



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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DECEMBER 3, 2012

Regular meeting of the City Council held on Monday, DECEMBER 3, 2012 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Ossing, Pope, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, and Landers. Meeting adjourned at 8:28 PM.

ORDERED: That the Minutes of the City Council Meeting, NOVEMBER 26, 2012, **FILE AS AMENDED**; adopted.

ORDERED: Now being the time set for the **JOINT TAX CLASSIFICATION PUBLIC HEARING** with the Board of Assessors on Monday, December 3, 2012 at 8:00 p.m. in Council Chambers, 2nd Floor, City Hall, 140 Main Street, Marlborough, MA to determine the percentage of the local tax levy to be borne by each class of property for Fiscal Year 2013. Massachusetts General Laws Chapter 40, Section 56 sets forth the procedures and responsibilities under the law.

MOTION MADE BY COUNCILOR OSSING TO CONTINUE THE JOINT TAX CLASSIFICATION PUBLIC HEARING UNTIL DECEMBER 17, 2012 AND ADVERTISE, SECONDED BY PRESIDENT POPE – CARRIES; adopted.

ORDERED: That the Contract Services transfer request in the amount of \$15,000.00 which moves funds from Principal Assessor to Professional & Technical Services and another \$15,000.00 which moves funds from Senior Assessor to Professional & Technical Services to allow for continued funding until March 2013, **APPROVED**; adopted.

FROM:

Acct. # 11410001-50160 \$15,000.00

Principal Assessor

Acct. # 11410001-50170 \$15,000.00

Senior Assessor

TO:

Acct. # 11410004-53180 \$15,000.00

Professional and Technical Services

Acct. # 11410004-53180 \$15,000.00

Professional and Technical Services

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:

MEDICAL MARIJUANA TREATMENT CENTER: A not-for-profit entity, as defined by Massachusetts law only, registered under Massachusetts law, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers, shall be deemed a “Medical Marijuana Treatment Center” and subject to the regulations under Section 650-32 of this ordinance.

2. Section 650-17, entitled “Table of Uses,” is hereby amended by adding to said section a new business use entitled, “Medical Marijuana Treatment Center,” which shall be regulated, as follows:

RR	A1	A2	A3	RB	RC	B	CA	LI	I
N	N	N	N	N	N	N	SP	SP	SP

3. A new Section 650-32, entitled “MEDICAL MARIJUANA TREATMENT CENTER,” is hereby added, as follows:

650-32 MEDICAL MARIJUANA TREATMENT CENTER

A. Subject to the provisions of this Zoning Ordinance, Chapter 40A of the Massachusetts General Laws, and provisions of the Rehabilitation Act and the Americans with Disabilities Act, the City of Marlborough Zoning Ordinance will not prohibit the location of a center for medical marijuana treatment within the City of Marlborough, but will instead regulate such centers. A Medical Marijuana Treatment Center should provide medical support, security, oversight by a physician, and standards that meet or exceed state regulations to be promulgated by the Commonwealth of Massachusetts Department of Public Health. Centers should not compete to provide streamlined care to patients and should not provide a location for patients to wait for treatment in the vicinity of children. Therefore, to ensure that these Centers are located in such a way as to not pose a direct threat to the health or safety of either qualifying patients or the public at large, the provisions of this section will apply to all such Centers.

- B. For purposes of this chapter, the following definitions shall apply:
1. DEBILITATING MEDICAL CONDITION shall mean cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis and other conditions as determined in writing by a qualifying patient's physician.
 2. MARIJUANA shall have the meaning given "marihuana" in Chapter 94C of the General Laws.
 3. MEDICAL USE OF MARIJUANA shall mean the acquisition, cultivation, possession, processing, (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfer, transportation, sale, distribution, dispensing, or administration of marijuana, for the benefit of qualifying patients in the treatment of debilitating medical conditions, or the symptoms thereof.
 4. PERSONAL CAREGIVER shall mean a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana. Personal caregivers are prohibited from consuming marijuana obtained for the personal, medical use of the qualifying patient.
 5. QUALIFYING PATIENT shall mean a person who has been diagnosed by a licensed physician as having a debilitating medical condition.
- C. Where a Special Permit is required for a Medical Marijuana Treatment Center, the Special Permit Granting Authority shall grant the Special Permit only upon its written determination that any adverse effects of the proposed use will not outweigh its beneficial impacts to the City or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Ordinance, the determination shall include consideration of each of the following:
1. Social, economic, or community needs which are served by the proposal;
 2. Traffic flow and safety, including parking and loading;
 3. Adequacy of utilities and other public services;
 4. Neighborhood character and social structures;
 5. Impacts on the natural environment;
 6. Potential fiscal impact, including impact on City services, tax base, and employment; and
 7. The ability for the Center to:
 - a. meet a demonstrated need;
 - b. provide a secure indoor waiting area for clients;
 - c. provide an adequate pick-up/drop-off area;

- d. provide adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals; and
- e. adequately address issues of traffic demand, parking, and queuing, especially at peak periods at the Center, and its impact on neighboring uses.

The Special Permit Granting Authority may require the applicant to provide a traffic study, at the applicant's expense, to establish the impacts of the peak traffic demand.

- D. A Medical Marijuana Treatment Center shall not be located:
 - 1. within five thousand (5,000) feet of another Medical Marijuana Treatment Center;
 - 2. within five thousand (5,000) feet of a Narcotic Detoxification and/or Maintenance Facility, as defined in and regulated by the zoning ordinance of the City of Marlborough; nor,
 - 3. within one thousand (1,000) feet of:
 - a. a school (as defined in § 517-2 of the Code of the City of Marlborough, as amended) located within the City of Marlborough;
 - b. a recreational facility (as defined in § 517-2 of the Code of the City of Marlborough, as amended); or
 - c. a park (as defined in § 517-2 of the Code of the City of Marlborough, as amended).
 - d. an elderly housing facility (as defined in § 517-2 of the Code of the City of Marlborough, as amended); or
 - e. a retirement community (as defined in § 650-5 of the Zoning Ordinance of the City of Marlborough, as amended) located within the City of Marlborough.
- E. Nothing contained in Chapter 412 of the Code of the City of Marlborough, as amended, prohibiting the smoking, ingesting, or other use or consumption of marijuana in any place accessible to the public shall be construed as applying to the medical use of marijuana inside a Medical Marijuana Treatment Center.

- 4. The effective date of these amendments shall be January 1, 2013.

Refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Communication from the Planning Board re: Results Way Mixed Use Overlay District, **MOVED TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That the Agreement to Extend Time Limitations on the Application for Special Permit from Metro PCS, LLC to extend time limitations to install a wireless communication facility onto the existing building located at 98 Pleasant St. to March 31, 2013 until 12:59 PM, **APPROVED**; adopted.

Councilor Tunnera abstained

ORDERED: That the Agreement to Extend Time Limitations for Public Hearing on the Application for Special Permit from Construction Materials Service, Inc., to construct a new 2400 sq. ft. office building on a nonconforming property at 379 South St. to January 8, 2013 until 9:00 PM, Order No 12-1005236, **ACCEPT & FILE**; adopted.

ORDERED: That there being no objection thereto set **THE SECOND MEETING IN JANUARY, 2013**, as date for a **PUBLIC HEARING** for the Application of Crown Castle, on behalf of T-Mobile, to exchange six existing antennas on a cell tower, 445 Simarano Dr., refer to **WIRELESS COMMUNICATIONS COMMITTEE, AND ADVERTISE**; adopted.

ORDERED: That the Application for Taxi License, Yan Fang Ye, d/b/a Ye's Taxi, 20 Devens St., refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Minutes, Community Development Authority, October 25, 2012, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, November 5, 2012, **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, October 23, 2012, **FILE**; adopted.

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

- A. Antonio Braga, 51 Christie Way, Apt 53L, pothole or other road defect

Reports of Committees:

Councilor Ossing reported the following out the Finance Committee:

Order No. 12-1005205 – Transfer \$277,099.00 from Economic Development to MEDC Funding. The Finance Committee reviewed the Mayor's letter dated October 25, 2012 requesting the transfer of \$277,099.00 from Economic Development to MEDC for funding their operations and special projects for the remainder of the fiscal year. **Recommendation of the Finance Committee is to approve the transfer 5 – 0.**

Order No. 12-1005203 – Transfer \$2,581,967.00 from Undesignated Funds to the School Department. The Finance Committee reviewed the Mayor's letter dated November 1, 2012 requesting the transfer of \$2,581,967.00 from Undesignated Funds to provide additional FY13 school department funding. **Recommendation of the Finance Committee is to approve the transfer 4 – 0 – 1.** (Councilor Oram abstained).

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

Order No. 12-1005154B - Communication from Attorney David Gadbois, representing Atlantic-Marlboro LLC of 205 Newbury Street, Framingham, Massachusetts 01701, owner of land which is the subject matter of Zoning Petition. The said land is shown on the City of Marlborough Assessors Map 101, Parcel 2. Atlantic-Marlboro LLC hereby petitions the City Council to amend the Zoning Code of the City of Marlborough Chapter 650 by adding to Article VI section 650-2 RESULTS WAY MIXED USE OVERLAY DISTRICT in accordance with the proposed change.

-REFER TO URBAN AFFAIRS, PLANNING BOARD AND ADVERTISE
PUBLIC HEARING: OCTOBER 15, 2012

The Chair updated the petitioners, Council and Committee on the progress of the proposal. At previous meetings, the Committee worked with MPAC and the petitioners on various parts of the plan, including small changes to the allowable uses and prohibited uses.

Chairman Elder reminded the petitioners they would prohibit marijuana facilities at the complex, and the petitioners agreed that prohibition would be added into the final language.

The Chair also updated the Council and Committee as to Site Plan, and assured everyone that the petitioners would be giving up significant control in the project to allow the Council to have more control and say over all aspects of the design.

Instead of providing affordable units on the property as required under current zoning, the petitioners agreed to provide funds to the City for the development and planning of affordable units within the city. The Chair stated this would be a better idea than putting money into an affordable fund as done in the past with other projects.

Motion by Councilor Clancy, seconded by the Chair, to recommend approval of the Atlantic Zoning Overlay Proposal, as amended, and to Suspend the Rules at the December 3, 2012 regular meeting to forward to the Solicitor to be placed in proper legal form. Motions were approved 5-0.

Suspension of Rules requested – granted

ORDERED: That the Collector's Office transfer request in the amount of \$4,631.00 which moves funds from Collector to Contract Services and Temporary Clerk to fund temporary help, **APPROVED**; adopted.

FROM:

Acct. # 11440001-50042	\$4,631.00
Collector	

TO:

Acct. # 11440004-53140	\$3,500.00
Contract Services	

Acct. # 11440002-50586	\$1,131.00
Temporary Clerk	

Council President Pope requested to be recorded in opposition

Suspension of Rules requested – granted

ORDERED: That the Senior Center transfer request in the amount of \$500,000.00 from Undesignated Funds to Senior Center to fund costs associated with design and engineering plans for a new Senior Center, **APPROVED**.

FROM:

Acct. # 10000-35900	\$500,000.00
Undesignated Funds	

TO:

Acct. # 19300006-53045	\$500,000.00
Senior Center	

Suspension of Rules requested – granted

ORDERED: Communication from Attorney David Gadbois, representing Atlantic-Marlboro LLC of 205 Newbury Street, Framingham, Massachusetts 01701, owner of land which is the subject matter of Zoning Petition. The said land is shown on the City of Marlborough Assessors Map 101, Parcel 2. Atlantic-Marlboro LLC hereby petitions the City Council to amend the Zoning Code of the City of Marlborough Chapter 650 by adding to Article VI section 650-2 RESULTS WAY MIXED USE OVERLAY DISTRICT, refer to **CITY SOLICITOR TO PLACE IN PROPER LEGAL FORM FOR THE DECEMBER 17, 2012 CITY COUNCIL MEETING**; adopted.

ORDERED: The Operations and Oversight Committee will investigate the reasons that various parts of the city have been having sporadic power outages, and what can be done to assure that our residents and businesses will have reliable electric service which is critical to all. The committee will endeavor to bring together whatever sources deemed appropriate for this purpose including representatives from National Grid, state officials, and local staff and officials. The goal will be to work collaboratively to find a quick resolution to this problem, and to inform the public of the city's progress in this regard, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: That the Commissioner of Public Works prepare a written report for submittal to the Operations and Oversight Committee that includes all residential and non-residential properties located outside the limits of the city that are currently benefitting from City of Marlborough water and sewer services; said report to include the status of all payments due, dates of connection and authorization to do so. Further Ordered, that the Commissioner and City Solicitor work with the Operations and Oversight Committee to suggest changes to the water and sewer ordinances that would create a uniform process by which any properties existing outside the limits of the City of Marlborough are granted permission to connect to Marlborough's municipal water and sewer systems as well as a fee schedule that would properly compensate the city for the use of these valuable resources. Said report should be made available to all members of the City Council on or before January 17, 2013, **WITHDRAWN**; adopted.

ORDERED: That the Proposed Conveyance of a Portion of City-Owned property, 93 Framingham Rd. Recommendation of the Legislative and Legal Affairs Committee is to recommend conveyance to Melanson Development Group a portion of municipal property at 93 Framingham Rd together with the following orders from the City Solicitor in proper form, **TABLED UNTIL DECEMBER 17, 2012**; adopted.

[1ST ORDER]

ORDERED:

That the City Council of the City of Marlborough,

having been notified by the Commissioner of Public Works, pursuant to M.G.L. c. 40, § 15, that the City's fee interest in a portion of municipal property taken for sewer purposes and located in part off Framingham Road, and identified and described as a portion of the land shown as Parcel 93A on Map 93 of the Marlborough Assessors Map,

and being more particularly shown as "Parcel 'D'" on a plan entitled "Plan of Land in Marlborough, MA, Owner: Celeste Walker, Executrix, 990 Center Street, Apt. #2, Jamaica Plain, MA 02130-3029, Prepared for: Melanson Development Group, Inc., P.O. Box 564, Woburn, MA 01801; Prepared by: Bruce Saluk & Associates, Inc., Civil Engineers & Land Surveyors, 576 Boston Post Road East, Marlborough, MA 01752; Date: November 29, 2010; Scale: 1" = 40'," containing 24,032 square feet (0.55 acres), more or less, said plan to be recorded in the South Middlesex Registry of Deeds,

is no longer needed for such purposes,

hereby declares, by a simple majority vote pursuant to M.G.L. c. 30B, § 16(a), that the fee interest in said Parcel D is available for disposition by sale, with the following restrictions on the subsequent use of said Parcel D:

1. the City reserves to itself a perpetual public sewer easement in, under, upon and through said Parcel D, for the purposes of maintenance, repair, construction or reconstruction of public sewer lines; for the installation, repair or replacement of additional sewer pipes or any other municipal utilities or services; and for passive recreation purposes; and
2. the City also reserves the right to excavate or disturb ground without responsibility for repairing the surface, whether with loam or seed, and hereby prohibiting the grantee, its heirs, successors or assigns from planting, installing or maintaining any bushes, plants, trees or a structure of any kind in or about said Parcel D, unless approved in advance by written approval of the Commissioner of Public Works of the City of Marlborough.

The above declaration shall be null and void unless, on or before January 1, 2014, the Marlborough Planning Board, pursuant to Chapter 650-28 of the Marlborough zoning ordinance, has granted to Melanson Development Group, Inc. an open space development special permit which incorporates said Parcel D as described above.

ORDER NO 12-1005149B

[2ND ORDER]

ORDERED:

That the City Council of the City of Marlborough,

having declared in Order No. 12-1005149A, that the fee interest in said Parcel D is available for disposition by sale, with the use restrictions recited in said Order,

now hereby authorizes the Mayor, by a two-thirds vote pursuant to M.G.L. c. 40, § 15, to convey the City's fee interest in said Parcel D to Melanson Development Group, Inc., of 5 Robertson Way, Woburn, Middlesex County, Massachusetts, for at least the minimum amount of Thirty-Six Thousand and 00/100 (\$36,000.00) Dollars, and upon such other terms as the Mayor shall consider proper and consistent with the intent of this Order and at a sales price that would maximize the total economic return to the City.

ORDER NO 12-1005149C

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:28 PM.