



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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FEBRUARY 14, 2011

Regular meeting of the City Council held on Monday, FEBRUARY 14, 2011 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Ossing, Vigeant, Pope, Levy, Ferro, Elder, Tunnera, Seymour, Clancy and Landers. Councilor Delano was absent. Meeting adjourned at 9:45 PM.

ORDERED: That the minutes of the City Council Meeting January 24, 2011, **FILE**; adopted.

ORDERED: That the PUBLIC HEARING On the Communication from Council President Vigeant re: Proposed Amendments to the Zoning Ordinance pertinent to Sections 650-21 and 650-22 and amendments to three Special Permits for retirement communities, Order No. 11-1002806, all were heard who wish to be heard, hearing recessed at 8:22 PM., adopted.

Councilors Present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Seymour, Clancy & Landers.

ORDERED: It is moved, in conformance with the provisions of Chapter 30A of the General Laws of the Commonwealth, that the Marlborough City Council conduct an executive session for the purpose of discussing strategy with respect to collective bargaining under § 21(3) of Chapter 30A as an open meeting may have a detrimental effect on the bargaining position of the public body and the City of Marlborough. It is further moved and stated that the Marlborough City Council will re-convene in open session after the executive session, **APPROVED** and returned to open meeting at 8:40 PM; adopted.

Yea: 11- Nay: 0

Yea: Delano, Ferro, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Vigeant & Levy

Suspension of the Rules requested – granted to allow the DPW Commissioner to speak.

MOTION made by Councilor Delano to reduce deficit appropriation to \$250,000.00 – **DOES NOT CARRY**

ORDERED: That pursuant to Chapter 44, section 31D of the General Laws of the Commonwealth of Massachusetts, which authorizes the City to incur liability and make expenditures for any fiscal year in excess of appropriation for snow and ice removal, the City Council of the City of Marlborough, upon the recommendation of the Mayor, approves expenditures of \$1,500,000.00 in excess of available appropriation for snow and ice removal for fiscal year 2011, **APPROVED**; adopted.

ORDERED: That the Public Facility transfer requests in the amounts of \$16,000.00 and \$10,000.00 which moves funds from Custodian to Additional Gross Overtime and Building Maintenance Craftsman to Principal Clerk respectively for overtime associated with snow removal operations, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 11920003-50560 \$16,000.00

Custodian

Acct. # 11920001-50292 \$10,000.00

Building Maintenance Craftsman

TO:

Acct. # 11920003-51300 \$16,000.00

Additional Gross OT

Acct. # 11920002-50520 \$10,000.00

Principal Clerk

ORDERED: That the transfer of Insurance Payment in the amount of \$76,300.00 which moves funds from Insurance Proceeds over 20K to Public Facilities Capital Outlay pertinent to claim filed for damaged DPW generator, **APPROVED**; adopted.

FROM:

Acct. # 2700009-48470 \$76,300.00

Insurance Proceeds Over 20K

TO:

Acct. # 19300006-58467 \$76,300.00

Capital Outlay

ORDERED: That the transfer of Mitigation Payment in the amount of \$30,000.00 which moves funds from National Grid Stabilization to Public Facilities Capital Outlay for lighting upgrades to Kelleher Field, **APPROVED**; adopted.

FROM:

Acct. # 83600-32710 \$30,000.00

National Grid Stabilization

TO:

Acct. # 19300006-58467 \$30,000.00

Capital Outlay

ORDERED: That the transfer request in the amount of \$21,111.00 which moves funds from Undesignated to fund the Director of the Department of Human Services for the remainder of FY11, **TABLE UNTIL FEBRUARY 28, 2011 CITY COUNCIL MEETING**; adopted.

FROM:

Acct. # 10000-35900 \$21,111.00

Undesignated Fund

TO:

Acct. # 15270001-50595 \$21,111.00

Human Services Director

ORDERED: That the sum of \$1,000,000 (one million) dollars be and is hereby appropriated for the reconstruction of municipal outdoor recreational facilities. That to meet said appropriations, the Comptroller/Treasurer, with the approval of the Mayor, is hereby authorized to issue bonds or notes of the City of Marlborough in the amount of \$1,000,000. Pursuant to the provisions of Chapter 44, Section 7 (25) of the Massachusetts General Laws as amended, each issue of such bonds or notes shall be payable in not more than fifteen (15) years from its date of issue, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the reappointments of Sean Fay and Philip Hodge to the Planning Board with terms expiring February 1, 2016, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the reappointment of Daniel Brogie to the Board of Assessors with a term to expire three years from date of approval, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the reappointment of John Tselikis and Dr. Jay Jahanmir to the Board of Health with terms expiring February 1, 2014, refer to **PERSONNEL 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 RESTRICTING RETIREMENT AND
INSURANCE BENEFITS FOR CERTAIN CITY
COUNCILORS
IN THE CITY OF
MARLBOROUGH**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding clause (vi) of paragraph (2)(a) of section three of chapter thirty- two of the General Laws or any other general or special law to the contrary, a person who for the first time, at the municipal election scheduled for November 1, 2011 or at any election thereafter, is elected by popular vote to the position of city councilor in the city of Marlborough shall not be eligible for membership in the Marlborough Contributory Retirement System as a member in service as defined in clause (i) of paragraph (1) (a) of the said section three; provided, however, that if a person so elected is, prior to November 1, 2011, already a member of the Marlborough Contributory Retirement System, said election shall not affect such person's membership.

SECTION 2. Notwithstanding section 2 of chapter thirty-two B of the General Laws or any other general or special law to the contrary, a person who for the first time, at the municipal election scheduled for November 1, 2011 or at any election thereafter, is elected by popular vote to the position of city councilor in the city of Marlborough shall not be eligible to participate in a plan of group life insurance, group accidental death and dismemberment insurance, or group general or blanket hospital, surgical, medical, dental and other health insurance, as provided by and through the city of Marlborough; provided, however, that if a person so elected is, prior to November 1, 2011, already a participant in a plan of group life insurance, group accidental death and dismemberment insurance, or group general or blanket hospital, surgical, medical, dental and other health insurance, as provided by and through the city of Marlborough, said election shall not affect such person's participation.

SECTION 3. Nothing in or resulting from this act shall affect any person who, as of November 1, 2011, is already serving in the position of city councilor in the city of Marlborough and who is re-elected by popular vote to that position at the municipal election scheduled for November 1, 2011 or at any election thereafter.

SECTION 4. This act shall take effect upon its passage, be and is herewith refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the City Council of the City of Marlborough hereby authorizes the Chief Procurement Officer to issue a Notice of Award to US Wireless, Inc., One Mifflin Place, Suite 400, 119 Mount Auburn Street, Cambridge, MA 02138 to construct, own, operate and maintain a monopole communication tower and associated ground equipment for wireless communications facilities at the former Hudson Street Landfill site, located at 402 Hudson Street, Marlborough, MA 01752, shown on Assessors' Map 30, Parcels 4, 4B, 4C and 4D. Said municipal property has been declared available for disposition by City Council Order No. 10-1002675A-3. Said Notice of Award shall specify that it is contingent upon 1) the approval by the Commissioner of Public Works as to the location of the monopole communication tower on the site, as depicted on a certified site plan to be produced by US Wireless; and 2) the approval of a special permit by the City Council pursuant to the Marlborough Zoning Ordinance.

AND IT IS FURTHERED ORDERED: That the Mayor is hereby authorized to negotiate and execute a ground lease with US Wireless, within 30 days of the date of the Notice of Award, which shall be in the amount of \$24,600.00 for the first year of the lease, and which shall be paid in monthly installments of \$2,050.00 during the first year, increasing annually by 3% on each anniversary of the rent commencement date. Said lease shall specify that the rental commencement date and the construction shall commence after US Wireless has obtained all necessary permits and licenses, including but not limited to those identified hereinabove, **APPROVED**; adopted.

ORDERED: That the Communication from Attorney Valeriani on behalf of Verizon Wireless, re: request to extend time limitations to permit, construct, operate and maintain a Wireless Communication Facility consisting of a 130' antenna-monopole-tower at 800 Bolton St. to April 13, 2011 at 11:00 PM, **APPROVED**; adopted.

ORDERED: That the Communication from Attorney Bergeron on behalf of Melanson Development pertinent to the Walker property re: assents of the proposed open space development as it includes land that is currently part of the Marlborough's sewer line pursuant to Section 650-28 (D) (2) of the Marlborough Zoning Ordinance, **APPROVED AND REFER TO PLANNING BOARD**; adopted.

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

- A. Richard Gaudette, 9 Rogers Ave., residential mailbox
- B. Charles Sarian, 51 Bouffard Dr., residential mailbox (2a)
- C. Jill Sacca, 227 Berlin Rd, residential mailbox
- D. Russell Gleason, 6 Gleason St. Ext., other property damage
- E. Attorney Leone, 1101 Worcester Rd., Framingham, on behalf of Ryan Nickerson, personal injury
- F. Lisa Benway, 85 Beach St., pothole or other road defect
- G. Babak Roushanaee, 50 Cotting Ave., other property damage

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

Order No. 11-1002795 - Various Police Department Transfers for \$133,644. The Finance Committee reviewed the Mayor's letter dated January 20, 2011 requesting the following three transfers to cover Police Overtime and Holiday Pay:

- Transfer \$44,436 from Stabilization – Public Safety to Police Officers
- Transfer \$84,208 from Police Officers to Police OT
- Transfer \$5,000 from Court OT to Police Holiday Pay

Recommendation of the Finance Committee is to approve the three transfers 3-2. Councilors Delano and Ossing opposed.

Order No. 11-1002796 – Transfer \$25,000 from Undesignated to Legal Services. The Finance Committee reviewed the Mayor's letter dated January 20, 2011 requesting the transfer of \$25,000 from Undesignated Funds to the Legal Services account to fund a variety of legal services. **Recommendation of the Finance Committee is to approve the following 5-0.**

- Report the \$25,000 transfer out to the full Council with no recommendation
- Request the Mayor add an agenda item to the February 14, 2011 City Council meeting to conduct an executive session to discuss collective bargaining and the Legal Service expenditures.
- Solicitor to update the Council on the expenditures to date and anticipated expenditures for ongoing arbitration cases

Councilor Clancy reported the following out of the Public Services Committee:

Order No. 11-1002808 – Public Hearing for Application for Pool Table License for Lazy Dog, 31 Main St. Recommendation for the Public Services Committee is to approve Public Hearing for February 28, 2011.

Councilor Elder reported the following out of the Human Services Committee:

Order No. 10/11-1002727A - Communication from Mayor Stevens with Human Services Reorganization Plan. Chairman Elder read into the record a letter from Councilor Pope indicating she was unable to attend tonight's postponed Human Services Committee meeting due to a work-related commitment that she was unable to re-schedule.

Tonight's meeting will concentrate on the proposed salary ordinances in connection with the Mayor's Human Services Reorganization Plan.

The Committee discussed the proposed, new salary ordinances for each of the positions in the Reorganization Plan:

Executive Director of Human Services

Veterans Agent

Human Services Manager

Council on Aging Program Manager

Motion made by Councilor Ferro, seconded by Chairman Elder, to set the Veterans' Agent salary ordinance with a minimum of \$41,135.00 and a maximum of \$46,271.00. Vote: 3-0

Motion made by Councilor Ferro to set the Human Services Manager salary ordinance with a minimum of \$41,135.00 and a maximum of \$46,271.00. DOES NOT CARRY

Councilor Ferro stated that he disagreed with the Mayor's proposal and stated that the plan included insufficient backup to justify paying a higher salary than the Veterans' Agent to the Human Services Manager.

Councilor Levy spoke in favor of the higher salary for the Human Services Manager and indicated that he was satisfied with the backup information.

Motion made by Councilor Levy to set the Human Services Manager salary ordinance with a minimum of \$44,803.00 and a maximum of \$50,397.00.

Vote 2-1 Ferro opposed

Motion made by Councilor Levy, seconded by Chairman Elder, to set the Executive Director of Human Services salary ordinance with a minimum of \$59,120.00 and a maximum of \$66,500.00.

Vote 3-0

Motion made by Councilor Elder to set the Part-Time Council on Aging Program Manager annual salary at a maximum of \$19,000.00 per year – Discussion followed:

Councilor Levy indicated that he was satisfied with the Mayor's proposal to create a new part-time position of Council on Aging Program Manager with a salary of \$25,000.00.

Councilor Ferro reminded councilors that this position is being created with a person in mind for the job, that being the interim, part-time COA Director.

Councilor Delano stated that he would support the reduced annual part-time salary of \$19,000.00 and would be open to working with the new COA Director toward funding additional services for the elderly, not salaries, but services that may be deemed necessary.

Motion made by Councilor Elder, seconded by Councilor Ferro, to set the Part-Time Council on Aging Program Manager annual salary at a maximum of \$19,000.00 per year.

Note: This new position is not to be counted as a full-time position.

Vote: 2-1 Levy opposed

The Committee continued discussion with Personnel Director Brumby asking if the city was required to advertise the new positions.

Mr. Brumby stated that the position of COA Director has already been advertised and that the Mayor's plan is to see how things work out.

Councilor Delano stated that regardless of the Mayor's intention he would like an opinion of whether or not there is a requirement to advertise the availability of the new position of Executive Director of Human Services.

Mr. Brumby stated that he would investigate the question.

Councilor Ferro stated that he would also like a legal opinion of the eligibility of the positions in the Mayor's reorganization to join a union/form a union.

Councilor Delano reported the following out of the Personnel Committee:

Order No. 10-1002777 - Communication from Mayor Stevens with the reappointment of Deborah Puleo as City Collector for a period of one year, effective February 1, 2011. Recommendation of the Personnel Committee is to approve 3-0.

Order No. 11-1002805 - Communication from City Council President Vigeant with reappointment of Lisa Thomas as City Clerk for a term to expire three years from the date of approval. Recommendation of the Personnel Committee is to approve 3-0.

Order No. - 10-1002760 - Communication from Mayor Stevens with appointment of Eric Asman to the Community Development Authority for a term to expire April 15, 2012. Recommendation of the Personnel Committee is to approve 3-0.

Order No. 10-1002776 - Communication from Mayor Stevens with the reappointment of Mark Gibbs as Director of Information Technology for a term to expire three years from the date of approval. Recommendation of the Personnel Committee is to approve 3-0.

Order No. 10-1002778 - Communication from Mayor Stevens with the reappointment of Stephen Reid as the City of Marlborough Building Inspector for a term to expire three years from the date of approval. Recommendation of the Personnel Committee is to approve 3-0.

Order No. 09-1002387 - Reappointment of Cynthia Panagore Griffin as Assistant City Solicitor for a term of three (3) years from the date of confirmation as her current term expires on January 7, 2010. Recommendation of the Personnel Committee is to approve 2 in favor; 1 present (Pope).

Suspension of the Rules requested – granted

ORDERED: That the City of Marlborough make a determination of its ability to plow all sidewalks in which it is an owner of any building or lot of land bordering on any street, lane, court, square or public place within the City where there is a sidewalk within 12 hours after snow ceases to fall in the daytime, and before 12:00 noon, if it ceases to fall in the nighttime, in strict accordance with the provisions on City Ordinances *prior to enforcement against any private resident* for failure to perform such snow and ice removal.

MOTION to suspend enforcement of the ordinance in light of extraordinary circumstances, **APPROVED**; adopted.

Suspension of the Rules requested – granted

ORDERED: That the appointment of Jennifer Crawford-Claro to the position of Council on Aging Director for a three year term from date of approval, **APPROVED**; adopted.

Suspension of the Rules requested – granted

ORDERED: That the transfer request in the amount of \$14,959.49 from Fringes to Asst. City Engineer, \$135.28 from Fringes to Longevity and \$26,927.08 from Fringes to Sick Leave necessary to fund benefits associated with an employee's retirement, **APPROVED**; adopted.

FROM:

| | |
|------------------------|-------------|
| Acct. # 11990006-51500 | \$42,021.85 |
| Undesignated Fund | |

TO:

| | |
|-------------------------|-------------|
| Acct. # 14001101-50660 | \$14,959.49 |
| Assistant City Engineer | |
| Acct. # 14001103-51430 | \$135.28 |
| Longevity | |
| Acct. # 14001103-51920 | \$26,927.08 |
| Sick Leave | |

Suspension of the Rules requested – granted

ORDERED: That the DPW transfer request in the amount of \$226,000.00 which moves funds from Stabilization-Capacity Study to Capital Outlay-East Plant for purposes of a study as outlined in the Commissioner's memorandum, **APPROVED**; adopted.

FROM:

| | |
|------------------------------|--------------|
| Acct. # 83600-32711 | \$226,000.00 |
| Stabilization-Capacity Study | |

TO:

| | |
|---------------------------|--------------|
| Acct. # 19300006-55950 | \$226,000.00 |
| Capital Outlay-East Plant | |

Suspension of the Rules requested – granted

ORDERED: That the transfer request in the amount of \$200,000.00 which moves funds from Undesignated to Marlboro 2010 to cover the estimated cost of the Economic Development Master Plan, **APPROVED**; adopted.

FROM:

| | |
|---------------------|--------------|
| Acct. # 10000-35900 | \$200,000.00 |
| Undesignated Fund | |

TO:

| | |
|------------------------|--------------|
| Acct. # 11210006-53940 | \$200,000.00 |
| Marlboro 2010 | |

Suspension of the Rules requested – granted. Chief Plummer was allowed to speak.

ORDERED: That the Fire transfer request in the amount of \$30,000.00 which moves funds from Undesignated to Additional Overtime to fund shift coverage and avoid station closures, **APPROVED**; adopted.

FROM:

| | |
|---------------------|-------------|
| Acct. # 10000-35900 | \$30,000.00 |
| Undesignated Fund | |

TO:

| | |
|------------------------|-------------|
| Acct. # 12200003-51300 | \$30,000.00 |
| Additional OT | |

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:

1. Section 526-2, entitled "Definitions," is hereby amended by adding after the definition of "SIGN" the following definition:

SIGN CONTRACTOR: A person, whether doing business as an individual, a sole proprietor, a partnership, a limited liability partnership, a corporation, a limited liability corporation, or any other form of business entity, and including his or her agents, employees, assigns and subcontractors, who erects, alters or re-locates a sign for or on behalf of an owner.

2. Section 526-3, entitled "Permit requirements," is hereby amended:

- a. by amending subsection B thereof, entitled "Application":

- i. by amending subsection (1) thereof, entitled "All signs":

1. by amending the introduction thereof, by adding in the first line thereof, after the word "drawing," the following words:-- or design graphic.

- a. by amending the introduction thereof, by adding in the first line thereof, after the words "Limited Industrial," the following word:-- and.
 - b. by amending subsection B thereof, entitled "Flat wall signs," by amending subsection (2) thereof, entitled "Canopy, marquee or awning sign," by amending subsection (c) thereof, entitled "Illumination," by adding after the word "backlit" the following words:-- , except in the Downtown Business District.
 - c. by amending subsection C thereof, entitled "Freestanding signs":
 - i. by amending subsection (1) thereof, entitled "General," by amending subsection (b) thereof, entitled "Sign setback," by adding after the words "freestanding sign" the following words:-- must be on the subject lot and.
 - ii. by amending subsection (2) thereof, entitled "Calculation of area," by amending in subsection (c) thereof, entitled "Bonus area for message board," by striking out in the first line thereof the word "shall" and inserting in place thereof the following word:-- may.
 - d. by amending subsection D thereof, entitled "Commercial centers":
 - i. by amending subsection (1) thereof, entitled "Bonus freestanding sign area for commercial centers," by amending subsection (a) thereof, entitled "Main sign," by striking out in the fifth line thereof the word "for."
 - ii. by amending subsection (5) thereof, entitled "Alterations to nonconforming freestanding signs," by striking out the subsection in its entirety and inserting in place thereof the following words:-- When a freestanding sign in a commercial center or on any parcel with multiple tenants does not conform to this chapter, then any alteration of that sign, whether in whole or in part, shall require that the entire sign shall be brought into conformity with § 526-3.G(3).
 - e. by amending subsection L thereof, entitled "Downtown Business District," by amending subsection (f) thereof, entitled "Design Review Board," by striking out subsection [4] thereof in its entirety and inserting in place thereof the following words:-- The term of the Design Review Board shall continue until such time as the Marlborough Historic Districts Commission is abolished.
7. Section 526-12, entitled "Administration and penalties," is hereby amended:

- a. by amending subsection B, entitled "Failure to act on permit," by striking out in the second line thereof the word "refused," and inserting in place thereof the following word:-- denied.
 - b. by amending subsection D, entitled "Penalties":
 - i. by adding to the title the following words:-- against owners.
 - ii. by adding at the end of the subsection the following words:-- In the event that a fine assessed pursuant to this subsection D remains unpaid by an owner as of the date when the owner and/or the owner's sign contractor submits any application for a sign permit for or on behalf of the owner, the Building Inspector or his/her designee may deny said application and may continue to so deny for so long as said fine remains unpaid.
 - c. by adding a new subsection E, entitled "Penalties against sign contractors," and adding the following words:-- If the Building Inspector or his/her designee determines that a sign contractor has erected, altered or re-located a sign in violation of § 526-3, then, in addition to the remedies provided for in § 526-12.D as against the owner, the Building Inspector or his/her designee may enforce § 526-3 by assessing against said sign contractor a fine of \$50.00 per day, each day being considered a separate violation. As a non-criminal alternative to this penalty, the Building Inspector or his/her designee may, pursuant to M.G.L. c. 40, § 21D, treat a sign contractor violation of § 526-3 by assessing against the sign contractor a non-criminal fine of \$50.00 for a first violation, and a non-criminal fine of \$50.00 per day for each additional violation of § 526-3, each day being considered a separate violation.
8. The effective date of these amendments shall be thirty (30) days after their approval, be **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 City's designation as a Green Community and award of a Grant in the amount of \$217,000.00 for use on energy savings upgrades and initiatives, **FILE**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:45 p.m.