rights and duties conferred or imposed upon the Trustees hereunder, by any by-laws adopted by the Trustees or by law.

6.1.7. To construe and interpret this Trust Agreement and other documents related to the purposes of the Trust.

6.1.8. To maintain bank accounts for the administration of the Trust and the Trustee Fund and to authorize certain Trustees or other appropriate persons to make payments from any appropriate account for purposes of the Trust.

6.1.9. To receive and review reports of the financial condition and of the receipts and disbursements of the Trust and the Trust Fund.

6.1.10. To adopt by-laws, rules, regulations, formulas, actuarial tables, forms, and procedures by resolution from time to time as they deem advisable and appropriate for the proper administration of the Trust, including participation criteria, provided the same are consistent with the terms of this Trust Agreement.

6.1.11. To purchase as a general administrative expense of the Trust so-called director's liability insurance and other insurance for the benefit of the Trust and/or the protection of the Trustees, Trust officers, employees, or agents against any losses by reason of errors or omissions or breach of fiduciary duty or negligence.

6.1.12. To enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration and operation of the Trust and to do all acts as they, in their discretion, may deem necessary or advisable. Except as otherwise directed by the Trustees, all such contracts and agreements, or other legal documents herein authorized, shall be executed by the Chairperson, or Secretary as may be voted by the Trustees.

6.1.13. To receive contributions or payments from any source whatsoever but such contributions or payments may not be utilized for any purpose unrelated to the provision of OPEB as herein provided or properly authorized expenses.

6.1.14. To pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the Trust.

6.1.15. To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper in connection with the administration of the Trust, although the power to do such acts is not specifically set forth herein.

6.1.16. To compromise, settle or arbitrate any claim, debt, or obligation of or against the Trust or Trust Fund; to enforce or abstain from enforcing any right, claim, debt or obligation, and to abandon any shares of stock, bonds, or other securities, or interests determined by it to be worthless; to prosecute, compromise and defend lawsuits, but without the obligation to do so, all at the risk and expense of the Trust.

6.1.17. To hire one or more consultants, actuaries, accountants, attorneys or other professionals to assist with the administration of the Trust Fund and to pay such amounts that the Trustee deems to be reasonable, including, without limiting the generality of the foregoing, third party firms to provide legal, tax, accounting and audit services to the Trust.

6.1.18. To comply with all requirements imposed by applicable provisions of law.

6.1.19. To serve as custodian with respect to Trust assets.

ARTICLE 7
LIMITATION OF TRUSTEES' POWERS, DUTIES AND RESPONSIBILITIES

7.1. Nothing contained in the Trust Agreement, either expressly or by implication, shall be deemed to impose any powers, duties or responsibilities on the Trustees other than those set forth in this Trust Agreement.

7.2. The Trustees shall have such rights, powers and duties as are provided to a named fiduciary for the investment of assets under ERISA. The Trustees shall not be liable for the making, retention or sale of any investment or reinvestment made by the Trustees as herein provided or for any loss to or diminution of the Trust Fund or for anything done or admitted to be done by the Trustees with respect to the Trust Agreement or the Trust Fund except as and only to the extent that such action constitutes a violation of the law or gross negligence.

7.3. The Trustees, in their discretion, may purchase as an expense of the Trust Fund such liability insurance for themselves as may be necessary and reasonable. The City, in its discretion, may also purchase liability insurance for the Trustees.

7.4. The City shall not assume any obligation or responsibility to any person for any act or failure to act of the Trustees, any insurance company, or any beneficiary of the Trust Fund. The Trustees shall have no obligation or responsibility with respect to any action required by this Trust Agreement to be taken by the City, any insurance company, or any other person, or for the result or the failure of any of the above to act or make any payment or contribution, or to otherwise provide any benefit contemplated by this Trust Agreement.

7.5. The Trustees shall not be obliged to inquire into or be responsible for any action or failure to act on the part of the City or the City Council. No insurance company shall be a party to this Trust Agreement, for any purpose, or be responsible for the validity of this Trust Agreement, it being intended that such insurance company shall be liable only for the obligations set forth in the policy or contract issued by it.

7.6. The Trustees shall invest and manage Trust assets as a prudent investor would, using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital, pursuant to M.G.L. c. 203C.

ARTICLE 8
ACTIONS BY THE TRUSTEES

8.1. A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees.

8.2. The Trustees may, by instrument executed by all of the Trustees, delegate to any attorney, agent or employee such other powers and duties as they deem advisable, including the power to execute, acknowledged or deliver instruments as fully as the Trustees might themselves and to sign and endorse checks for the account of the Trustees of the Trust.

8.3. No Trustee shall be required to give bond.

ARTICLE 9
LIABILITY OF THE TRUSTEES

9.1. A Trustee shall not be liable for any mistake of judgment or other action made, taken or omitted by the Trustee in good faith, nor for any action taken or omitted by any other Trustee or any agent or employee selected with reasonable care, and the duties and obligations of the Trustees hereunder shall be expressly limited to those imposed upon them by this Trust Agreement.

9.2. No successor Trustee shall be held responsible for an act or failure of a predecessor Trustee.

9.3. Trustees are public employees for purposes of M.G.L. c. 258, and shall be indemnified by the City against any civil claim, action, award, compromise, settlement or judgment by reason of an intentional tort to the same extent and under the same condition as other public employees of the City.

9.4. A Trustee shall not be indemnified for violation of the civil rights of any person if he acted in a grossly negligent, willful or malicious manner, or in connection with any matter where it is shown to be a breach of fiduciary duty, an act of willful dishonesty or an intentional violation of law by the Trustee.

ARTICLE 10
MEETINGS OF THE TRUSTEES

10.1. The Trust may meet at such times and at such places as the Trustees shall determine.

10.2. The Trustees shall comply with the Open Meeting Law, M.G.L. c.30A, §§18-25 and its implementing regulations.

10.3. A quorum at any meeting shall be a majority of the Trustees then in office.

ARTICLE 11
TAXES, EXPENSES, AND COMPENSATION

11.1. It is intended that the Trust will be a Section 115 of the Internal Revenue Code of 1986 trust. As such, it is expected that there will be no income taxes owed by the Trust. To the extent that any taxes are imposed on the Trust, the Trustee shall use the assets of the Trust Fund to pay for any taxes owed.

11.2. All reasonable costs and expenses of managing and administering the Trust and the Trust Fund, including such compensation for the Trustees as may be approved by the City Council, in consultation with the Mayor, from time to time, and reimbursement for reasonable fees incurred through the use of third party vendors or agents, shall be paid from the Trust unless the City chooses to pay the expenses directly.

ARTICLE 12
ACCOUNTS

12.1. The Trustees shall keep complete and accurate accounts of all of the Trust's receipts, investments and disbursements under this Trust Agreement. Such records, as well as all other Trust records, shall be retained and made available for public inspection and or copying in accordance with the requirements of the Public Records Law, M.G.L. c. 66, §10 and M.G.L. c. 4, §7, clause 26th and their implementing regulations. The person or persons designated by the City shall be entitled to inspect such records upon request at any reasonable time.

12.2. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices. The results of the audit shall be provided to the City at the same time as it is presented to the Trustees.

12.3. The Trust Fund shall be subject to the Commonwealth of Massachusetts Public Employee Retirement Administration Commission's triennial audit.

ARTICLE 13
ANNUAL REPORTS

13.1. The Trustees shall furnish to the City Council and the Mayor, annually, or more frequently if the City Council so requests, a statement of account and a performance account showing the condition of the Trust Funds and all investments, sales, income, disbursements and expenses of the Trust and the Trust Fund.

ARTICLE 14
INVESTMENT OF TRUST FUNDS

14.1. The Trustees hereby authorize and direct the City Treasurer to invest and reinvest the amounts in the Trust Fund not needed for current disbursement, consistent with the prudent investor rule, and as provided in the Investment Policy which is attached to this instrument and hereby incorporated.

14.2. Before funds may be invested, the Trustees shall create an initial investment policy to be approved by the City Council. Trust funds may be invested with PRIT after a vote of the Trustees, approval of the Mayor, and approval of the City Council.

14.3. In no event shall the funds be invested directly in mortgages or in collateral loans.

ARTICLE 15
CUSTODY OF THE TRUST FUNDS

15.1. The Trustees hereby appoint the City Treasurer as custodian of the Trust Fund and authorize the Treasurer to employ an outside custodial service to maintain custody of the Trust Funds. All funds in the Trust Fund shall be accounted for separately from all other funds of the City.

15.2. The City Treasurer, with the authorization of the Trustees, shall establish one or more checking accounts, which may be interest bearing or non-interest bearing accounts. Such checking account or accounts shall be funded solely from the Trust Funds, and the Trustees may authorize the City Treasurer to draw on such checking accounts for the payment of OPEB and for the administrative expenses of the Trust.

ARTICLE 16
TERMINATION OF TRUST

16.1. The Trust shall continue unless and until terminated pursuant to law or by an instrument in writing signed by at least three Trustees, provided, however, that continuance of the Trust shall not be deemed to be a contractual obligation of the City.

16.2. Upon termination of the Trust, subject to the payment of or making provision for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the City and held by the City Treasurer to be used exclusively for providing OPEB to Retired Employees and their eligible dependents and for no other purpose.

16.3. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

ARTICLE 17
AMENDMENTS

17.1. The Trust may only be amended as set forth herein. The City may amend the Trust at any time as may be necessary to comply with the requirements for tax exemption under Section 115 of the Code, to conform the Trust to the laws of the Commonwealth of Massachusetts and to meet the standards set forth in GASB 43 and GASB 45 to be treated as funded through a qualifying trust or equivalent arrangement.

17.2. This Trust Agreement may be amended, but not revoked, from time to time by the City, subject to the following limitations:

17.2.1. The assets of the Trust may not be used for or diverted to any other purposes prior to satisfaction of the City's OPEB obligations and reasonable expenses of administering the Trust.

17.2.2. The duties and liabilities of the Trustees cannot be substantially changed without their written consent.

17.3. Any amendment to this Trust shall be executed in writing.

ARTICLE 18
MERGER

18.1. The City may provide for the merger of the Trust with one or more other trusts established by the City or other government entities for similar purposes as may be provided by law.

ARTICLE 19
SEVERABILITY OF INVALID PROVISIONS

19.1. If any provision of this Trust Agreement is determined invalid, illegal, or unenforceable for any reason, then the provision shall be severed from the remaining provisions of the Trust Agreement for any reason, and the remaining parts of the Agreement shall be construed to give the maximum practical effect to the purposes stated herein, as if the invalid, illegal, or unenforceable provision was never a part.

ARTICLE 20
MISCELLANEOUS

20.1. This Trust Agreement shall be interpreted, construed and enforced, and the Trust hereby created shall be administered in accordance with and governed by the laws of the United States and of the Commonwealth of Massachusetts.

20.2. The titles to Articles of this Trust Agreement are placed herein for convenience of reference only, and the Trust Agreement is not to be construed by reference thereto.

20.3. No person shall be obliged to see to the application of any money paid or property delivered to the Trustees, or as to whether or not the Trustees have acted pursuant to any authorization herein required, or as to the terms of this Trust Agreement. In general, each person dealing with the Trustees may act upon any advice, request or representation in writing by the Trustees, or by the Trustee's duly authorized agent, and shall not be liable to any person in so doing. The certification of the Trustees that they are acting in accordance with this Trust Agreement shall be conclusive in favor of any person relying thereon.

20.4. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one instrument, which may be sufficiently evidenced by any counterpart.

20.5. Until advised to the contrary, the Trustees may assume this Trust is entitled to exemption from taxation under Section 115 of the Internal Revenue Code of 1986 or under any comparable section or sections of future legislation that amend, supplement or supersede one or both of those sections of the Internal Revenue Code.

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be executed in their respective names by their duly authorized officers as of the day and year first above written.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:07 PM.