



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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

**Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723
October 5, 2009**

Regular meeting of the City Council held on Monday, October 5, 2009 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Schafer, Juaire, Seymour, Clancy and Landers. Meeting adjourned at 8:20 p.m.

ORDERED: That the minutes of the City Council Meeting SEPTEMBER 28, 2009, **FILE**; adopted.

Suspension of the Rules requested – granted

ORDERED: That the Applicant request that the Special Permit be **WITHDRAWN WITHOUT PREJUDICE** prior to the PUBLIC HEARING on the Application for Special Permit from Attorney Hoyt, on behalf of Clear Wireless LLC, for installation of a wireless communications facility located at 342 Lincoln St., **APPROVED**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the Proposed Zoning Ordinance Amendment, Chapter 650, regarding Narcotic Detoxification and Maintenance Facilities, all were heard who wish to be heard, hearing recessed at 8:07 p.m.; adopted.

ORDERED: That the following budget transfer requests in the amount of \$5,000.00 from Chief PS Operator to Interim Foreman, \$30,000.00 from Water MWRA to Water Plant, \$9,500.00 from Foreman to Contract Services and \$19,911.40 from Equipment Operator to a different Equipment Operator account to supplement funding in said accounts, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 61090001-50780 \$5,000.00
Chief PS Operator

TO:

Acct. # 61090003-51470 \$5,000.00
Interim Foreman

FROM:

Acct. # 61090006-52320 \$30,000.00
Water MWRA

TO:

Acct. # 61090006-52332 \$30,000.00
Water-Plant

FROM:

Acct. # 14001301-50690 \$9,500.00
Foreman

TO:

Acct. # 14001304-53140 \$9,500.00
Contract Services

FROM:

Acct. # 14001503-50740 \$19,911.40
Equipment Operator

TO:

Acct. # 14001303-50740 \$19,911.40
Equipment Operator

ORDERED: That the Communication from the Mayor pertinent to the City's 5th year of participation in the Massachusetts Interlocal Insurance Association rewards program from July 1, 2008 to June 30, 2009, **FILE**; adopted.

ORDERED: That the minutes, Traffic Commission, August 25 2009, **FILE**; adopted.

ORDERED: That the minutes, Planning Board, September 14, 2009, **FILE**; adopted.

ORDERED: That the Mayor be and is hereby requested, in her role as Chair of the Marlborough School Committee, to report on the status of stimulus funds received for school support and the anticipated timeline for return to General Government of funds appropriated to the School Department for FY2010, per agreement between the City Council and Mayor during the FY2010 budget process. Said report to be submitted at the City Council's regular meeting of October 26, 2009, refer to the **MAYOR**; adopted.

ORDERED: That the following budget transfer request in the amount of \$11,500.00 from Equipment Operator-Water to Temp. P.T. Help Water & Sewer and \$7,448.00 from Motor Equipment Repairman to Temp. P.T. Help Fleet Maintenance, **APPROVED**; adopted.

FROM:

Acct. # 61090001-50740 \$11,500.00
Equipment Operator-Water

TO:

Acct. # 61090003-51240 \$11,500.00
Temp. P.T. Help Water & Sewer

FROM:

Acct. # 14001403-50745 \$7,448.00
Motor Equipment Repairman

TO:

Acct. # 14001403-51240 \$7,448.00
Temp. P.T. Help Fleet Maintenance

Councilor Schafer requested to be recorded in opposition.

ORDERED: That the following budget transfer request in the amount of \$22,141.80 from Fringes to Sick Leave Buy Back associated with an employee's retirement, **APPROVED**; adopted.

FROM:

Acct. # 11990006-51500 \$22,141.80
Fringes

TO:

Acct. # 60080003-51920 \$22,141.80
Sick Leave Buy Back

ORDERED:

Order For Appropriation

That the City Council of the City of Marlborough hereby appropriates the sum of \$5,000.00 from Legal Department account number 11510006-57600 for the purposes of acquiring a permanent municipal sewer easement from the Division of Capital Asset Management and Maintenance, acting on behalf of the Massachusetts Highway Department, for the purposes of installing, maintaining, replacing, removing, and using an existing underground municipal sewer line located across and under land of the Commonwealth on Pleasant Street, as described in the attached Grant Of Easement and as shown on the plan attached to said Grant as "Exhibit A," entitled "Sewer Easement Plan in Marlborough, MA," prepared for the City of Marlborough, City Hall, 140 Main Street, Marlborough, MA 01752, dated November 1, 2006, revised December 6, 2006, Scale: 1"=40', prepared by Bruce Saluk & Associates, Inc., 576 Boston Post Road, Marlborough, MA 01752, **APPROVED**; adopted.

ORDERED:

Order For Acquisition Of Easement

That the City of Marlborough purchase a permanent Grant of Easement, to be executed by the Mayor on behalf of the City, from the Division of Capital Asset Management and Maintenance, acting on behalf of the Massachusetts Highway Department, has granted a permanent easement to the City for the purposes of installing, maintaining, replacing, removing, and using an existing underground municipal sewer line located across and under land of the Commonwealth on Pleasant Street, as described in the attached Grant Of Easement and as shown on the plan attached to said Grant as "Exhibit A," entitled "Sewer Easement Plan in Marlborough, MA," prepared for the City of Marlborough, City Hall, 140 Main Street, Marlborough, MA 01752, dated November 1, 2006, revised December 6, 2006, Scale: 1"=40', prepared by Bruce Saluk & Associates, Inc., 576 Boston Post Road, Marlborough, MA 01752, which shall be recorded at the Middlesex South District Registry of Deeds, **APPROVED**; adopted.

Yea: 11 – Nay: 0

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

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, **TABLED UNTIL OCTOBER 26, 2009**; adopted.

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 (5,000) feet of another Narcotic Detoxification and/or Maintenance Facility; nor,
 2. within two thousand (2,000) feet of:
 - a. a school (as defined in § 517-2 of the Code of the City of Marlborough, as amended) located within the City of Marlborough;
 - b. a recreational facility (as defined in § 517-2 of the Code of the City of Marlborough, as amended); or
 - c. a park (as defined in § 517-2 of the Code of the City of Marlborough, as amended).
 - d. an elderly housing facility (as defined in § 517-2 of the Code of the City of Marlborough, as amended); or
 - e. a retirement community (as defined in § 650-4 of the Zoning Ordinance of the City of Marlborough, as amended) located within the City of Marlborough, **TABLED UNTIL OCTOBER 26, 2009**; 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 sub-section:

- P. For researching more than 2 records in response to a genealogical request, \$10.00 per half-hour (3-7 records search), \$20 per hour (8-12 records search), **APPROVED**; adopted.

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain; adopted. No objection to passage in one evening.

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 517, ENTITLED "SEX OFFENDERS," AS FOLLOWS:

1. Section 517-1, entitled "Findings and intent," is hereby amended by striking out in the last line of subsection D thereof the words "where the state law is silent" and inserting in place thereof the following words:-- to the extent state law is silent.
2. Section 517-2, entitled "Definitions," is hereby amended:
 - a. by amending the definition of "day care center" by striking out in the third line thereof the words "Office of Child Care Services" and inserting in place thereof the following words:-- Department of Early Education and Care.

- b. by amending the definition of “facility for the mentally retarded” by striking out in the first line thereof the words “Department of Mental Retardation” and inserting in place thereof the following words:-- Department of Developmental Services.
 - c. by adding the following definition: “Loitering – To remain for more than fifteen (15) minutes within a five hundred (500) foot distance of the location in question.”
 - d. by amending the definition of “mentally retarded person” by striking out in the third line thereof the words “Department of Mental Retardation” and inserting in place thereof the following words:-- Department of Developmental Services.
 - e. by amending the definition of “park” by striking out in the second and third lines thereof the words “, the Commonwealth of Massachusetts or other governmental subdivision,”.
 - f. by amending the definition of “registered sex offender”:
 - i. by striking out in the second line thereof the words “Chapter 6, § 178C” and inserting in place thereof the following words:-- Chapter 6, § 178K(2)(c).
 - ii. by adding in the fifth line thereof, after the word “who”, the following words:-- , for so long as such person.
 - iii. by adding after the word “Registry” in the sixth line thereof the following word:-- Board.
 - iv. by adding in the eighth line thereof, after the word “who”, the following words:-- , for so long as such person.
 - v. by adding after the word “Registry” in the ninth line thereof the following word:-- Board.
3. Section 517-3, entitled “Residency restrictions,” is hereby amended:
- a. by amending subsection A thereof, entitled “Prohibition,” by adding after the word “retarded” in the third line thereof the following words: ; provided, however, that the prohibition contained in this section shall not apply to any Level 3 offender, to the extent and in the manner such Level 3 offender is already governed by MGL c. 6, § 178K(2)(e).
4. Section 517-4, entitled “Safety zones,” is hereby amended:

- a. By striking out in subsection A, entitled "Prohibitions," in the first through third lines of sub-subsection 4 the words "A registered sex offender is prohibited, after having received notice from the Marlborough Police Department that he/she is loitering within five hundred (500) feet of a school, a day care center, a park, any recreational facility, elderly housing facility or facility for the mentally retarded, from continuing to so loiter or from returning thereto" and inserting in place thereof the following words:-- A registered sex offender, after having received notice from the Marlborough Police Department that he/she is loitering by having remained for more than fifteen (15) minutes within a five hundred (500) foot distance of a school, a day care center, a park, any recreational facility, elderly housing facility or facility for the mentally retarded, is prohibited from continuing to so loiter.
 - b. By striking out in subsection A, entitled "Prohibitions," in the first and second lines of sub-subsection 5 the words "A registered sex offender is prohibited, after having received notice from the Marlborough Police Department that he/she is loitering within five hundred (500) feet of a school bus stop, from continuing to so loiter or from returning thereto" and inserting in place thereof the following words:-- A registered sex offender, after having received notice from the Marlborough Police Department that he/she is loitering by having remained for more than fifteen (15) minutes within five hundred (500) feet of a school bus stop, is prohibited from continuing to so loiter.
 - c. By striking out in subsection C, entitled "Penalties," in the third through the fifth lines thereof the words "In lieu of non-criminal disposition, registered sex offenders who commit an additional violation under this section, except for those who are not yet seventeen (17) years of age when they commit any such additional violation, may be subject to immediate arrest under state law."
5. These amendments shall become effective immediately upon passage, **APPROVED**; adopted.

Councilor Schafer abstained

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain; adopted. No objection to passage in one evening.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:20 p.m.