



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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APRIL 11, 2011**

Regular meeting of the City Council held on Monday, APRIL 11, 2011 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Seymour, and Landers. Absent: Clancy. Meeting adjourned at 9:30 PM.

ORDERED: That the minutes of the City Council Meeting MARCH 28, 2011, **FILE AS AMENDED**; adopted.

ORDERED: That the PUBLIC HEARING On the Application for Special Permit from Attorney Bergeron on behalf of Melanson Development Group, Inc. to expand the non-conforming use of the existing Walker house and barn located on 93 Framingham Rd, Order No. 11-1002853, all were heard who wish to be heard, hearing recessed at 9:15 p.m.

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

Councilor Absent: Councilor Clancy

At President Vigeant's request to recess at 9:15 PM and returned to open meeting at 9:17 PM, **APPROVED**; adopted.

ORDERED: That the following Police transfer requests for the purpose of funding the newly ratified agreement between the City of Marlborough and the New England Police Benevolent Association, Local 81, refer to **FINANCE COMMITTEE**; adopted.

TRANSFER REQUEST									
FROM ACCOUNT				TO ACCOUNT					
AVAILABLE BALANCE	AMOUNT	ORG C	OBJECT	ACCOUNT DESCRIP	AMOUNT	ORG CODE	OBJECT	ACCOUNT DESCRIP	AMOUNT AVAIL
				Undesignated Fund				Police	
\$ 1,408,278.00	\$ 54,927	10000	35900	Undesignated Fund	\$ 39,040	12100001	50420	Police Officer	
					\$ 1,196	12100003	51342	Longevity	
					\$ 781	12100003	51410	First Responder	
					\$ 4,601	12100003	51440	Edu Incent	
					\$ 1,164	12100003	51450	Night Shift	
					\$ 2,632	12100003	51490	Holiday	
					\$ 1,440	12100003	51920	Sick Leave	
					\$ 489	12100003	50435	Specialist	
					\$ 149	12100003	51370	OT Celebration	
					\$ 199	12100003	51360	OT Training	
					\$ 2,214	12100003	51310	OT Reg	
					\$ 904	12100003	51320	OT Court	
					\$ 117	12100003	51329	On Call	
					\$ 54,927				

ORDERED: That the Personnel transfer in the amount of \$1,681.00 which moves funds from Medical Exams to Part-Time Senior Clerk to cover retroactive step increases as well as increased accruals in the department, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. #11520004-53010 \$1,681.00
Medical Exams

TO:

Acct. # 11520002-50401 \$1,681.00
Part Time Senior Clerk

ORDERED: That the Conservation Maintenance Funds transfer request in the amount of \$10,000.00 which moves funds from Undesignated to Conservation Trust fund as part of conditions of two special permits, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. #10000-35900 \$10,000.00
Undesignated Funds

TO:

Acct. # 84500-48300 \$10,000.00
Conservation Trust Fund

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

ORDERED: That pursuant to the provisions of § 53E½ of Chapter 44 of the General Laws of the Commonwealth of Massachusetts, the City Council of the City of Marlborough, upon the recommendation and approval of the Mayor, does authorize an increase in expenditures in the Public Safety Revolving Fund from forty-five thousand dollars (\$45,000) to no more than seventy-five thousand dollars (\$75,000) during Fiscal Year 2011, **APPROVED**; adopted.

ORDERED: That the Acceptance of Gift to the Conservation Commission in the amount of \$1,400.00 from the Butler Family Foundation to be used to maintain the Felton Conservation Land on Elm St. for purposes as outlined in MGL, Chapter 44, Section 53 1/2, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the Communication from Comptroller Tom Abel re: Electronic Real Estate Tax Bills, **FILE**; adopted.

ORDERED: That the Communication from Comptroller Tom Abel re: Disclosure Report for FY10 as required, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: Communication from Planning Board Chair Barbara Fenby re: Proposed Zoning Ordinance Change, Retirement Community, **FILE**; adopted.

ORDERED: That the Application of Best Buy Stores, LP for renewal of Junk Dealer's license at 769 Donald Lynch Blvd., refer to **PUBLIC SERVICES**; adopted.

ORDERED: That the Application of Sergey Yeghiyan, d/b/a C.T.C. Gold & Diamond Refinery for Junk Dealer's license at 149 Main St., refer to **PUBLIC SERVICES**; adopted.

ORDERED: That the NStar Gas Co. Condensed Financial Return for yearend December 31, 2010, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, March 14, 2011, **FILE**; adopted.

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

- A. Linda DiBenedetto, 230 Hildreth St., other property damage
- B. Jeff Carchidi, 209 Simpson Rd., other property damage
- C. Claudette Mitchell, 3 Kelber Dr., other property damage
- D. Robert Seymour, 17 Kenney Lane, other property damage
- E. Jennifer Blair, 40 Memory Lane, pothole or other road defect
- F. New Horizons at Marlborough, 400 Hemenway St., residential mailbox claim 2(a)
- G. Sandra Dehart, 8 Turner Ridge Rd., other property damage
- H. Joseph Curley, 69 Sunshine Dr., other property damage
- I. Doris Maffioli, 118 Conrad Rd., other property damage
- J. Marcia Wilcox, 111 Conrad Rd., other property damage
- K. Seymour Sackler, 7 Barnard Rd., other property damage
- L. Susan Throckmoton, 20 Midland St., other property damage
- M. John Riley, 9 Turner Ridge Rd., other property damage
- N. Luiz Lott, 14 Calder St., residential mailbox claim 2(b)
- O. Thomas Czarkowski, 80 Conrad Rd., other property damage
- P. Ronald Demarco, 6 Libby Ave., other property damage
- Q. Charles & Barbara Doucette, 67 Pheasant Hill Rd., other property damage
- R. Peter & Robin Cohan, 2 Turner Ridge Rd., other property damage
- S. Silvino Paz, 76 Church St., other property damage
- T. Lisa McNally-Shahbazi, 3 Monroe Ave., residential mailbox claim 2(a) & other property damage
- U. Dean & Jennifer Vittum, 52 Fitzgerald Rd., other property damage
- V. Greg Barry, 120 Woodland Dr., residential mailbox claim 2(a)

Councilor Seymour abstained

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

Order No. 11-1002848 - Increase Expenditure in Public Safety Revolving Fund: The Finance Committee continued deliberation on 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 that was tabled at the March 21, 2011 Finance Committee meeting. The Finance Committee concluded that the existing language in the order was sufficient and that a letter from the Mayor authorizing the increase in funding was required for City Council approval. The Finance Committee voted 4 – 0 to request the Mayor submit a letter to the City Council on the April 14, 2011 meeting authorizing the increase in the annual expenditures in the Public Safety Revolving Fund from \$45,000 to \$75,000 in FY11. **Recommendation of the Finance Committee is to unanimously support approving the increase in authorized expenditures at the April 14, 2011 meeting.**

Councilor Elder requested to take the following petition off the table – APPROVED; adopted.

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.

APPROVED; adopted.

Suspension of the Rules requested - granted

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, **APPROVED**; adopted.

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
\$50,504	\$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.			

Suspension of the Rules requested - granted

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, **APPROVED**; adopted.

FROM:

Acct. #13100003-51730
Unemployment

\$23,274.16

TO:

Acct. # 12100003-51920
Sick Leave

\$15,069.60

Acct. # 12100002-50520
Principal Clerk

\$8,204.56

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 650-21, ENTITLED "RETIREMENT COMMUNITY RESIDENCE DISTRICTS," AND CHAPTER 650-22, ENTITLED "RETIREMENT COMMUNITY RESIDENCE DISTRICTS OVERLAY DISTRICTS," AS FOLLOWS:

1. Section 650-21, entitled "Retirement Community Residence Districts," is hereby amended:
 - a. by amending subsection C(3) thereof, by deleting the second sentence thereof, which heretofore read "At least 66% of the living area in each unit shall be located on the first floor."
 - b. by amending subsection C(8) thereof, by amending the second sentence thereof, by adding after the word "provide" the following words:-- at least.
2. Section 650-22, entitled "Retirement Community Overlay Districts," is hereby amended:
 - a. by amending subsection C thereof, entitled "Permitted uses":
 - i. by amending the introduction thereof, by striking out in the sixth line thereof the following words:-- "and such additional multifamily housing units segregated onto a separate portion of the site, referred to herein as an 'ancillary residential community,' as the City Council deems appropriate,".
 - ii. by amending subsection (3) thereof, by deleting the second sentence thereof, which heretofore read "At least 66% of the living area in each unit shall be located on the first floor."
 - iii. by amending subsection (8) thereof, by amending the second sentence thereof, by adding after the word "provide" the following words:-- at least.
 - iv. by amending subsection (14) thereof, by striking out said subsection in its entirety, including sub-subsections (a) through (f), which heretofore read:

"(14) The following site development provisions shall apply to any ancillary residential community which is approved in conjunction with the granting of a special permit for the construction of a retirement community:

(a) Each building in an ancillary residential community shall face either upon an existing street or upon a public or private way constructed within said ancillary residential community and shall have a minimum front yard of no less than 10 feet from the edge of

the paved way to the closest point of the structure. Each building, whether principal or accessory, shall be at least 50 feet from any other building by air line distance between the nearest points of the building.

(b) No dwelling unit shall contain less than 800 square feet of floor space exclusive of halls and stairs, and no room shall contain less than 120 square feet.

(c) No part of any building in any ancillary residential community shall be less than 30 feet from any lot line, less than 50 feet from any street, or less than 80 feet from the nearest structure in a retirement community.

(d) All site landscaping shall be designed so as to provide a clear sense of separation between the ancillary residential community and a retirement community. Landscape design preference shall be given to the maintenance of existing trees and ground cover. The development of large lawn areas shall be minimized.

(e) The City Council may, as a condition of any special permit which includes an ancillary residential community, require that the land area on which the ancillary residential community is located be permanently maintained as one undivided lot or, within a condominium, as one undivided condominium unit, or require such other legal mechanism as will, in the opinion of the City Council, assure that the said ancillary residential community will not be subdivided or its ownership further condominiumized, that said ancillary residential community will remain as rental housing, and that ownership of said ancillary residential community will remain consolidated.

(f) The total number of units in an ancillary residential facility shall not exceed 30% of the combined total of retirement community and ancillary apartment units.”

- v. by amending subsection (15) thereof, by amending the introduction thereof, by striking out in the first line thereof the following words:-- “and which does not include any ancillary residential community”.

3. The effective date of these amendments shall be the date on which they are voted upon by the city council, **TABLED UNTIL APRIL 25, 2011**; adopted.

[END: Order No. 11-1002806-1]

That, as a result of the City Council’s approval of Order No. 11-1002806-1, the following special permits previously approved by the City Council, in its capacity as special permit granting authority, shall each be modified in the following respects:

- 1) Special Permit issued to Brigham Development Corp., 38 Brigham Street, Marlborough, MA for development and operation of land at 388 Boston Post Road East into a "Retirement Village" of condominiums, Order No. 97-7158B, adopted September 8, 1997. The second sentence in condition number 7 thereof, which sentence had read "At least 66% (sixty six percent) of the living area in each unit shall be located on the first floor," shall be stricken and shall have no legal effect as of the effective date of Order No. 11-1002806;
- 2) Special Permit issued to Brigham Development Corp. and Williams Village, LLC, 38 Brigham Street, Marlborough, MA to construct a retirement community, Order No. 99-7967B, adopted April 5, 1999. The second sentence in condition number 7 thereof, which sentence had read "At least 66% (sixty six percent) of the living area in each unit shall be located on the first floor," shall be stricken and shall have no legal effect as of the effective date of Order No. 11-1002806; and
- 3) Special Permit issued to Metro Park Corp., 929 Boston Post Road East, Marlborough, MA to construct a retirement community, Order No. 03-10022, adopted September 8, 2003, as amended by a Revised Special Permit issued to Toll MA Land Partnership, 250 Gibraltar Road, Horsham, PA to construct 69 townhouse residential retirement community units, Order No. 09-1002151C, approved June 22, 2009. The second sentence in condition number 7 thereof, which sentence had read "At least 66% (sixty-six percent) of the living area in each unit shall be located on the first floor," shall be stricken and shall have no legal effect as of the effective date of Order No. 11-1002806, be and is herewith **TABLED UNTIL APRIL 25, 2011**; adopted.

[END: Order No. 11-1002806-2]

ORDERED: That the Retirement Benefits transfer request in the amount of \$9,000.00 which moves funds from Unemployment to Retirement to fund an employee's special military assessment benefits, **APPROVED**; adopted.

FROM:

Acct. #13100003-51730 \$9,000.00

Unemployment

TO:

Acct. # 11940006-51770 \$9,000.00

Retirement

ORDERED: That the Unemployment Benefits transfer request in the amount of \$35,000.00 which moves funds from Unemployment to Unemployment to fund unemployment benefits for employees not funded in the original budget, **APPROVED**; adopted.

FROM:

Acct. #13100003-51730 \$35,000.00

Unemployment

TO:

Acct. # 11970006-51730 \$35,000.00

Unemployment

ORDERED: That the Wireless Receipts transfer request in the amount of \$51,000.00 which moves funds from Undesignated to Open Space Stabilization to move the city's wireless antennae receipts for FY10 to open space account, **TABLED**; adopted.

FROM:

Acct. #10000-35900 \$51,000.00

Undesignated

TO:

Acct. # 83600-32918 \$51,000.00

Stabilization-Open Space

ORDERED: That pursuant to the provisions of § 53E½ of Chapter 44 of the General Laws of the Commonwealth of Massachusetts, the City Council of the City of Marlborough, upon the recommendation of the Mayor, does, to be effective during fiscal year 2011, amend paragraph (d) of Order No. 10-1002587B, which concerns a revolving fund to be utilized by the Mayor, as follows:

(a) receipts credited to the fund shall be limited to an emergency dispatch fee due the City pursuant to its contract with Patriot Ambulance, unless otherwise directed by the General Laws; and

(b) that expenditures from said fund shall be limited to public safety training; and

(c) that the Mayor shall be the only officer authorized to approve expenditures from the same; and

(d) no more than seventy-five thousand dollars shall be expended during Fiscal Year 2011, unless otherwise authorized by the City Council and Mayor; and

(e) the Mayor shall prepare a year-end report identifying funds received, funds expended, description of expenditures and year-end balance; and

(f) no provisions of this order shall be changed unless approved by the Mayor and City Council.

FILE; adopted.

ORDERED: That the DPW transfer request in the amount of \$200.00 which moves funds from Misc.Hand/Power tool to Rep./Maint. Equipment due to increases in repair costs with hand powered tools, **APPROVED**; adopted.

FROM:

Acct. #114001506-54420 \$200.00

Misc.Hand/Power

TO:

Acct. # 14001506-52500 \$200.00

Rep./Maint. Equipment

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

APPROVED; adopted.

Previously passed all stages of legislation - objection to passage in one evening.

MOTION: Approve - carries

Councilor Ferro and Ossing requested to be recorded in opposition.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:30 p.m.