



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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APRIL 27, 2009

Regular meeting of the City Council held on Monday April 27, 2009 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Schafer, Juare, Seymour, Clancy and Landers. Meeting adjourned at 9:10 p.m.

ORDERED: Minutes, City Council Meeting, April 6, 2009, **FILE AS AMENDED**; adopted.

ORDERED: That President Vigeant recognized newly hired Patrol Officers Heather Manning and Soren Levenson, **FILE**; adopted.

ORDERED: That the budget transfer request in the amount of \$29,400.00 which moves funds from Fuel and Lubricants to Rubbish Collection as a result of increased solid waste disposal costs, **REFER TO FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 140014006-54830

\$29,400.00

Fuel and Lubricants

TO:

Acct. # 60086006-52920

\$29,400.00

Rubbish Collection

Suspension of the Rules requested-granted to move item 18, which is a request by President Vigeant to convene an executive session.

ORDERED: At President Vigeant's request to convene an executive session with the Mayor, Solicitor, Labor Counsel, and Comptroller at the regular meeting of April 27, 2009 to discuss potential deficiencies in the Mayor's anticipated FY2010 Municipal Operating Budget as a result of labor negotiations, the City Council moved to **EXECUTIVE SESSION, APPROVED** and returned to open meeting at 8:35 p.m.; adopted.

Yea: 10 – Nay: 1

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

Nay: Schafer

ORDERED: That the budget transfer request in the amount of \$175.00 to move funds from Principal Clerk to Full-time Library Clerk to meet a payroll deficit in the FY09 budget, **APPROVED**; adopted.

ORDERED: That the refund to the City in the amount of \$381,696.08 from the Assabet Valley Regional High School District following a ruling by MA DOR, **FILE**; adopted.

ORDERED: That the Art in Bloom 2009 exhibit at City Hall from 9:00 AM – 5:00 PM Tuesday, April 28th through 3:00 PM on Wednesday, April 29th, **FILE**; adopted.

ORDERED: That the consideration of Mr. David Brumby for the position of Director of Personnel, refer to **PERSONNEL COMMITTEE**; adopted.

Councilor Delano read a disclosure statement which is filed with the City Clerk's office.

ORDERED: That the appointment of William Dunbar to the position of Fort Meadow Commissioner for a term ending May 31, 2012 and Mr. Lee Thomson for reappointment to the Commission for term ending May 31, 2012, **REFER BACK TO THE MAYOR**; adopted.

ORDERED: That the reappointments of Mr. Michael Hogan and Ms. Camille Duridas to the Community Development Authority for three year terms ending April 15, 2012 and June 25, 2012 respectively, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That Agenda #9, Communication from the City Solicitor re: question as to Acting Mayor's Jurisdiction over DPW be moved to item #17, **APPROVED**; adopted.

ORDERED: That the Communication from Hancock Associates re: supplemental materials for Special Permit for Drive-Thru Teller and ATM at 81 Granger Blvd, refer to **URBAN AFFAIRS**; adopted.

Councilor Delano abstained

ORDERED: That the Communication from Department of Public Utilities re: NSTAR Gas Co.'s Condensed Financial Return for Year End December 31, 2008, **FILE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, JUNE 8, 2009** as date for a **PUBLIC HEARING** on the petition by Petition from National Grid to install 60' of primary ug across Forest St. from P.47 to a hand hole, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the minutes, Board of Assessors, April 17, 2009, **FILE**; adopted.

ORDERED: That the minutes, Planning Board, March 9, 2009, **FILE**; adopted.

ORDERED: That the minutes, Community Development Authority, February 27, 2009, **FILE**; adopted.

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

- A. Linda B. Martin, 9 Sauta Farm Way, Sudbury, Pothole or Other Road Defect
- B. John Jewett, 65 Hamilton Cir., Residential Mailbox Claim
- C. Thomas Confort, 33 Austin Rd., Sudbury, Pothole or Other Road Defect
- D. DeLuca & Weizenbaum, Ltd, on behalf of Sonja Cobb, 182 West Main St., Wrongful Death
- E. Richard Leighs, 65 Woodland Dr., Pothole or Other Road Defect

Reports of Committees:

Councilor Clancy reported the following out of the Personnel Committee:

Order No. 09-1002149 – Communication from the Mayor with appointment of Nancy Savoie to the position of City Planner which expires two years from the date of confirmation. The committee discussed the position with Nancy Savoie and members of the City Council. There was discussion regarding the temporary appointment of Ms. Savoie which is due to expire and it was discussed and agreed to continue the part-time position until June 30,

2009. There was discussion as to the full time appointment after June 30, 2009 to include a sunset clause that would expire in one year from the date of appointment. **Recommendation of the Personnel Committee is approve the full-time appointment of Nancy Savoie to the full-time position of City Planner with a one year sunset clause 3-0 and to Suspend the Rules to continue the temporary appointment of Nancy Savoie as part-time planner until June 30, 2009, 3-0.**

Councilor Levy reported the following out of the Legislative and Legal Affairs Committee:

Order No. 09-1002124 – Communication from City Council President Vigeant presenting the recodified Marlborough City Code with request to refer the document to the Legislative & Legal Affairs Committee for review and consultation with the City Solicitor as to the process involved to adopt the re-codified version. The Asst. Solicitor detailed the process necessary to adopt the new code and presented an order for Council approval and Certification by the City Clerk. Notice of the ordinance must be advertised ten (10) days before final passage and again after final passage. The new Code book is available in the Clerk's Office for public review. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval 2-0 and to Suspend the Rules to advertise the City Code Ordinance 2-0. This item will appear on the June 8, 2009 agenda as the advertisement cannot be published in time to comply with the ten day period prior to the May 11, 2009 agenda.**

Order No. 08/09-1002080 – Communication from City Solicitor re: proposed acquisition of sewer pump station located on private property at 728 Donald Lynch Boulevard (Olive Garden Restaurant site) constructed, presently owned and controlled by the Upper River Road LLC. The DPW Commissioner and City Solicitor explained that UPPER RIVER ROAD, LLC built and owns this sewer pump station which is only accessible across the Olive Garden site owned by Shops at the Pond, LLC. Upper River Road, LLC is transferring ownership of the pump station to the City and Shops at the Pond, LLC is granting an easement to allow the City access to the site. The committee received final copies of the Bill of Sale and Grant of Easement which have been approved by Upper River Road, LLC and Shops at the Pond, LLC respectively and now require final approval by the City. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval of the Proposed Acquisition of Sewer Pump Station and Access Easement at 728 Donald Lynch Boulevard 2-0.**

Councilor Ossing reported the following out of the Finance Committee:

Order No. 09-1002158 - Transfer \$10,000.00 from Undesignated Funds to the Public Safety Stabilization Account: The Finance Committee reviewed the Mayor's letter dated March 19, 2009 requesting the transfer of \$10,000.00 from the Undesignated Funds account to the Public Safety stabilization account. The Finance Committee requested the Chairman ask the Mayor why Genzyme issued the check for the special permit condition and report back to the full Council. **Recommendation of the Finance Committee is to approve 5-0.**

Order No. 09-1002170 - Transfer \$75,000.00 from Undesignated Funds account to the Water MR Plant account: The Finance Committee reviewed the Mayor's letter dated April 1, 2009 requesting the transfer of \$75,000 from the Undesignated Funds account to the Water MR Plant account. The transfer will cover the cost of increasing the capacity of the Millham Water Treatment facility and reducing the city use of MWRA water. The city is able to increase water

production due to Lake Williams and Millham Reservoir being at full capacity.
Recommendation of the Finance Committee is to approve 5-0.

Councilor Delano reported the following out of the Wireless Communication Committee:

Order No. 09-1002112A - Application of MetroPCS for a Special Permit to install a telecommunications facility onto an existing water tank located at 115 Onamog St. Recommendation of the Wireless Communication Committee is to recommend approval 2-0 and to Suspend the Rules to refer to City Solicitor to be put in proper form and place item on the May 11, 2009 agenda. Councilor Schafer was absent.

Suspension of Rules requested-granted

ORDERED: That the recommendation to continue the temporary appointment of Nancy Savoie as part-time City Planner until June 30, 2009, **APPROVED**; adopted.

Suspension of the Rules requested – granted to advertise the City Code Ordinance before final passage.

ORDERED:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE 2008 CODE OF THE CITY OF MARLBOROUGH BE ADOPTED, ORDAINED AND ENACTED AS FOLLOWS:

A R T I C L E I I I
ADOPTION OF 2008 CODE

1-25. Adoption of Code.

The ordinances and legislation of the City of Marlborough of a general and permanent nature, including the 1986 Code adopted by the City Council of the City of Marlborough on March 23, 1987, as supplemented and republished by General Code Publishers Corp. with chapter reassignments as set forth in the Derivation Table attached hereto and published in said Code, are hereby approved, adopted, ordained and enacted as the "Code of the City of Marlborough," hereinafter known and referred to as the "Code."

1-26. Nonsubstantive changes in previously adopted legislation.

In compiling and preparing the ordinances and 1986 Code for publication as the 2008 Code of the City of Marlborough, no changes in the meaning or intent of such ordinances have been made. Certain grammatical changes and other minor nonsubstantive changes were made in one or more of said pieces of legislation. It is the intention of the City Council that all such changes be adopted as part of the Code as if the ordinances had been previously formally amended to read as such.

1-27. Code supersedes prior ordinances.

This ordinance and the Code shall supersede all other general and permanent ordinances enacted prior to the enactment of this Code, except such ordinances as are hereinafter expressly saved from repeal or continued in force.

1-28. Incorporation of provisions into Code.

The provisions of this ordinance are hereby made Article III of Chapter 1, General Provisions, of the Code of the City of Marlborough, such ordinance to be entitled "Article III, Adoption of 2008 Code," and the sections of this ordinance shall be numbered §§ 1-25 to 1-39, inclusive.

1-29. When effective.

This ordinance shall take effect immediately upon passage and publication according to law.

1-30. Copy of Code on file.

A copy of the Code in loose-leaf form has been filed in the Office of the City Clerk and shall remain there for use and examination by the public until final action is taken on this ordinance; and, if this ordinance shall be adopted, such copy shall be certified to by the Clerk of the City of Marlborough by impressing thereon the seal of the City as provided by law, and such certified copy shall remain on file in the office of the City Clerk to be made available to persons desiring to examine the same during all times while the said Code is in effect.

1-31. Publication; filing.

The Clerk of the City of Marlborough, pursuant to law, shall cause to be published in the manner required, a copy of this adopting ordinance in a newspaper of general circulation in the City. Sufficient copies of the Code shall be maintained in the office of the Clerk for inspection by the public at all times during regular office hours. The enactment and publication of this adopting ordinance, coupled with the availability of copies of the Code for inspection by the public, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

1-32. Amendments to Code.

Any and all additions, amendments or supplements to the Code, when passed and adopted in such form as to indicate the intent of the City Council to make them a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code of the City of Marlborough shall be understood and intended to include such additions, amendments or supplements. Whenever such additions, amendments or supplements to the Code shall be adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing the said Code as additions, amendments and supplements thereto.

1-33. Inclusion of new legislation prior to adoption of Code.

All ordinances of a general and permanent nature adopted subsequent to the date given in § 1-39.A and prior to the effective date of this ordinance given in § 1-29 are hereby deemed to be part of the Code and shall, upon being printed, be included therein. Attested copies of all such legislation shall be temporarily placed in the Code until printed supplements are included.

1-34. Code book to be kept up-to-date.

It shall be the duty of the Clerk, or someone authorized and directed by the Clerk, to keep up-to-date the certified copy of the book containing the Code required to be filed in the Clerk's office for the use of the public. All changes in said Code and all ordinances adopted subsequent to the effective date of this codification which shall be adopted specifically as part of the Code shall, when finally adopted, be included therein by reference until such changes or new ordinances are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

1-35. Sale of Code book.

Copies of the Code book containing the Code may be purchased from the Clerk upon the payment of a fee to be set by City Council, which may also arrange for procedures for the periodic supplementation thereof.

1-36. Altering or tampering with Code; penalties for violation.

It shall be unlawful for anyone to improperly change or amend, by additions or deletions, any part or portion of the Code, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the City of Marlborough to be misrepresented thereby. Anyone violating this section of this ordinance shall be subject, upon conviction, to a fine of not more than two hundred dollars (\$200.00).

1-37. Severability.

- A. **Severability of Code provisions.** Each section of the Code, and every part of each section, is an independent section or part of a section, and the holding of any section or a part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.
- B. **Severability of ordinance provisions.** Each section of this ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.

1-38. Repeal of ordinances.

All ordinances or parts of ordinances of a general and permanent nature adopted and in force on the date of the adoption of this ordinance and not contained in the Code are hereby repealed as of the effective date of this adopting ordinance, except as hereinafter provided.

1-39. Ordinances saved from repeal.

The adoption of this Code and the repeal of ordinances provided for in § 1-38 of this ordinance shall not affect the following ordinances, rights, and obligations, which are hereby expressly saved from repeal:

- A. Any ordinance adopted subsequent to December 17, 2007.
- B. Any right or liability established, accrued or incurred under any legislative provision prior to the effective date of this ordinance, or any action or proceeding brought for the enforcement of such right or liability.
- C. Any offense or act committed or done before the effective date of this ordinance in violation of any legislative provision, or any penalty, punishment, or forfeiture which may result therefrom.
- D. Any prosecution, indictment, action, suit or other proceeding pending, or any judgment rendered, prior to the effective date of this ordinance, brought pursuant to any legislative provision.
- E. Any franchise, license, right, easement or privilege heretofore granted or conferred.
- F. Any ordinance providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place, or any portion thereof.
- G. Any ordinance or resolution appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond or other instruments or evidence of the City's indebtedness.
- H. Ordinances authorizing the purchase, sale, lease or transfer of property, or any lawful contract or obligation.
- I. The levy or imposition of taxes, assignments or charges.
- J. The dedication of property or approval of preliminary or final subdivision plans.

- K. Any ordinance providing for salaries or compliments.
- L. Any ordinance relative to parking or traffic.

Suspension of the Rules requested - granted

ORDERED: That Council Order No. 07-1001543 **noted below**, which provides for an abbreviated budget authorization format as recommended by the Massachusetts Department of Revenue Financial Review and adopted for FY09 which is due to expire on June 30, 2009 per its "Sunset Clause" provision, be extended for one-year to provide for the continuation of Order No. 07-1001543 through FY10, **DOES NOT CARRY**; adopted.

That the City Council approve the Massachusetts Department of Revenue Financial Review Recommendation for adopting an abbreviated budget authorization format for all departments for the FY08 budget process.

Background: The Mass DOR report recommended that the city adopt the best financial practices by approving the FY08 budget as salary and expenditure line items for each department as opposed to the current practice of approving each line item. Department heads would be able to authorize transfers within their department for expenditure line items only. The Auditor will provide a summary of these transfers each month to the City Council. All salary transfers and transfers between departments would require City Council approval. This is for the FY08 budget only, with the provision of a "**Sunset Clause**" that the City Council will assess the results at the end of FY08 to determine if the practice will continue.

Yea: 5– Nay: 6

Yea: Juairé, Seymour, Clancy, Landers, Ossing

Nay: Delano, Ferro, Schafer, Pope, Vigeant & Levy

Suspension of Rules requested - granted

ORDERED: That the application for Special Permit of MetroPCS for a Special Permit to install a telecommunications facility onto an existing water tank located at 115 Onamog St., refer to **CITY SOLICITOR TO BE PUT IN PROPER FORM FOR MAY 11, 2009 CITY COUNCIL MEETING**; adopted.

ORDERED: That the DPW Commissioner take the following steps in connection with budgetary issues previously discussed by the City Council and in keeping with other municipal departments in the City:

- Prepare the DPW 2010 Operating Budget, to include a three percent reduction from the FY2009 budget, similar to the request made of the School Department;
- Reduce the number of DPW employees by four (4) which is the number of vacant positions in the Commissioner's report, "DPW OPERATIONS REVIEW: FORESTRY, PARKS AND CEMETERIES," delivered to the City Council in October 2008 and discussed with the Operations & Oversight Committee in subsequent hearings;
- Take steps to privatize minimal lawn maintenance functions as discussed with the Operations & Oversight Committee, **RECONSIDERED TO**

PLACE ON APRIL 27, 2009 AGENDA IN ADDITION TO THE CITY SOLICITOR EXPLORE THE POSSIBILITY OF MAYOR STEVENS RELINQUISHING AUTHORITY OVER THE DPW DEPARTMENT TO COUNCIL PRESIDENT VIGEANT WHO WOULD SERVE AS ACTING MAYOR SPECIFIC TO THE DPW DEPARTMENT IN LIGHT OF THE MAYOR'S RECENT DISCLOSURES. FURTHER REQUEST THAT THE CITY SOLICITOR CLARIFY THE PROCEDURES BY WHICH THIS PROCESS WOULD TAKE PLACE.

MOTION TO TABLE UNTIL CITY COUNCIL RECEIVES AN OPINION FROM THE STATE ETHICS COMMISSION; adopted.

ORDERED: That the Public Safety Committee compile information for the review of the Mayor and City Council, utilizing the assistance of the City's Police and Fire Chiefs, to evaluate the necessity through the year 2020 of a public safety substation, to include police, fire, and civil defense services, in the west end of the City. Said report should consider build-out of the industrial park and residential and commercial development along Route 20 west and include cost figures on the construction and manning of a public safety sub-station to service the west end of the City, refer to **PUBLIC SAFETY COMMITTEE FOR EVALUATION.**

MOTION MADE AND ACCEPTED TO AMEND ABOVE ORDER TO FURTHER REQUEST THAT THE PUBLIC SAFETY COMMITTEE STUDY AND EVALUATE THE FUTURE PUBLIC SAFETY PRIORITIES OF THE CITY INCLUDING REVIEW OF POLICE, FIRE, AND CIVIL DEFENSE SERVICES IN TERMS OF PERSONNEL FACILITIES, EQUIPMENT, AND COST ASSOCIATED THEREWITH. SAID EVALUATION SHOULD FURTHER ASSESS CURRENT FACILITIES AND PERSONNEL LEVELS, SALARY AND OVERTIME BUDGETS, AND PLANNED CAPITAL OUTLAYS TO DETERMINE THE EFFECT THAT THESE CURRENT EXPENDITURES WILL HAVE ON FUNDING ANY IDENTIFIED PRIORITIES.

MOTION MADE AND ACCEPTED TO INSERT AFTER "ASSOCIATED THEREWITH" IN THE ABOVE TEXT "AND TO INCLUDE REGIONALIZATION".

ORDERED: That the application of Post Road Used Auto Parts for renewal of Junk Dealer's license, **APPROVED**; adopted.

ORDERED: That the application of Arch Stanton LLC, d/b/a US Gold Network, for Junk Dealer's license, **APPROVED**; adopted.

ORDERED: That the application for a Junk Dealer's License, Nobiano Coelo Rangel, d/b/a Silver Games, 259 Boston Post Rd East #10, **DENIED**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:10 p.m.