



**CITY OF MARLBOROUGH  
OFFICE OF CITY CLERK**

**Lisa M. Thomas**

**140 Main St.**

**Marlborough, MA 01752**

**(508) 460-3775 FAX (508) 460-3723**

**DECEMBER 6, 2010**

Regular meeting of the City Council held on Monday, DECEMBER 6, 2010 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 10:13 p.m.

ORDERED: That the minutes of the City Council Meeting November 22, 2010, **FILE AS AMENDED**; adopted.

ORDERED: That the PUBLIC HEARING for the **JOINT TAX CLASSIFICATION PUBLIC HEARING** with the Board of Assessors on Monday, December 6, 2010 at 8:00 p.m. in Council Chambers, 2<sup>nd</sup> 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 2009. Massachusetts General Laws Chapter 40, Section 56 sets forth the procedures and responsibilities under the law, all were heard who wish to be heard, hearing adjourned at 8:54 p.m.; adopted.

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

ORDERED: That the following transfers of \$994,076.00 (nine hundred ninety four thousand, seventy six dollars) from Undesignated Funds to Reduce the FY2011 Tax Levy, and \$1,022,246.00 (one million, twenty two thousand, two hundred forty six dollars) from Undesignated Funds to Reduce Snow and Ice Deficit on FY2011 Tax Levy, **APPROVED**; adopted.

FROM:

Acct. # 10000-35900 \$994,076.00

Undesignated Fund

Acct. # 10000-35900 \$1,022,246.00

Undesignated Fund

TO:

To Reduce Tax Levy \$994,076.00

To Reduce Snow and Ice Deficit \$1,022,246.00

ORDERED: That the following transfers of \$10,000.00, 40,000.00, 43,909.00 (ten thousand dollars, forty thousand dollars and forty three thousand, nine hundred and nine dollars) from Interest on BAN, Interest Expense, and Interest on BAN respectively to Reduce the FY2011 Tax Levy, **APPROVED**; adopted

FROM:

Acct. # 13860006-59254 \$10,000.00

Interest on BAN

Acct. # 61075206-59080 \$40,000.00

Interest Expense

Acct. # 17520006-59254 \$43,909.00

Interest on BAN

TO:

To Reduce FY2011 Tax Levy

\$93,909.00

ORDERED: That the following transfer of \$912,015.00 (nine hundred twelve thousand, fifteen dollars) from Overlay Reserve to Reduce the FY2011 Tax Levy, **APPROVED**; adopted.

FROM:

Acct. # 10000-32200

\$912,015.00

Overlay Reserve

TO:

To Reduce FY2011 Tax Levy

\$912,015.00

ORDERED: That the following transfers of \$21,300.00 (twenty one thousand, three hundred dollars, and \$194,200.00 (one hundred ninety four thousand, two hundred dollars) from Sale of Graves and Aquifer Protection, to reduce the FY2011 Tax Levy, **APPROVED**; adopted.

FROM:

Acct. # 27000-33020

\$21,300.00

Sale of Grave

Acct. # 61000-31200

\$194,200.00

Aquifer Protection

TO:

To Reduce FY2011 Tax Levy

\$215,500.00

MOTION made by Councilor Ferro to change the residential to 51.8623% and the CIP to 48.1378% - **DOES NOT CARRY**

ORDERED: That the following percentage of FY2011 Tax Levy, **APPROVED**; adopted:

Residential	51.2118
C.I.P.	48.7882

ORDERED: That the residential tax exemption for owner-occupied, residential properties for Fiscal Year 2011 be three percent (3%), **NOT APPROVED**; adopted.

ORDERED: It is moved, in conformance with the provisions of § 21(3) of Chapter 30A of the General Laws of the Commonwealth, that the City Council conduct an executive session for the purpose of discussing strategy with respect to litigation, as an open meeting may have a detrimental effect on the litigating position of the City of Marlborough. It is further moved and stated that the City Council will re-convene in open session after the executive session, **MOVED TO ITEM 15**; adopted.

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, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the transfer request in the amount of \$39,850.24 which moves funds from Undesignated Fund to Open Space Acquisition per City's annual payment agreement with Ward Mountain LLC, be and is herewith **APPROVED**; adopted.

FROM:

Acct. # 83600-11520

\$39,850.24

Open Space Stabilization

TO:

Acct. # 19300006-58170

\$39,850.24

Open Space Acquisition

ORDERED: That the transfer request in the amount of \$10,555.00 which moves funds from Undesignated to Director to fund the Human Services Department for two months, **APPROVED AND REFER TO THE LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the appointment of Eric Asman to the Community Development Authority for a term to expire April 15, 2012, 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  
PROVIDING A SIMPLIFIED PROCEDURE  
FOR THE LAYOUT AND ACCEPTANCE OF CERTAIN WAYS  
IN AND BY 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 the provisions of Chapters 82 and 79 of the General Laws or any other general or special law, the city of Marlborough may employ the procedure hereinafter set out for municipal acceptance of roads constructed within a subdivision in accordance with a definitive plan approved by the planning board of the city of Marlborough. The said board, upon request of either the city council for the city of Marlborough or of a developer, or upon its own initiative, shall prepare a written certification that a subdivision road has been laid out and constructed in accordance with the board's rules and regulations and the approved definitive plan. The said board shall submit to the said city council the board's certification, together with original mylars of an acceptance plan, in required form for recording at the Registry of Deeds, and an as-built plan(s). The cost for preparing acceptance plans and as-built plans, if necessary, shall be paid from any funds which may remain in the subdivision bond of the developer. The said city council shall hold a public hearing, after giving written notice by first-class mail, postage prepaid, to the owner of record of each property abutting the road, as appears from municipal records, and after giving notice by publication in a newspaper of local circulation at least seven days prior to the hearing. The sole purpose of the public hearing shall be to determine whether it is in the public interest to accept the road as a public way. If the said city council determines, after the public hearing, that it is in the public interest to accept the road, it shall so vote, by a two-thirds majority, and cause to be prepared for recording at the Middlesex South District Registry of Deeds an order of acceptance containing said vote. The order of acceptance, together with the original mylar acceptance plan(s), shall be recorded within thirty (30) days following the said vote, and, upon recordation, shall operate to vest in the city of Marlborough, with no

additional notice or other action required, the ownership in fee to the road, together with the ownership of all utility, drainage, flowage, and other easements shown for all municipal purposes including but not limited to repair, improvement, reconstruction, removal and replacement, as well as all pipes, structures, and other improvements located therein. No owner of, or holder of any interest in, land abutting a road so accepted or subject to an easement shown on said acceptance plan shall have any claim for compensation against the city on account of said acceptance.

**SECTION 2.** This act shall take effect upon its passage, refer to **PUBLIC SERVICES 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 ESTABLISHING  
A BUSINESS AND ECONOMIC DEVELOPMENT SPECIAL REVENUE FUND  
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 section 53 of chapter 44 of the General Laws or any other general or special law to the contrary, the city of Marlborough shall establish in the city treasury a special revenue account to be known as the Business and Economic Development Special Revenue Fund in the city of Marlborough, into which account shall be deposited a) certain receipts comprising a portion of the total local room occupancy tax received annually by the city under section three A of chapter sixty-four G of the General Laws, as set forth in section 2 herein; and b) any grants and monetary gifts or donations made to the city in furtherance of the purposes of this act. The purposes of this act, and of the Business and Economic Development Special Revenue Fund, shall be to promote and to sustain the development of business and the local economy in the city of Marlborough.

**SECTION 2.** Notwithstanding the provisions of any general or special law to the contrary, the amount of the room occupancy excise based on rates in excess of 4% collected under section three A of chapter sixty-four G of the General Laws by the city of Marlborough for the fiscal year beginning July 1, 2011 and each fiscal year thereafter shall be credited to the Business and Economic Development Special Revenue Fund, subject to further appropriation by a majority vote of the city council of the city of Marlborough.

**SECTION 3.** Notwithstanding the provisions of any general or special law to the contrary, the amount of the room occupancy excise based on a rate equal to 4% collected under section three A of chapter sixty-four G of the General Laws by the city of Marlborough for the fiscal year beginning July 1, 2011 and each fiscal year thereafter shall be credited to the General Fund in the city of Marlborough.

**SECTION 4.** Notwithstanding the provisions of any general or special law to the contrary, any interest accruing on any amount on deposit in the Business and Economic Development Special Revenue Fund shall be credited to the General Fund in the city of Marlborough.

**SECTION 5.** Nothing in or resulting from this act shall affect amounts distributed in any fiscal year to the city of Marlborough from the Local Aid Fund.

**SECTION 6.** The city of Marlborough may amend this act by a two-thirds vote of the city council of the city of Marlborough. Such amendatory vote shall designate a) that the Business and Economic Development Special Revenue Fund shall thereupon cease to have effect in the city of Marlborough; b) that all unexpended and uncommitted amounts on deposit in the Business and Economic Development Special Revenue Fund, as of the date of said amendatory vote, shall forthwith be credited to the General Fund for the city of Marlborough; and c) that the portion of the total room occupancy excise in excess of 4% received annually by the city under section three A of chapter sixty-four G of the General Laws and theretofore credited to the Business and Economic Development Special Revenue Fund, as set forth in section 2 herein, as well as any grants and monetary gifts or donations made to the city in furtherance of the purposes of this act, shall thereafter be credited to the General Fund for the city of Marlborough.

**SECTION 7.** If the city of Marlborough votes, pursuant to section three A of chapter sixty-four G of the General Laws and sections (2)(h) and (2)(i) of 830 Code of Massachusetts Regulations Part 64G.3A.1, to revoke its acceptance of the room occupancy excise rate in excess of 4% under section three A of chapter sixty-four G of the General Laws, then the Business and Economic Development Special Revenue Fund shall thereupon cease to have effect in the city of Marlborough, and all unexpended and uncommitted amounts on deposit in the Business and Economic Development Special Revenue Fund, as of the date of said revocation vote, shall forthwith be credited to the General Fund for the city of Marlborough.

**SECTION 8.** This act shall take effect upon its passage, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 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.

2. by amending subsection (d) thereof, by adding in the first line and again in the third line thereof, after the words "plot plan," the following words:-- or site plan.

3. by amending subsection (e) thereof, by adding in the first line thereof, after both mentions of the words "sketch," the following words:-- or design graphic.

- ii. by amending subsection (2) thereof, entitled "Action on applications," by striking out the word in the fourth line thereof the word "approved" and inserting in place thereof the following word:-- denied.

- b. by amending subsection G thereof, entitled "Removal of existing signs," by striking out the entire subsection and inserting in place thereof the following words:-- All non-conforming signs shall be brought into conformance no later than June 23, 2000.

3. Section 526-6, entitled "Signs permitted in all zoning districts," is hereby amended by amending subsection A thereof, entitled "Temporary off-premises signs," by amending in subsection (2) thereof, entitled "Other public and nonprofit events," by striking out in the fourth line thereof the word "longer" and inserting in place thereof the following word:-- larger.

4. Section 526-7, entitled "Prohibited signs" is hereby amended:
  - a. by amending subsection H thereof by striking out the words "is prohibited."
  - b. by amending subsection K thereof by striking out the entire subsection and inserting in place thereof the following words:-- Any sign erected in violation of this chapter.
  - c. by amending subsection L thereof by striking out in the third line thereof the words "safe sight distances as specified by Chapter 650, Zoning" and inserting in place thereof the following words:-- the 25-foot site visibility triangle requirements contained in the City's zoning ordinance.
5. Section 526-8, entitled "Residence districts" is hereby amended by striking out in the third line thereof the words "an accessory" and inserting in place thereof the following word:-- a customary.
6. Section 526-9, entitled "Nonresidence districts," is hereby amended:
  - a. by amending the introduction thereof, by adding in the first line thereof, after the word "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 "Secondary signs," 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, refer to **PUBLIC SERVICES COMMITTEE**; adopted.



ORDERED: That the Communication from DPW Commissioner LaFreniere re: Determination that a Portion of the Former Landfill Property off Hudson St. is Surplus and Available for Lease for Other Municipal Purposes, refer to the **PROCUREMENT OFFICER**; adopted.

ORDERED: That there being no objection thereto set **Monday, December 20 2010** as date for a **PUBLIC HEARING** on the Petition from Massachusetts Electric Co. and Verizon New England, Inc. install stub P. 85-5 as midspan pole to service new construction of Farm Commons Dr., be and is herewith refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Minutes, Planning Board, November 8, 2010, **FILE**; adopted.

#### Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

**Order No. 10-1002725 – Additional \$50,000.00 for Legal Services.** The Finance Committee reviewed the Mayor's letter dated November 3, 2010 requesting the transfer of \$50,000 from Undesignated Funds to the Legal Services account for outside labor counsel services related to ongoing collective bargaining negotiations. **Recommendation of the Finance Committee is to approve the transfer of \$25,000.00 from Undesignated Funds to Legal Services for outside labor counsel services related to ongoing collective bargaining negotiations 4-0 and to Suspend the Rules to vote at the December 6, 2010 City Council Meeting. MOTION to Suspend the Rules DOES NOT CARRY.**

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

**Order No. 10-1002596A - Communication from Gary White re: Acceptance of Easements of Fahey Street.** The committee discussed the matter with Gary White. By communication dated December 6, 2010, Assistant Solicitor Panagore Griffin submitted in proper legal form a proposed Order of Acceptance for the referenced municipal easements in the Fahey Street subdivision, together with copies of the deed and plan for the committee's review. The original deed will be recorded with the mylar plan and a record of the City Council's approval. **Recommendation of the Public Services Committee is to approve 2-0.**

#### **Suspension of the Rules requested – granted**

ORDERED: That the Fire Department transfer request in the amount of \$30,000.00 from Undesignated Fund to Additional Overtime to cover anticipated shortfalls in the FY11 overtime funding, **APPROVED**; adopted.

FROM:

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

TO:

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

**Suspension of the Rules requested – granted**

ORDERED: That the Water Transfer request in the amount of \$20,000.00 from Assistant DPW Commissioner Sewer to Professional & Technical Services to meet the Department of Environmental Protection (DEP) compliance requirements, **APPROVED**; adopted.

FROM:

Acct. # 60080001-50630 \$20,000.00

Assistant DPW Commissioner Sewer

TO:

Acct. # 61090004-53180 \$20,000.00

Professional & Technical Services

**Suspension of the Rules requested – granted**

ORDERED: That the owners of "The Campus at Marlborough" request an extension for a sewer connection permit granted on December 19, 2005 which expires on December 18, 2010 to allow owners to continue to market Phase II, **APPROVED FOR TWO YEARS FROM DATE OF APPROVAL**; adopted.

**Suspension of the Rules requested – granted**

ORDERED:

*Resolution in Support of FY11 New Access Point Funding  
Edward M. Kennedy Community Health Center  
Marlborough Hospital  
A Member of UMass Memorial Health Care  
In City Council – December 6, 2010*

Whereas, the City Council of the City of Marlborough has a civic interest in the economic health and well being of Marlborough Hospital, a member of UMass Memorial Health Care; and,

Whereas, in coordination with the Edward M. Kennedy Community Health Care Center (Kennedy CHC), Marlborough Hospital is working on bringing a much needed clinical service to our community; and,

Whereas, based on health status indicators through the research done by the Kennedy CHC over an 18 month strategic planning process, Marlborough and Hudson have been identified as nearby communities that lack access to primary care; and,

Whereas, the Kennedy CHC will establish a family medicine practice on or near the grounds of Marlborough Hospital, a site of UMass Memorial Health Care, the community hospital used by the Health Care Center, to reach out to the uninsured and underserved residents from Marlborough and surrounding towns; and,

Whereas, Marlborough Hospital recognizes the need for primary care in the area and will actively support a satellite to serve the many people who are using the emergency department for urgent care, rather than for emergent care; and,

Whereas, Marlborough Hospital seeks support from the Marlborough City Council in its efforts to obtain an HRSA FY11 New Access Point Grant in furtherance of their plans to locate a satellite facility in the City of Marlborough to provide expanded primary and preventive health services to the medically underserved population;

*Therefore, the City Council of the City of Marlborough hereby goes on record to wholeheartedly support Marlborough Hospital's grant application for HRSA FY11 New Access Point Funding through the HRSA Bureau of Primary Health Care; adopted.*

MOTION made to move item 16 of the December 6, 2010 before item 15, **APPROVED**; adopted.

ORDERED: That Pursuant to Section 12(b) of M.G.L. c. 30B (Uniform Procurement Act), the City Council hereby authorizes the Chief Procurement Officer to award a contract for a term not to exceed five years, including any renewal, extension, or option, if the Chief Procurement Officer deems such term to be in the best interest of the City for any procurement subject to Chapter 30B.

Said authorization shall allow the Chief Procurement Officer to determine the costs and benefits of the City entering into contracts for a term not to exceed five years, as appropriate. The Chief Procurement Officer shall cancel any contract if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the first year as required by Chapter 30B. The City shall retain sole discretion in exercising any renewal, extension, or option. The City shall not exercise any renewal, extension, or option unless, after reasonable investigation of costs and benefits, the procurement officer has determined in writing that the exercise of the renewal, extension, or option is more advantageous than alternate means of procuring comparable supplies or services as required by Chapter 30B, be and is herewith **APPROVED**; adopted.

ORDERED: That the Mayor, City Solicitor and Fire Chief meet on December 6, 2010 with the City Council in Executive Session to update the City Council on the status of the new ladder truck and legal strategies to correct ongoing issues regarding repair and downtime since its purchase and to update the City Council on pending litigation with respect to Fire Department personnel, **APPROVED and returned to open meeting at 10:13 p.m.**; adopted.

**Yea: 11- Nay: 0**

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

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 10:13 p.m.