



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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

**Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723
September 28, 2009**

Regular meeting of the City Council held on Monday, September 28, 2009 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Vigeant, Delano, Ferro, Schafer, Juare, Seymour, Clancy and Landers. Councilors absent: Pope. Meeting adjourned at 9:12 p.m.

ORDERED: That the minutes of the City Council Meeting SEPTEMBER 14, 2009, **FILE**; adopted as amended.

ORDERED: Now being the time set for the PUBLIC HEARING on the Application for Special Permit from Attorney Hoyt, on behalf of Clear Wireless LLC, for modification of a wireless communications facility located at 157 Union St., all were heard who wish to be heard, hearing recessed at 8:15 p.m.; adopted.

Councilor Seymour abstained

City Clerk read into the record Certification by City Councilor Pope, Required Under Chapter 79 of the Acts of 2006, for the Public Hearing, September 28, 2009 re: Clear Wireless LLC. at 157 Union St.

ORDERED: Now being the time set for the PUBLIC HEARING on the Application for Special Permit from Attorney Hoyt, on behalf of Clear Wireless LLC, for modification of a wireless communications facility located at 115/109 Onamg St., all were heard who wish to be heard, hearing recessed at 8:30 p.m.; adopted.

City Clerk read into the record Certification by City Councilor Pope, Required Under Chapter 79 of the Acts of 2006, for the Public Hearing, September 28, 2009 re: Clear Wireless LLC. at 115/109 Onamg St.

ORDERED: Now being the time set for the PUBLIC HEARING on the Application for Special Permit from Attorney Hoyt, on behalf of Clear Wireless LLC, for modification of a wireless communications facility located at 75 Donald Lynch Blvd., all were heard who wish to be heard, hearing recessed at 8:45 p.m.; adopted.

City Clerk read into the record Certification by City Councilor Pope, Required Under Chapter 79 of the Acts of 2006, for the Public Hearing, September 28, 2009 re: Clear Wireless LLC. at 75 Donald Lynch Blvd.

ORDERED: That the Green Communities Planning Assistance Grant awarded to the City of Marlborough from the Commonwealth of Massachusetts Department of Energy Resources (DOER) to obtain Green Community status and in accordance with MGL, Chapter 44, Section 53A for purposes outlined, **APPROVED**; adopted.

ORDERED: That the Communication from the Mayor re: reopening of the police substation at 87 Broad Street on French Hill, **FILE**; adopted.

ORDERED: That the EPA New England for the Targeted Brownfields Assessment Program Grant awarded to the City of Marlborough for the site located at 25 East Main St. in which the City of Marlborough will receive services (now estimated up to \$125,000.00) for assessing contaminants at this site to be used in accordance with MGL, Chapter 44, Section 53A for purposes outlined, **APPROVED**; adopted.

ORDERED: That the Communication from the Mayor regarding the Bolton Street lead service replacement project, refer **BACK TO MAYOR**; adopted.

ORDERED: That the appointment of Beverly Sleeper to the position of Chief Procurement Officer for a three-year term expiring November 20, 2012, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the two transfer requests in the amount of \$1,160.84 and \$1,488.26 from the Mayor's Longevity and Sick Leave Buy Back accounts to the Council on Aging's Longevity and Sick Leave Buy Back accounts associated with the former Executive Secretary to the Mayor accepting a position of Principal Clerk with the Council on Aging, **APPROVED**; adopted.

FROM:

Acct. # 11210003-51430 \$1,160.84
Longevity

TO:

Acct. # 15410003-51430 \$1,160.84
Longevity

FROM:

Acct. # 11210003-51920 \$1,488.26
Sick Leave Buy Back

TO:

Acct. # 15410003-51920 \$1,488.26
Sick Leave Buy Back

ORDERED: That the correspondence from City Auditor Diane Smith providing a status update and timeline with respect to the closing of the FY09 books and submittals required for the certification of free cash, **FILE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, OCTOBER 26, 2009** as date for a **PUBLIC HEARING** on the Application for Special Permit from Attorney Hoyt, on behalf of Clear Wireless LLC, for modification of a wireless communication facility located at 2 Mount Royal Ave., refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, OCTOBER 26, 2009** as date for a **PUBLIC HEARING** on the Application for Special Permit from Attorney Hoyt, on behalf of Clear Wireless LLC, for modification of a wireless communication facility located at 460 Boston Post Rd. East, refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the minutes, Planning Board, August 17 2009, **FILE**; adopted.

ORDERED: That the minutes, MetroWest Regional Transit Authority, June 8 and July 27, 2009, **FILE**; adopted.

ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.
A. Jasmine Volpe, 75 Jackson Circle, other property damage

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

Order No. 09-1002304 – Two DPW Transfers to Part Time Help Accounts: The Finance Committee reviewed the Mayor's letter dated September 9, 2009 describing two DPW transfers. The first transfer is for \$11,500.00 from Equipment Operators – Water to Temporary Part Time Help Water and Sewer. The Finance Committee was concerned that the transfer was made after the account was in deficit. Per Mass general law Chapter 44 section 31, no department shall incur liability in excess of the appropriation made for the use of such department. The Finance Committee voted 5 – 0 to approve the transfer. The Finance Committee also recommended that the Mayor reinforce the expectation to all department heads the need to project expenses and not allow accounts go into deficit. The hiring of part time help should be brought to the attention of the City Council as a potential to deficit spend part time help accounts. The second transfer is for \$7,448.00 from Motor Equipment Repairmen to the Temporary Part Time Help Fleet Maintenance. The Finance Committee reinforced that this transfer was an example of the proper method of requesting a transfer in that there were sufficient funds in the account when requesting the transfer. **Recommendation of the Finance Committee is to approve 5-0.**

Order No. 09-1002305 – Transfer \$22,141.80 from Fringes to Sick leave Buy Back: The Finance Committee reviewed the Mayor's letter dated September 9, 2009 requesting the transfer of \$22,141.80 from the Fringes account to the sewer department sick leave buy back account to cover the retirement of a DPW worker in the sewer department. **Recommendation of the Finance Committee is to approve 5-0.**

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

Order No. 09-1002309 - Communication from the Mayor re: Grant of Easement, Division of Capital Asset Management for the purpose of maintaining an existing municipal sewer line located beneath Commonwealth-owned land on Pleasant St. The committee discussed the history of the existing sewer line and the proposed sewer easement with the DPW Commissioner and Assistant City Solicitor. The Division of Capital Asset Management, acting on behalf of Massachusetts Department of Highways, plans to transfer control of this land to the Department of Fish and Game. The City needs to secure this permanent easement prior to that transfer in order to have access to maintain the sewer line. The value of the easement has been set at \$5,000. This order requires two votes by the Council: (1) to appropriate the \$5,000 cost and (2) to approve the Order for Acquisition of Easement.

Order 09-100-2309-1 Order for Appropriation

Recommendation of the Legislative and Legal Affairs Committee is to approve the appropriation of \$5,000.00, 3-0.

Order 09-100-2309-2 Order for Acquisition of Easement

Recommendation of the Legislative and Legal Affairs Committee is to approve the purchase of the easement, 3-0.

Order No. 08/09-1001787B: Communication from the Mayor re: Renewal of Ordinance on Claims Procedures. The Committee reviewed this request to renew an ordinance adopted by City Council last year which expired June 30th due to a sunset clause. The proposed ordinance expedites the claims process for mailbox damage and allows employees of the Legal Department to assist residents with claims against 3rd parties. In FY09, while the ordinance was in effect, seven mailbox claims were filed and six claims paid totaling \$325.38 (\$54.23 average cost). There were no requests for assistance from the Legal Dept. Due to the low number of claims; the Committee recommended removing the sunset clause in the proposed ordinance

Recommendation of the Legal and Legislative Affairs Committee is to recommend approval of the Proposed Ordinance as amended and under Suspension of the Rules to advertise Ordinance and place item on the October 26, 2009 agenda as the advertisement cannot be published in time to comply with the ten day period prior to the October 5, 2009 agenda 3-0.

Suspension of the Rules requested - granted

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 ADDING TO SECTION 7-13 OF CHAPTER 7 OF ARTICLE II THE FOLLOWING NEW PARAGRAPHS:

It shall be deemed to be within the proper discharge of the official duties of the employees in the Legal Department for said employees to contact private contractors and/or their insurers in an effort to assist, or attempt to assist, those claimants whose claims against the City of Marlborough have been denied based upon a determination by the Legal Department or the City's insurer that said private contractors are responsible for satisfying those claimants' claims; provided however, that nothing contained herein shall be construed to create an attorney-client relationship between any claimant so assisted, or attempted to be assisted, and either the Solicitor or the Assistant Solicitor, whose sole client is and shall remain the City of Marlborough; and provided, further, that nothing contained herein shall be construed so as to interfere, in the sole determination of the Solicitor or the Assistant Solicitor, with the proper discharge of any other official duties of the employees in the Legal Department. This paragraph shall be applicable to only those claims accruing on or after November 1, 2009.

Notwithstanding the immediately preceding paragraph, any written claim presented to the City of Marlborough alleging that a residential mailbox has been damaged by the operation of a snow plow shall be granted upon written confirmation provided by the Department of Public Works to the Legal Department that City of Marlborough snow plow operations were in effect during the date when, and on the street where, the claimed mailbox damage occurred; provided, however, that such claim must be accompanied both by an auto-dated photograph(s) of the damaged mailbox as well as by a paid receipt showing the actual cost of the mailbox's repair or replacement; and provided, further, the maximum amount of reimbursement shall be set at Seventy-Five and 00/100 (\$75.00) Dollars, except that in the absence of such photograph(s)

and/or such paid receipt, the maximum amount of reimbursement shall be set at Thirty and 00/100 (\$30.00) Dollars. This paragraph shall be applicable to only those mailbox claims accruing on or after November 1, 2009, **ADVERTISED AND PLACE ON OCTOBER 26, 2009 AGENDA**; adopted.

(In Legal and Legislative Affairs Committee)

Suspension of the Rules requested – granted

ORDERED: That the following budget transfer request in the amount of \$496,000.00 from Stabilization to DPW Projects which allows for the replacement of all lead services that currently exist within the Bolton St. right-of-way project, refer **BACK TO MAYOR**; adopted.

FROM:

Acct. # 836000-11515 \$496,000.00

Stabilization

TO:

Acct. # 19300006-58514 \$496,000.00

DPW Projects

ORDERED: That the re-appointments of Jack Gracey and Lynn Faust to the Historical Commission for a three year term expiring September 18, 2012, **APPROVED**; adopted.

ORDERED: That the re-appointment of Thomas Krouse as a Wiring Inspector with an expiration date of February 6, 2012, **APPROVED**; adopted.

ORDERED: That the appointment of William Short to the Board of Registrars with a term expiring April 1, 2011, **APPROVED**; adopted.

ORDERED: That the re-appointment of Pricilla Ryder as Conservation Officer for a three year term expiring August 31, 2012, **APPROVED**; adopted.

Councilor Clancy abstained due to his role as Chairman of the Conservation Commission.

ORDERED: That the re-appointment of Allan White to the Conservation Commission for a three year term expiring March 5, 2012, **APPROVED**; adopted.

Councilor Clancy abstained due to his role as Chairman of the Conservation Commission.

ORDERED: That the Application of National Grid to install 60' of primary underground service wire across Forest Street from Pole #47 to a hand hole to service Special Olympics at 512 Forest Street, **APPROVED**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, OCTOBER 26, 2009** as date for a **PUBLIC HEARING** requested by Attorney Arthur Bergeron, on behalf of 400 South St. LLC, 424 South St. LLC and 428 South St. LLC, to request that City Council rezone Map 93 Parcels 18A, 19, 20, 22, 23 32, 101 and 103 from Industrial (I) to Commercial & Automotive (CA), refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD AND ADVERTISE**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:12 p.m.