



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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SEPTEMBER 9, 2013

Regular meeting of the City Council held on Monday, SEPTEMBER 9, 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 9:32 PM.

ORDERED: That the minutes of the City Council Meeting August 26, 2013, **FILE**; adopted.

ORDERED: That the Update/Discussion with Building Inspector regarding his interpretation of the zoning requirements governing recreational facilities, specifically the requirement for a special permit for certain uses, **APPROVED**; adopted.

ORDERED: That the Fire Department transfer request in the amount of \$45,279.00 which moves funds from Fringe to Sick Leave and Firefighter accounts to fund costs associated with the retirement of a member of the Fire Department, refer to **FINANCE COMMITTEE**.

FROM:

Acct. 11990006-51500 \$45,279.00

Fringe

TO:

Acct. # 12200003-51920 \$35,057.00

Sick Leave

Acct. # 12200001-50450 \$10,222.00

Firefighter

ORDERED: That the Appointment of Leslie Biggs to the Council on Aging who will fill the balance of the term of Lynn Anderson which is due to expire on May 2, 2016, refer to **PERSONNEL COMMITTEE**; adopted

ORDERED: That the Appointment of Thomas Golden to the Zoning Board of Appeals to fill the balance of the term of John Sahagian which is due to expire on May 5, 2017, refer to **PERSONNEL COMMITTEE**; adopted

ORDERED: That the Zoning Board of Appeals Process and Notification of resignation from James Natale and Jay Whitaker. Mr. Whitaker's resignation will be effective September 18, 2013, **FILE**; adopted

ORDERED: That the Communication from Assistant City Solicitor Cynthia Panagore Griffin re: Motion to Approve Application of TVI, Inc. d/b/a Savers for a Secondhand Dealer's License which has been placed in final legal form, **MOVE TO ITEM 13**; adopted.

ORDERED: That there being no objection thereto set **Monday, October 21, 2013** as date for a **PUBLIC HEARING** On the Application for Special Permit from Attorney Bergeron on behalf of 54 Main St., LLC to install a drive-thru service window which would be part of a new structure on the property for Dunkin Donuts restaurant, replacing the existing Dunkin Donuts restaurant structure, which does not have a drive-thru service window, refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the Application for Second Hand Article License, Mary Giorgi, Giorgi's Consignment Boutique, 266 Main St., refer to **PUBLIC SERVICES COMMITTEE**; adopted

ORDERED: That the Communication from Central Mass. Mosquito Control Project re: Mosquito Control Update, **FILE**; adopted

ORDERED: That the Minutes, Traffic Commission Minutes, June 25 and July 23, 2013, **FILE**; adopted

Councilor Tunnera reported the following out of the Personnel Committee:

Order No. 13-1005480A - Reappointments of William Brewin and Rustin Kyle as Members of the Marlborough Public Library Board of Trustees.

Councilor Seymour made a motion to Approve, seconded by the Chair
Approved 3-0

Order No. 13-1005515 - Reappointment of Deborah Fox as City Collector to serve a term of one year to take effect on the first Monday following her appointment.

Councilor Seymour made a motion to approve, seconded by the chair.
Approved 3-0

Order No. 13-1005516 - Reappointment of Diane Smith as City Auditor for a term of three years.

Councilor Seymour made motion to approve, seconded by the chair.
Approved 3-0

Councilor Elder reported the following out of Urban Affairs Committee:

Agenda Item(s) addressed: #13-1005483 - Application for Special Permit by Attorney Schaffer on behalf of Irene Kantor to operate a Martial Arts Studio at 38 Brigham Street which is located within an Industrial District where private indoor and outdoor recreation may only be allowed through a Special Permit.

Present: Chairman Elder, Councilor Clancy, Councilor Landers, Councilor Tunnera; Also Councilor Delano, President Pope, Councilor Seymour; Absent: Committee Member Robey

The petitioners gave the Committee an overview to the plans they are submitting.

President Pope brought up concerns about possible parking issues, but the petitioners said they didn't foresee any major parking conflicts as parents drop off their children/pick them up and, for the most part, do not remain on the premises during the class.

Councilor Delano expressed his concern about the business' past practice of utilizing illegal signs, which they said they stopped using three years ago.

The Committee and Council discussed the use of CORI forms, and Councilor Seymour requested them to act according to MGL.

No department head gave a negative opinion on the project.

The Chair read the conditions and changed a few conditions, including striking language possibly prohibiting the petitioners from making changes to the building.

Councilor Clancy made a motion to approve, the motion was seconded, and the vote was 4-0 to approve the application for Special Permit by Attorney Schaffer on behalf of Irene Kantor to operate a Martial Arts Studio at 38 Brigham Street which is located within an Industrial District where private indoor and outdoor recreation may only be allowed through a Special Permit. (Robey absent)

The committee also will recommend suspending the rules at the Council's 9-9-13 meeting to send the permit to the Solicitor to put in proper legal form as well as send to the Building Commissioner to give advice on condition #1 (no changes to existing outside and parking areas and to the building), which was struck by the committee.

Suspension of the Rules requested – granted

ORDERED: That the Application for Special Permit from Attorney Schaffer on behalf of Irene Kantor to operate a Martial Arts Studio located within an Industrial District where private indoor or outdoor recreation may only be allowed through Special Permit, 38 Brigham St. refer to **CITY SOLICITOR TO PLACE IN PROPER LEGAL FORM AS WELL AS SEND TO THE BUILDING COMMISSIONER TO GIVE ADVICE ON CONDITION #1 (NO CHANGES TO EXISTING OUTSIDE AND PARKING AREAS AND TO THE BUILDING) WHICH WAS STRUCK BY COMMITTEE FOR THE SEPTEMBER 23, 2013 CITY COUNCIL MEETING;** adopted.

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 510-4, BUILDING SEWER CONNECTIONS

Add after Item A (7):

(8) All sewer extension and building sewer connection permits shall only be issued if in accordance with the flow allocations in the December 3, 2007 Certificate of the Secretary of Energy and Environmental Affairs on the October 2007 *Phase IV Final Recommended Comprehensive Wastewater Management Plan/Final Environmental Impact Report* (CWMP/EIR), as stipulated below.

(a) The City is divided into two sewer service areas, one tributary to the Easterly wastewater treatment facility (WWTF) and the other tributary to the Westerly WWTF, divided by a "WWTF Division Line" that runs north/south through the City, to the east of Route 495.

(b) A total of 4.15 million gallons per day (mgd) average daily flow is allocated in the CWMP/EIR Certificate to the Westerly WWTF from the City of Marlborough and the Town of Northborough as described further in items [1] and [2] below. The actual allowable flow is dependent upon the permitted value in the facility's National Pollutant Discharge Elimination System (NPDES) permit. Sewer connection or extension permits shall only be approved if the resulting total flows to the Westerly WWTF are within the permitted flow allocation in the NPDES permit and if the flows are consistent with the following allocations:

[1] Up to 2.9 mgd of the total permitted average daily flow is allocated in the CWMP/EIR Certificate to originate from the western side of the City of Marlborough tributary to the Westerly WWTF through the year 2025.

[2] The remaining allocation between 2.9 mgd and the NPDES permitted average daily flow (up to 1.25 mgd) is allocated in the CWMP/EIR Certificate to originate from the Town of Northborough tributary to the Westerly WWTF through the year 2025. Note that the City of Marlborough is required via a January 1, 1990 intermunicipal agreement to provide the Town of Northborough with 0.80 mgd of sewer capacity, however this agreement expired as of January 1, 2010.

(c) The flow limitation for the Easterly WWTF in effect on the date of the December 3, 2007 Certificate was 5.5 mgd on an average monthly basis, as permitted by the Easterly WWTF's October 19, 2006 NPDES permit. Sewer connection or extension permits through the year 2025 shall only be approved if the total flows to the Easterly WWTF are within this permitted flow allocation.

- (d) All flow allocations in the CWMP/EIR Certificate, as well as sewer connection or extension estimated flows, shall be based on average annual values.
- (e) Extensions tributary to the Easterly WWTF originating from beyond the area bounded by the town boundaries to the north, south and east, and by the WWTF Division line to the west require approval by the Mayor, the City Council, and, when applicable thresholds are exceeded, by MassDEP via a sewer extension permit. Similarly, sewer extensions tributary to the Westerly WWTF beyond the area bounded by the WWTF Division Line to the east, the town boundaries to the north and south, and the neighborhoods identified for sewerage in the CWMP/EIR in Northborough to the west require approval from the Mayor, City Council, and, as applicable, MassDEP. Flow from one side of the WWTF Division Line may be treated at the WWTF on the other side with prior City Council approval.

APPROVED; adopted.

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

MOTION made by the Councilor Delano to amend Conditions #6 & #7 of Savers License below, amended further by Councilor Landers to request each Condition amendment be addressed separately – DOES NOT CARRY.

Councilor Ossing requested to be recorded in opposition of Conditional Amendments.

ORDERED: That the City Council moves to **GRANT** a Junk and Secondhand Dealer License to TVI, Inc. d/b/a Savers for its business to be conducted and operated at 222A East Main Street in Marlborough with the following conditions and waivers:

Conditions

1. The license shall not be transferred without prior review and approval of the City Council.
2. The license hereby granted is issued to TVI, Inc. d/b/a Savers only and is applicable only to the 222A East Main Street location.
3. There will be no exterior storage, display or sales of merchandise, other than a recycle trailer, a cloth delivery trailer with items waiting to be processed, and a local trailer from one of Savers' charitable partners delivering merchandise to the store. No more than three such trailers and trucks shall be parked at the loading dock area in the rear of the building at any one time, and no such trailers or trucks shall be parked on any other side of the building at any time.
4. Donations shall take place only during the hours of operation which shall be 9:00 A.M. to 9:30 P.M. Monday through Saturday and 10:00 A.M. to 7:00 P.M. on Sundays, and during the month of October from 9:00 A.M. to 10:00 P.M. Monday through Saturday and 10:00 A.M. to 10:00 P.M. on Sundays.

5. No Savers' donation boxes shall be permitted outside of the building.
6. No scrolling or rotating message signs shall be permitted as part of Savers' signage plans.
7. Glue boards shall be installed at locations within the business premises satisfactory to the Marlborough Board of Health and Savers, and a monthly monitoring program shall be implemented consisting of a log book for said glue boards satisfactory to the Board of Health.
8. This license shall be subject to revocation or suspension for noncompliance of the above conditions or other applicable local ordinances or state laws.
9. The waivers granted as part of this license shall no longer be applicable should Savers commence paying the general public for merchandise delivered without first obtaining the review and approval of the City Council.

Waivers

1. The waiver of Section 377-4 of the Ordinance as requested by Savers is not granted because Section 377-4 is not applicable to Savers' operations.
2. The waiver of Section 377-5 of the Ordinance is granted with respect to the last sentence thereof requiring the City Clerk to keep a list of persons employed by Savers. All other provisions of Section 377-5, other than the duty of the City Clerk to keep a record of the name and residence of each dealer, are not applicable to Savers.
3. The provisions of Sections 377-6, 377-7 and 377-9 of the Ordinance are waived in their entirety.

Adopted

President Pope requested to be recorded in opposition. Councilors Delano and Elder also requested to be recorded in opposition.

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 526, ENTITLED "SIGNS," AS FOLLOWS:

Section 526-7, entitled "Prohibited signs" is hereby amended by inserting the following:

- N. Digital electronic and LED (light emitting diode) signs and message boards, any portion of which can be electronically or mechanically changed by programmable electronic or mechanical processes, excluding signs of the City of Marlborough, the commonwealth of Massachusetts, the federal government, or the agents thereof, subject to the following exception:

- (1) permanent digital electronic and LED (light emitting diode) signs and message boards that have been permitted by the Building Department and installed or erected as of August 22, 2013 shall be allowed subject to the following requirements which are supplemental to other provisions of this Code:
 - (a) the exception provided in this subsection N. shall be applicable only to current owners of existing permanent digital electronic and LED (light emitting diode) signs and message boards that have been permitted by the Building Department and installed or erected by August 22, 2013;
 - (b) said owners must provide 24/7 contact information to the Code Enforcement Officer;
 - (c) the sign or message board must transition instantaneously from one message, symbol or image to the next;
 - (d) the sign or message board must go dark in the event of a malfunction;
 - (e) the sign or message board must adjust automatically to ambient light, and may not exceed 0.3 foot candles above ambient light;
 - (f) the colors of the sign or message board must be limited to white illumination on a black background;
 - (g) the sign or message board may be lit only during the hours of business operation; and
 - (h) the exception provided in this subsection N. shall not apply to any dimensional or structural changes to, or changes in location of, the sign or message board.
- (2) The prohibitions of subsection N. regarding digital electronic and LED (light emitting diode) signs and message boards shall be in effect for 10 months from the effective date of this amendment to Chapter 26.

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 Proposed Amendment to the Code of the City of Marlborough, Zoning, Section 650-17, entitled "Table of Uses," by regulating the business uses entitled "Power laundries and dry cleaning" so as to separate into independent categories said uses and allow Dry Cleaning establishments as of right in the Business (B) district and in the Commercial Automotive (CA) district, **TABLED UNTIL SUCH TIME THAT PLANNING BOARD PROVIDES THEIR RECOMMENDATION;** adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:32 PM.