



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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July 20, 2009

Regular meeting of the City Council held on Monday July 20, 2009 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Seymour, and Landers. Councilors absent: Schafer, Juairé, and Clancy. Meeting adjourned at 8:45 p.m.

ORDERED: That the minutes of the City Council Meeting June 22, 2009, **FILE**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the Application for Special Permit from Cheraq Patel to construct a 104 room hotel at 257 Simarano Dr. as it is in an industrial zone, **CONTINUED UNTIL AUGUST 17, 2009**; adopted.

ORDERED: That the following budget transfer request in the amount of \$17,140.50 which moves funds from Fringes to Sick Leave Buy Back associated with an employee's retirement, **APPROVED**; adopted.

FROM:

Acct. # 11990006-51500

\$17,140.50

Fringes

TO:

Acct. # 14001403-51920

\$17,140.50

Sick Leave Buy Back

ORDERED: That a grant awarded to the Police Department in the amount of \$17,168.00 from the US Department of Justice, Office of Justice Programs' Bureau of Justice Assistance to establish a domestic violence high risk assessment program and team in accordance with MGL, Chapter 44, Section 53A for purposes outlined, **APPROVED**; adopted.

ORDERED: That a FY08 State and Tribal grant in the amount of \$286,000.00 offered through the US Environmental Protection agency which provides reimbursement monies for the design and construction of upgrades to the Westerly Wastewater Treatment Facility in accordance with MGL, Chapter 44, Section 53A for purposes outlined, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That a grant awarded to the Council on Aging in the amount of \$35,523.00 from the Executive Office of Elder Affairs which provides supplemental support to local funding for personnel, programming and expenses in accordance with MGL, Chapter 44, Section 53A for purposes outlined, **APPROVED**; adopted.

ORDERED: That the Local Option Taxes in the FY10 budget recently signed by Governor Patrick which allow communities to increase their hotel occupancy tax from 4% to 6% and to add an additional .75% local tax onto the State's 6.25% restaurant meals tax, **NOT APPROVED**; adopted.

Suspension of Rules requested to allow the Mayor to speak – DOES NOT CARRY.

ORDERED: That the communication from the Mayor regarding letters received from the Sudbury Valley Trustees and The Colonial Garden Club of Marlborough urging that the Community Preservation Act (CPA) be added to the ballot for this coming November's election, **FILE**; adopted.

ORDERED: That the Tax Increment Financing (TIF) proposal from Marlborough Savings Bank, refer to **FINANCE COMMITTEE** adopted.

Councilor Delano abstained

ORDERED: That the appointment of Jay Whitaker as an alternate member of the Zoning Board of Appeals which expires two years from the date of Council approval, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the reappointments of William King and Lynn Faust to the Zoning Board of Appeals with terms expiring May 5, 2014, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the intention of Fire Chief Adams retiring on or about February 19, 2010, **FILE**; 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 328, ENTITLED "CLERK'S FEES," AS FOLLOWS:

Chapter 328 is hereby amended by adding to section 328-1 the following new subsection:

P. For researching more than 2 records in response to a genealogical request, \$4.00 per half-hour (3-7 records search), \$8 per hour (8-12 records search), refer to **LEGISLATIVE AND LEGAL AFFAIRS 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 communications facility at 303 Boundary St., to September 15, 2009 at 5:00 PM, Order No. 09-1002161A, **APPROVED**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, August 17, 2009** as date for a **PUBLIC HEARING** on the Application for Fuel Storage License at 929 Boston Post Rd., refer to **PUBLIC SERVICES COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the communication from the Central Massachusetts Mosquito Control Project re: investigating resident's complaints on July 1, 8, 15, 22 and 29, **FILE**; adopted.

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

- A. Paul Goldsmith, 64 Edson St., Stow, pothole or other road defect
- B. Rebecca Holman, 313 Dawn Rd., Maynard, pothole or other road defect
- C. Anna Ramsey, 17 Ellis Ave., other damage
- D. Jon Abrahamson, 528 Belknap Rd., Framingham, pothole or other road defect
- E. Betty Massey, 37 Ferrecchia Dr., pothole or other road defect

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

Order No. 07/08/09-1001680A – Communication from Attorney Aldo Cipriano re: real property transfer and exchange off of Bolton St., Lakeview/Bolton St. Realty LLC, and the City of Marlborough. The Committee met with the Assistant City Solicitor who outlined the steps necessary to facilitate the proposed land exchange. The Committee also reviewed a communication from DPW Commissioner Ronald LaFreniere declaring a portion of land on Bolton St to be surplus. **Recommendation of the Legal and Legislative Affairs Committee is to recommend approval 3-0, the following motions under Suspension of the Rules to address the first steps and the Order remains in Committee for further action.**

1. Accept and place on file the July 7th letter from DPW Commissioner Ronald LaFreniere declaring a parcel of land on Bolton St. to be a surplus.
2. City Council transfers the care, custody, management and control of approximately 3.09 acres shown as portions of Parcels 4C and 4D on Assessors Map 30, and further defined as "Parcel B" on the "Compiled Plan of Land in Marlborough, MA" by Thomas Land Surveyors dated April 8, 2009 from DPW for purposes of a public dump and refuse disposal of solid waste to itself for another specific municipal purpose, namely to make that parcel available for sale.
3. City Council requests the Legal Department and/or DPW to cause Parcel B as defined above to be identified on a descriptive plan, including any easements the City must retain, for recording as a deed of conveyance, and further requests the Legal Department and/or DPW to obtain an appraisal of Parcel B as required by MGL C. 30B, §16, each to be referred to the Legislative and Legal Affairs Committee for further action.

Order No. 09-1002240 - Proposed Order from Council President Vigeant re: issuance of license to food service establishments in downtown Marlborough. The Committee received input from Board of Health Chairman John Rowe and Director Robert Landry and a communication from Councilor Schafer requesting the Committee consider a 10PM restriction on sidewalk food service.

The original order was amended as follows:

- 1) Remove reference to specific business names.
- 2) Modify the effective dates to be from May 1st to September 30th.
- 3) Add a 10pm restriction.
- 4) Authorize the Building Inspector or his agents to revoke a license for violation of the terms and restrictions.
- 5) Require indemnification of the City.

Recommendation of the Legal and Legislative Affairs Committee is to recommend approval 2-1 (Clancy opposed)

Order No. 09-1002229 – Communication from the Mayor re: Order of Taking by eminent Domain –Maple and Valley Streets. This taking is for the purpose of acquiring the fee interest in a portion of the land located at the intersection of Maple St. and Valley St. from the developer of the apartments at the former Design Pak building, and upon which the developer constructed public safety improvements in accordance with the Special Permit. No appropriation is necessary as the developer has waived an appraisal and damages for this taking also in accordance with the Special Permit. **Recommendation of the Legal and Legislative Affairs Committee is to recommend approval 3-0.**

Suspension of the Rules requested - granted

ORDERED:

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING SUBMITTED FOR ITS OWN CONSIDERATION CHANGES IN THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, TO FURTHER AMEND CHAPTER 650, NOW ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY ADDING THERETO AS FOLLOWS:

1. Section 650-5, entitled “Definitions; Word Usage,” is hereby amended by adding to said Section the following definition:

NARCOTIC DETOXIFICATION AND/OR MAINTENANCE FACILITY: A non-residential drug treatment program that assists individual addicted to drugs by administration of a substitute drug. Any facility that dispenses, prescribes, administers, allocates, delivers, hands out, or uses in any way a substitute drug, with or without providing other treatment services, shall be deemed a “Narcotic Detoxification and/or Maintenance Facility” and subject to the regulations under Section 650-31 of this ordinance.

2. Section 650-17, entitled “Table of Uses,” is hereby amended by adding to said section a new business use entitled, “Narcotic Detoxification and/or Maintenance Facility,” which shall be regulated, as follows:

RR	A1	A2	A3	RB	RC	B	CA	LI	I
N	N	N	N	N	N	N	SP	SP	SP

3. A new Section 650-31, entitled “NARCOTIC DETOXIFICATION AND/OR MAINTENANCE FACILITIES,” is hereby added, as follows:

650-31 NARCOTIC DETOXIFICATION AND/OR MAINTENANCE FACILITIES

- A. Subject to the provisions of this Zoning Ordinance, Chapter 40A of the Massachusetts General Laws, and provisions of the Rehabilitation Act and the Americans with Disabilities Act, the City of Marlborough Zoning Ordinance will not prohibit the location of a facility for narcotic detoxification or narcotic maintenance within the City of Marlborough, but will instead regulate such facilities. A Narcotic Detoxification and/or Maintenance Facility should provide medical support, security, drug testing with oversight by a physician, and standards that meet or exceed state regulations under 105 CMR 164 for licensure of substance abuse treatment programs. Facilities should not compete to provide streamlined care to patients and should not provide a location for patients to wait for treatment in the vicinity of children. Therefore, to ensure that these facilities are located in such a way as to not pose a direct threat to the health or safety of either the participants in the rehabilitation treatment or the public at large, the provisions of this section will apply to all such facilities.
- B. Where a Special Permit is required for a Narcotic Detoxification and/or Maintenance Facility, the Special Permit Granting Authority shall grant the Special Permit only upon its written determination that any adverse effects of the proposed use will not outweigh its beneficial impacts to the City or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Ordinance, the determination shall include consideration of each of the following:
1. Social, economic, or community needs which are served by the proposal;
 2. Traffic flow and safety, including parking and loading;
 3. Adequacy of utilities and other public services;
 4. Neighborhood character and social structures;
 5. Impacts on the natural environment;
 6. Potential fiscal impact, including impact on City services, tax base, and employment; and
 7. The ability for the facility to:
 - a. meet a demonstrated need;
 - b. provide a secure indoor waiting area for clients;
 - c. provide an adequate pick-up/drop-off area;
 - d. provide adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals; and
 - e. adequately address issues of traffic demand, parking, and queuing, especially at peak periods at the facility, and its impact on neighboring uses.

The Special Permit Granting Authority may require the applicant to provide a traffic study, at the applicant's expense, to establish the impacts of the peak traffic demand.

- C. A Narcotic Detoxification and/or Maintenance Facility shall not be located:
1. within five thousand (5000) feet of another Narcotic Detoxification and/or Maintenance Facility; nor,
 2. within seven hundred fifty (750) feet of a public or private elementary school, middle school, or secondary school, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

Suspension of Rules requested-granted

ORDERED: That the July 7th letter from DPW Commissioner Ronald LaFreniere declaring a parcel of land on Bolton St. to be a surplus, **FILE**; adopted.

Suspension of Rules requested-granted

ORDERED: That the City Council transfers the care, custody, management and control of approximately 3.09 acres shown as portions of Parcels 4C and 4D on Assessors Map 30, and further defined as "Parcel B" on the "Compiled Plan of Land in Marlborough, MA" by Thomas Land Surveyors dated April 8, 2009 from DPW for purposes of a public dump and refuse disposal of solid waste to itself for another specific municipal purpose, namely to make that parcel available for sale, **APPROVED**; adopted.

Suspension of Rules requested-granted

ORDERED: That the City Council requests the Legal Department and/or DPW to cause Parcel B as defined in Order No. 09-1001680A-2 to be identified on a descriptive plan, including any easements the City must retain, for recording as a deed of conveyance, and further requests the Legal Department and/or DPW to obtain an appraisal of Parcel B as required by MGL C. 30B, §16, each to be referred to the Legislative and Legal Affairs Committee for further action, **APPROVED**; adopted.

Suspension of Rules requested-granted

ORDERED:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, AS FOLLOWS:

Pursuant to Article I, § 6 of the City Code, and the licensing power granted thereby to the Mayor and the City Council to grant licenses upon such terms and under such restrictions as they may prescribe and revoke at pleasure, the City Council, subject to the concurrence of the Mayor under Article I, § 6, hereby grants a license to each food service establishment in downtown Marlborough, starting at and including Papa John's Pizza (located at 8 Hildreth Street) and proceeding westward along Main Street up to and including Marlborough House of Pizza (located at 280 Main Street), to place tables and chairs upon the sidewalk fronting each such food service establishment, but subject to the following terms and restrictions, which may be modified without notice:

- a. Such tables and chairs shall not be located in parking or landscaped areas, per the City's Zoning Ordinance;

- b. Service of alcoholic beverages out-of-doors shall require a separate license from the License Commission and any appropriate State approval, per the City's Zoning Ordinance;
- c. Such tables and chairs shall not interfere with the accessible path of travel for handicapped individuals, per the Americans with Disabilities Act and all other applicable law;
- d. Signs shall not be permitted except in accordance with the City's Sign Ordinance;
- e. Such license shall commence on June 22, 2009 and shall terminate at close of business on September 7, 2009 (Labor Day); and
- f. All other applicable federal, State and City rules and regulations shall remain in full force and effect.

APPROVED AS AMENDED AS FOLLOWS:

1. Remove reference to specific business names.
2. Modify the effective dates to be from May 1st to September 30th.
3. Add a 10PM restriction.
4. Authorize the Building Inspector or his agents to revoke a license for violation of the terms and restrictions.
5. Require indemnification of the City; adopted.

ORDERED: That the Operations and Oversight Committee review the status of city or state owned paper streets and public ways to determine the limitations, if any, of activities involving clearing, tree cutting, paving, temporary and/or permanent construction that may occur on said ways that are located in the City of Marlborough and further that the Operations and Oversight Committee review prior activities involving paper streets and public ways in connection therewith to determine if proper authorization for said use was appropriately granted, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: That the City Council Operations and Oversight Committee meet with representatives of Colonial Power to review their contract and operations with the City of Marlborough, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: That the minutes of the City Council Meeting June 15, 2009, **FILE**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:45 p.m.