



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

**Lisa M. Thomas
140 Main St.**

**Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723
MARCH 28, 2011**

Regular meeting of the City Council held on Monday, MARCH 28, 2011 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Seymour, Clancy and Landers. Meeting adjourned at 9:08 PM.

ORDERED: That the minutes of the City Council Meeting MARCH 14, 2011, **FILE**; adopted.

ORDERED: That the DPW transfer requests as follows with explanations noted on the spreadsheet:

- Transfer in the amount of \$5,600.00 from Sewer-Assistant Commissioner to Water-Temporary Part-Time.
- Transfer in the amount of \$10,000.00 from Water-Equipment Operators to Water-Maintenance Trenches.
- Transfer in the amount of \$10,000.00 from Streets-Equipment Operators to Streets-Highway Construction Materials.
- Transfer in the amount of \$15,000.00 from Repair Shop-Motor Equipment Repairmen to Repair Shop-Rep./Maint. Supplies-Veh.
- Transfer in the amount of \$1,600.00 from Repair Shop-Motor Equipment Repairmen to Repair Shop-Temporary Part-Time, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH --BUDGET TRANSFERS --									
DEPT:		PUBLIC WORKS				FISCAL YEAR:		2011	
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$50,504	\$5,600	60080001	50630	Sewer-Assistant Commissioner	\$5,600	61090003	51240	Water-Temporary Part Time	\$30
	Reason:	Money available due to retirement.				Projected cost to complete FY11. Includes temporary part time office coverage for billing office and summer help utilized to paint hydrants.			
\$193,420	\$10,000	61090001	50740	Water-Equipment Operators	\$10,000	61090006	54620	Water-Maintenance Trenches	\$14
		Money available due to temporary vacancy.				Funds needed to repair trench areas resulting from emergency water main breaks and sewer blockages.			
\$215,079	\$10,000	14001303	50740	Streets-Equipment Operators	\$10,000	14001305	55310	Streets-Highway Constr. Materials	\$12,318
		Money available due to Worker's Compensation.				Repair of roadway deficiencies throughout city.			
\$55,660	\$15,000	14001403	50745	Repair Shop-Motor Equipment Repairmen	\$15,000	14001406	54810	Repair Shop-Rep./Maint. Supplies-Veh.	\$187
		Money available due to temporary vacancy.				Anticipated funds needed to purchase supplies for vehicle repairs for remainder of fiscal year.			
\$55,660	\$1,600	14001403	50745	Repair Shop-Motor Equipment Repairmen	\$1,600	14001403	51240	Repair Shop-Temporary Part Time	\$1,400
		Money available due to temporary vacancy.				Funds needed to complete FY 11 Assabet Valley High School Co-Op Student & Summer Help Programs.			

ORDERED: That the Police transfer request in the amount of \$15,069.60 which moves funds from Unemployment to Sick Leave and \$8,204.56 which moves funds from Unemployment to Principal Clerk necessary to pay unbudgeted benefits associated with an employee's retirement, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. #13100003-51730	\$23,274.16
Unemployment	

TO:

Acct. # 12100003-51920	\$15,069.60
Sick Leave	

Acct. # 12100002-50520

\$8,204.56

Principal Clerk

MOTION made by Councilor Ossing to refer to Finance Committee - **DOES NOT CARRY**.

MOTION made by Councilor Delano to approve \$1,467.50 and refer to Finance Committee - **DOES NOT CARRY**.

ORDERED: That the transfer request in the amount of \$2,935.00 which moves funds from Director Elderly to Principal Clerk to fund the Principal Clerk position for the remainder of FY11, **APPROVED**; adopted.

FROM:

Acct. #15410001-50190	\$2,935.00
Director Elderly	

TO:

Acct. # 15410002-50520	\$2,935.00
Principal Clerk	

ORDERED: That the FY11 Mass Decontamination Unit Grant awarded to the Fire Department in the amount of \$2,500.00 which will facilitate the field deployment, training and operational readiness of a mobile Mass Decontamination Unit to enhance protection of local hospitals during any public health emergent situation, to be uses for purposes outlined in MGL, Chapter 44, Sections 53A, **APPROVED**; adopted.

ORDERED: That the reappointments of Dorothy Hodgson, Rita Connors and Brenda Costa and appointment of Marie Elwood to the Council on Aging Board of Directors for four-year terms expiring the first Monday in May 2015, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the reappointment of William Short to the Registrar of Voters for a three-year term from date of confirmation, refer to **PERSONNEL COMMITTEE**; 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 June 7, 2011 at 11:00 PM, **APPROVED**; adopted.

ORDERED: That the Minutes, Board of Assessors, March 11, 2011, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, February 28, 2011, **FILE**; adopted.

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

- A. Vicki Emerson, 72 Hillcrest Rd., other property damage
- B. Robert Ober, 35 Onamog St., residential mailbox claim 2(a)
- C. Ryan Nickerson, Attorney Leone, 1101 Worcester Rd., Framingham, on behalf of Ryan Nickerson, personal injury (previously submitted on February 14, 2011 agenda)
- D. Karin Kirby, 44 Minehan Ln., residential mailbox
- E. Maria Batitsta, 115 Howe St., other property damage
- F. Donald Randolph, 587 Elm St., other property damage
- G. Anthony Trio, 323 Simpson Rd., other property damage
- H. Paul Morin, 32 Gunnar Dr., other property damage
- I. Bart & Ida Frullo, 6 Jefferson St., other property damage
- J. Robert Mele, 31 Vine St., other property damage
- K. Bernard Gaibisso, 3 Akroyd St., other property damage
- L. Mary Aykanian, 27 Oakcrest Ave., residential mailbox claim 2(b)
- M. Robert Plaza, 66 Farrington Ln., residential mailbox claim 2(a)
- N. Mary-Elaine McGinn, 83 Lincoln St., other property damage
- O. Francis McCarthy, 114 Leoleis Dr., other property damage
- P. Diane Horvath, 36 Hildreth St., other property damage
- Q. Christine Sheehan, 222 Liberty St., other property damage
- R. Agnes Kevit, 96 Mechanic St., other property damage
- S. Seanna & Frank Lombardo, 162 Prospect St., other property damage
- T. Rachel Zu & David Young, 70 Robert Rd., other property damage

Reports of Committees:

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

Order No. 11-100-2806-1 & 11-100-2806-2 - Communication from City Council President Arthur Vigeant re: proposed amendment to the Zoning Ordinance. Steve Reid explained the rationale for the proposed Zoning Ordinance amendment which is principally to eliminate confusion resulting from the floor layout restrictions requiring 66% of the living area in each unit in a retirement community to be located on the first floor. The change relaxes the mathematical calculation of how a property is oriented. According to Inspector Reid there is no effect on existing condos and no change to other Special Permit requirements. Councilors Vigeant and Delano expressed concerns regarding proper notification to the existing Retirement Communities and requested that the committee delay discussions until further feedback can be obtained from residents. Steve Reid provided verification that proper notice was sent. The Committee determined that the soonest the full Council could act on the order is April 25th due to advertising requirements. We are also waiting on an opinion from the Planning Board. This should allow adequate time to solicit further feedback from residents. **Recommendation of the Urban Affairs Committee is to approve the both orders 5-0.**

Councilor Ossing reported the following out of the Finance Committee:

Order No. 11-1002844 – Transfer \$9,000 from Unemployment to Retirement. The Finance Committee reviewed the Mayor’s letter dated March 8, 2011 requesting the transfer of \$9,000 from the School Unemployment account to the City Retirement account to fund an employee’s special military assessment benefits. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

Order No. 11-1002845 – Transfer \$35,000 from School Unemployment to City Unemployment. The Finance Committee reviewed the Mayor’s letter dated March 8, 2011 requesting the transfer of \$35,000 from the School Unemployment account to the City Unemployment account to provide unemployment benefits for employees not funded in the original budget. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

Order No. 11-1002846 – Transfer \$51,000 from Undesignated Funds to Open Space Stabilization Account. The Finance Committee reviewed the Mayor’s letter dated March 8, 2011 requesting the transfer of \$51,000 from the Undesignated Funds account to the Open Space Stabilization account. This transfer moves the City’s wireless antennae receipts for fiscal year 2010 to the intended open space account. The Finance Committee assigned the following actions:

- The Finance Committee questioned if all the 2010 and 2011 wireless antenna receipts had been collected. Provide the Finance Committee with a report detailing the list of wireless antenna providers and confirmation that their FY10 and FY11 receipts have been received by the city. Action: John Ghiloni
- The Finance Committee requested that the Auditor provide the balances in all the stabilization account to all City Councilors for the next council meeting. Action: Diane Smith

Recommendation of the Finance Committee is to approve the transfer 5-0.

Order No. 11-1002848 – Increase Expenditure in Public Safety Revolving Fund. The Finance Committee reviewed the Mayor’s letter dated March 10, 2011 requesting the increase in allowed annual expenditures from \$45,000 to \$75,000 in the FY11 Public Safety Revolving Training fund. The Finance Committee questioned whether the funds would be expended prior to June 30, 2011 and whether the Order required changing since the language implies “no more than \$45,000 shall be expended during FY11, **unless otherwise authorized by the City Council and Mayor.**” **Recommendation of the Finance Committee is to table the order 3-2 (Councilors Seymour and Delano opposed) pending additional clarification from the Mayor and Solicitor.**

Order No. 11-1002830 – Various DPW transfers for \$19,756.00. The Finance Committee reviewed the Mayor's letter dated February 24, 2011 requesting five transfers within the DPW budget. The Finance Committee approved four of the transfers on March 7, 2011. The fifth transfer was tabled due to insufficient funds in the Miscellaneous Hand/Power Tools line item to cover the transfer. The transfer was revised on March 8, 2011 to reduce the transfer to \$200.00 from Miscellaneous Hand/Power Tools to the Repair/Maintenance Equipment line item in the Forestry Department. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

Councilor Clancy orally reported the following out of the Public Services Committee under Suspension of the Rules:

Order No. 11-1002837 - Chairman requests removal of the Application for Taxi License, MetroWest Taxi, John St.Martin, 212 Sudbury Street.

Chairman Clancy:

I received an email from Building Inspector Reid on March 22, 2011 that the property in question is located in an RR Residential Zoning district. A taxi service is not listed in the zoning code as a customary home occupation.

I would recommend that the application be removed from committee – that the applicant be advised that the use is not permitted at the property in question and further that the application fee be returned to the applicant.

Councilor Ferro had questions pertinent to another taxi service operating in his ward and wanted to ensure that all taxi/livery services are reviewed under the same guidelines.

MOTION made to table – **CARRIES.**

Suspension of the Rules requested - granted

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 \$1,750,000.00 in excess of available appropriation for snow and ice removal for fiscal year 2011, **APPROVED;** adopted.

Suspension of the Rules requested - granted

ORDERED: That the City of Marlborough, as part their the Green Communities designation, has been awarded five Big Belly solar compactors and as outlined in MGL Chapter 44, Section 53A ½ must be accepted by City Council and installed no later than April 15, 2011, **APPROVED;** adopted.

Suspension of the Rules requested - granted

ORDERED: That the Fluoridation Equipment Upgrades for the Millham Water Treatment Plant grant in the amount of \$13,600.00 which provides funds for upgrades to water fluoride equipment at the Millham Water Treatment Plant to be used as outlined in accordance to MGL, Chapter 44, Section 53A, **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, **APPROVED**; 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 DPW intra-transfers as follows with explanations noted on the spreadsheet, **APPROVED**; adopted.

Transfer in the amount of \$706.00 from Assistant Commissioner to Principal Clerk.

Transfer in the amount of \$3,500.00 from Chief Treatment Operator to Overtime-Regular-EWTP.

Transfer in the amount of \$1,600.00 from Equipment Operators - Streets to Dispatcher.

Transfer in the amount of \$13,200.00 from Equipment Operators - Streets to Overtime-Regular.

CITY OF MARLBOROUGH										
--BUDGET TRANSFERS --										
DEPT:		PUBLIC WORKS				FISCAL YEAR:		2011		
FROM ACCOUNT:						TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance	
\$50,505	\$706	60080001	50630	Assistant Commissioner	\$706	14001002	50520	Principal Clerk	\$14,362	
	Reason:	Money available due to retirement					Insufficient funds transferred to cover retroactive step increases			
\$48,394	\$3,500	60081001	50910	Chief Treatment Plant Operator	\$3,500	60081003	51310	Overtime-Regular-EWTP	\$5,679	
	Reason:	Money available due to WC case					Higher than expected use associated with major system repairs.			
\$273,616	\$1,600	14001303	50740	Equipment Operators - Streets	\$1,600	14001303	50790	Dispatcher	\$11,565	
	Reason:	Money available due to WC case					Insufficient funds transferred to cover retroactive step increases.			
\$273,616	\$13,200	14001303	50740	Equipment Operators - Streets	\$13,200	14001303	51310	Overtime-Regular	\$9,588	
	Reason:	Money available due to WC case					Supplemental funding required to cover year end cost based on 3-year average.			

ORDERED: That the FY09 State and Tribal Grant (STAG) awarded to the City of Marlborough in the amount of \$485,000.00 which provides reimbursement monies for the design and construction of upgrades to the Westerly Wastewater Treatment facility to be used as outlined in MGL, Chapter 44, Section 53A, **APPROVED**; adopted.

MOTION made by Councilor Elder to delete the words " for the first time" in Section 2, - **CARRIES**.

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, **TABLED**; adopted.

MOTION made by Councilor Ferro to table – **DOES NOT CARRY BY A ROLL CALL VOTE OF 1 YEAS AND 10 NAYS.**

Yeas: Ferro

Nays: Delano, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Vigeant and Levy

MOTION made by Councilor Levy to delete the words "precisely" and "except for clerical and editorial changes only" in the following paragraph - **CARRIES**

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:

SO THAT THE PETITION READS AS FOLLOWS:

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 as follows:

Section 1. Notwithstanding Section 17 of Chapter 138 of the General Laws, the licensing authority of the City of Marlborough may grant an additional license for the sale of all alcoholic beverages not to be drunk on the premises under Section 15 of said Chapter 138 to the Rick Lombardi and Julie Lombardi, d/b/a The Vin Bin, located at 91 Main Street, Marlborough, MA. The license shall be subject to all of said Chapter 138 except said Section 17. Upon the approval of said license, the applicants shall surrender their current license for the sale of wines and malt beverages to the licensing authority.

Section 2. The licensing authority shall not approve the transfer of the license to any other location but it may grant the license to a new applicant at the same location if the applicant files with the licensing authority a letter from the department of revenue indicating that the license is in good standing with the department and that all applicable taxes have been paid.

Section 3. If the license granted under this act is cancelled, revoked or no longer in use, it shall be returned physically with all of the legal rights, privileges and restrictions pertaining thereto to the licensing authority, which may then grant the license to a new applicant at the same location and under the same conditions as specified in this act.

Section 4. This act shall take effect upon its passage, **APPROVED**; adopted.

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY DELETING IN THEIR ENTIRETY SECTIONS 557-1 (PERMIT REQUIRED), 557-2 (FENCES OR BARRIERS REQUIRED), 557-3 (INSPECTION REQUIRED), 557-4 (EXEMPTIONS), 557-5 (COMPLIANCE), AND 557-6 (VIOLATIONS AND PENALTIES) OF CHAPTER 557, AND ADDING THE FOLLOWING NEW PARAGRAPH TO THE SECTION OF CHAPTER 557 ENTITLED “GENERAL REFERENCES”:

Commonwealth of Massachusetts State Building Code, as amended (See 780 CMR)
APPROVED; adopted.

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

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:

POSITION	EFFECTIVE DATE	MINIMUM 1 st 6 mos.	STEP 1 2 nd 6 mos.	STEP 2 Next 12 mos.	MAXIMUM
Executive Director of Human Services	7/1/11	\$59,120.00	\$61,484.80	\$63,944.19	\$66,501.96
Human Services Manager	7/1/11	\$44,803.00	\$46,595.12	\$48,458.92	\$50,397.28
Council on Aging Program Manager	7/1/11	N/A	N/A	N/A	\$19,000.00

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain; adopted. OBJECTION TO PASSAGE IN ONE EVENING. (Ferro opposed to passage in one evening) – TABLE UNTIL THE APRIL 11, 2011 CITY COUNCIL MEETING.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:08 p.m.