



**CITY OF MARLBOROUGH  
OFFICE OF CITY CLERK**

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

**Marlborough, MA 01752  
(508) 460-3775 FAX (508) 460-3723  
November 9, 2009**

Regular meeting of the City Council held on Monday, November 9, 2009 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Juairé, Seymour, Clancy and Landers. Absent was Schafer. Meeting adjourned at 8:20 p.m.

**ORDERED:** That the minutes of the City Council Meeting October 26, 2009, **FILE**; adopted.

**ORDERED:** That the budget transfer request in the amount of \$3,000.00 from Wiring Electrical Inspector to Assistant Wiring Inspector accounts and \$1,500.00 from Professional & Technical to Assistant Wiring Inspector accounts due to an employee's unanticipated medical leave, **APPROVED**; adopted.

**FROM:**

Acct. # 12410001-50380 \$3,000.00  
Wiring Inspector

**TO:**

Acct. # 12410001-50970 \$3,000.00  
Assistant Wiring Inspector

**FROM:**

Acct. # 12410004-53180 \$1,500.00  
Professional and Technical

**TO:**

Acct. #12410001-50970 \$1,500.00  
Assistant Wiring Inspector

**ORDERED:** That the budget transfer request in the amount of \$1,500.00 from the Undesignated Fund to Advertising accounts as the City Clerk's advertising budget was depleted due to an increased demand for ordinance and traffic ads, refer to **FINANCE COMMITTEE**; adopted.

**FROM:**

Acct. # 100-359000 \$1,500.00  
Undesignated Funds

**TO:**

Acct. # 11610004-53150 \$1,500.00  
Advertising

ORDERED: That the budget transfer request in the amount of \$2,600.00 from Foreman to Interim Foreman accounts to meet anticipated costs for the remainder of FY10 and \$3,600.00 from Foreman to Interim Foreman accounts to provide coverage associated with an employee's unanticipated and extended medical leave, refer to **FINANCE COMMITTEE**; adopted.

## FROM:

Acct. # 140001301-50690 \$2,600.00  
Foreman

## TO:

Acct. # 14001303-51470 \$2,600.00  
Interim Foreman

## FROM:

Acct. # 140001301-50690 \$3,600.00  
Foreman

## TO:

Acct. # 14001503-51470 \$3,600.00  
Interim Foreman

ORDERED: That the Massachusetts Department of Revenue has certified Free Cash in the amount of \$4,906,090.00, **FILE**; adopted.

ORDERED: That the City Council accept and place on file the October 15, 2009 letter from Commissioner Ronald LaFreniere of the Department of Public Works declaring a portion of municipal property, identified as parcel 148 on Map 82 of the Assessors Maps (the "Parcel"), and more specifically described as a strip of land located on Maple Street beneath which is situated a municipal sewer line, and containing approximately 0.1118 acres, more or less, to be surplus, and further, pursuant to Section Fifteen A of Chapter Forty of the Massachusetts General Laws the City Council hereby transfers the care, custody, management, and control of the Parcel from the Department of Public Works to the City Council for the purpose of disposition with reservation of a permanent sewer easement, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the City Council hereby determines that a certain portion of municipal property, pursuant to Section Fifteen A of Chapter Forty of the Massachusetts General Laws, as identified in Order No. 09-1002359 is declared available for disposition by sale to Dennis P. and Carolyn M. Kennedy, with reservation of a permanent sewer easement which is hereby transferred to the care, custody, management, and control of the Department of Public Works.

## FURTHER ORDERED:

It is FURTHER ORDERED: that the Mayor is authorized to sell the parcel for the minimum price of \$\_\_\_\_\_ (\$\_\_\_\_\_) dollars in "as is" condition subject to reservation of a permanent sewer easement, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the requested copies of 2009 TIF reports, **FILE**; adopted.

ORDERED: That the announcement of the Veterans Day parade to be held on Wednesday, November 11, 2009 at 10:00 AM, **FILE**; adopted.

ORDERED: That the application for Junk Dealer's License for Gerald Dumais, d/b/a Dumais and Sons, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, DECEMBER 21, 2009** as date for a **PUBLIC HEARING** on the Application for Special Permit from Donald Conn, on behalf of JAM Enterprises, LLC, for drive-thru window at drive-in sonic Restaurant on Boston Post Rd., Map 89, Lot 77, refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the communication from Crystal Ridge Community Trust re: Street Acceptance for Danjou Dr, refer to **PUBLIC SERVICES COMMITTEE AND PLANNING BOARD**; adopted.

ORDERED: That the minutes, Planning Board, September 28 and October 5, 2009, **FILE**; adopted.

ORDERED: That the minutes, Traffic Commission, September 29, 2009, **FILE**; adopted.

ORDERED: That the minutes, MetroWest Regional Transit Authority, September 21, 2009, **FILE**; adopted.

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

- A. Lorraine Berry, 72 Causeway St., Husdon, MA, other property damage
- B. Carrie Goldman & Joshua Schram, 97 Howe St., other property damage

Reports of Committees:

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

**Order No. 09-1002346 - Communication from Mayor Stevens with proposed Ordinances pertaining to Marlborough's Storm Drain System.** The Committee reviewed two Proposed Ordinances (Ch. 271 Stormwater Management and Ch.511 Detection and Elimination of Illicit Discharge to Municipal Storm Drain System) as well as the proposed amendment to Ch. 315 Enforcement to allow for non-criminal dispositions of violations of these Ordinances. These Ordinances will bring the City into compliance with requirements set forth in our Environmental Protection Agency (EPA) Phase II National Pollution Discharge Elimination System (NPDES) permit and will help protect the City's storm drain system and, in turn, the City's water quality. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval of Proposed Ordinances, Ch. 271, Stormwater Management; Ch. 511 Detection and Elimination of Illicit Discharge to Municipal Storm Drain System; and amend Ch. 315 Enforcement and under Suspension of the Rules to advertise Ordinances and place item on November 23, 2009 agenda which will comply with the ten day period prior to the November 23, 2009 agenda 3-0.**

**Order No. 09-1002311 - Communication from the Mayor re: Revision of Marlborough Code, Article IV, §7-33 Tree Warden.** The Committee reviewed this request to delete existing language and adopt a more comprehensive ordinance concerning the position of Tree Warden. The Committee requested that additional language be included to state that if the Tree Warden is also a City employee, any compensation ordinarily due to the Tree Warden for services performed during his or her regular working hours shall instead be paid to the City. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval of Proposed Ordinance as amended and under Suspension of the Rules to advertise the Ordinance and place item on November 23, 2009 agenda which will comply with the ten day period prior to the November 23, 2009 agenda 3-0.**

**Order No. 07/08/09-1001680A-3 - Communication from Attorney Cipriano re: Real Property transfer and exchange off Bolton Street.** Pursuant to Order 07/08/09-1001680A-2, wherein the City Council transferred to itself the care, custody, management, and control of a certain parcel of land on Bolton Street, the Committee received from the Assistant City Solicitor copies of a Peer Review Appraisal and the Definitive Plan with easements dated October 18, 2009. We also received a draft Order of Sale with Restrictions for the disposition of this property pursuant to M.G.L. C. 30B, § 16(a). The proposed Order of Sale sets the sale price at \$25,000 and details the terms of the sale to Lakeview/Bolton St. Realty LLC and the City's willingness to accept another parcel of land as full or partial consideration. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval of the Order of Sale 3-0.**

Councilor Clancy reported the following out of the Personnel Committee:

**Order No. 09-1002326 – Appointment of Beverly Sleeper to the position of Chief Procurement Officer for a three-year term expiring November 20, 2012. Recommendation of the Personnel Committee is to approve 2-1 (Councilor Delano opposed).**

**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 A NEW CHAPTER 271, ENTITLED "STORMWATER MANAGEMENT," AS FOLLOWS:

**CHAPTER 271. STORMWATER MANAGEMENT**

A. Purpose

1. This ordinance complies with the requirements of Phase II of the National Pollutant Discharge Elimination System (NPDES) stormwater program promulgated on December 8, 1999 (and as may be subsequently amended) under the Federal Clean Water Act (CWA). Under the Phase II stormwater program, the U.S. Environmental Protection Agency (EPA) requires regulated municipalities to reduce the discharge of pollutants in stormwater to the maximum extent practicable and to adopt ordinances to address the control of sources of pollutants entering the municipal storm drain system.
2. Regulation of discharges to the municipal storm drain system is necessary for the protection of Marlborough's water bodies, drinking water and groundwater, and to safeguard the public health, safety, welfare and the environment. Increased and contaminated stormwater runoff associated with developed land uses and the accompanying increase in impervious surface are major causes of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater.

3. This ordinance establishes stormwater management standards for the temporary and final conditions that result from development and redevelopment projects. Those standards seek to minimize adverse impacts offsite and downstream which would be born by abutters, citizens and the general public. The harmful impacts of increased and contaminated stormwater runoff associated with developed land uses and the impacts of soil erosion and sedimentation include without limitation:
  - a. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;
  - b. contamination of drinking water supplies;
  - c. alteration or destruction of aquatic and wildlife habitat;
  - d. flooding;
  - e. erosion of stream channels; and
  - f. overloading or clogging of municipal catch basins and storm drainage systems.

B. Objectives

1. Protect groundwater and surface water to prevent degradation of drinking water supply and waterways;
2. Require practices that minimize soil erosion and sedimentation and that control the volume and rate of stormwater runoff resulting from land-disturbing activities;
3. Maintain the natural hydrologic characteristics of the land to the maximum extent practicable as determined by the City Engineer, in order both to reduce flooding, stream bank erosion, siltation, non-point source pollution and property damage, as well as to maintain the integrity of stream channels and aquatic habitats;
4. Promote the infiltration and the recharge of groundwater;
5. Ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process, and are implemented and maintained;
6. Require practices to control waste at a construction site, such as discarded building materials, concrete truck washout, chemicals, litter and sanitary waste, that may cause adverse impacts to water quality;
7. Prevent pollutants from entering the Marlborough municipal storm drainage system and to minimize discharge of pollutants from that drainage system;
8. Ensure adequate long-term operation and maintenance of structural stormwater best management practices so that stormwater structures work as designed;

9. Comply with state and federal statutes and regulations relating to stormwater discharges;
10. Establish Marlborough's legal authority to ensure compliance with the provisions of this ordinance through inspection, monitoring, and enforcement; and
11. Encourage the use of environmentally sensitive design and low impact development techniques.

C. Definitions

The following definitions shall apply in the interpretation and enforcement of this ordinance:

**CLEARING:** Any activity that removes the vegetative surface cover.

**DEVELOPMENT:** The modification of land to accommodate a new use, revised use, or expansion of use, usually involving construction.

**EROSION:** The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

**LAND-DISTURBING ACTIVITY:** Any activity that causes a change in the existing soil cover which includes the position or location of soil, sand, rock, gravel, or similar earth material. Land-disturbing activities include, but are not limited to, clearing, clearing of trees, grubbing, grading, filling and excavation.

**MASSACHUSETTS STORMWATER MANAGEMENT POLICY:** The Policy issued by the Commonwealth of Massachusetts Department of Environmental Protection, as amended from time to time, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act MGL c. 131, § 40 and Massachusetts Clean Waters Act MGL c. 21, §§ 23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and to control the quantity of runoff from a site.

**MASSACHUSETTS STORMWATER HANDBOOKS:** The Massachusetts Stormwater Handbooks ("Handbooks") that were produced by MassDEP and the Massachusetts Office of Coastal Zone Management are to be used as guidance for controlling stormwater. The Handbooks, all published in February 2008 and as amended from time to time, consist of three volumes: Volume 1: Overview of Massachusetts Stormwater Standards; Volume 2: Technical Guide for Compliance with the Massachusetts Stormwater Management Standards; and Volume 3: Documenting Compliance with the Massachusetts Stormwater Management Standards.

**MUNICIPAL STORM DRAIN SYSTEM:** The municipal storm drain system is a conveyance or a system of conveyances designed or used for collecting or conveying stormwater, which is not a combined sewer, including any road with a drainage system, municipal street, catch basins, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, ditch, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City.

**RUNOFF:** Rainfall, snowmelt, or irrigation water flowing over the ground surface.

**SITE:** Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

**SOIL:** Any earth, dirt, sand, rock, gravel, clay or similar material.

**STORMWATER:** Stormwater runoff, snow melt runoff, and surface water runoff and drainage.

**STORMWATER MANAGEMENT PERMIT:** A permit issued by the City Engineer, after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment or the City from the deleterious effects of uncontrolled and untreated stormwater runoff.

Additional terms that apply to issuance of a Stormwater Management Permit established by this ordinance shall be defined and included as part of the rules and regulations promulgated and, from time to time, amended under Section H.2 of this ordinance, a copy of which is available at the Engineering Division of the Marlborough Department of Public Works and at the office of the City Clerk. Terms not defined in said rules and regulations or pertinent statutes shall be construed according to their customary and usual meaning unless the context indicates a special or technical meaning.

D. Authority

This ordinance is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

E. Applicability

This ordinance shall be applicable to the following activities. Compliance with all provisions of this ordinance, to the maximum extent practicable as determined by the City Engineer, shall be a requirement for issuance of a Stormwater Management Permit.

1. All subdivisions as defined in the Massachusetts Subdivision Control Law (MGL c. 41, §§ 81K – 81GG) requiring approval of a definitive subdivision plan;

2. "Minor Residential Projects" and "Nonresidential and Major Residential Projects," as defined in the Building and Site Development Ordinance (Chapter 270, Article II § 270-2), when a construction activity results in a land disturbing activity that will disturb equal to or greater than 5,000 ft<sup>2</sup> of land that drains to the Marlborough municipal storm drain system, onto an adjacent property, into a municipal/private street, or into a wetland/stream;
3. Land-disturbing activity a) which is equal to or greater than 5,000 ft<sup>2</sup> occurring, at least in part, within the City of Marlborough, b) which in the sole opinion of the City Engineer has caused or will cause stormwater-related problems within the City, and c) which does not otherwise require a permit or approval from the City.

F. Exemptions

1. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04 and MGL c. 40A, § 3;
2. Maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling;
3. Repair or replacement of an existing roof of a single-family dwelling;
4. The construction of any fence that will not alter existing terrain or drainage patterns;
5. Construction and/or maintenance of utilities (gas, water, electric, telephone, etc.) other than drainage, which will not alter terrain, ground cover, or drainage patterns;
6. Emergency repairs to any stormwater management facility or practice that poses a threat to public health or safety, or as deemed necessary by the City Engineer; and
7. Any work or projects for which all necessary approvals and permits have been issued before the effective date of this ordinance. (This exemption does not apply to amendments or extensions of approved projects that have not started construction. In these cases, the applicant may need to re-design the project to comply with these requirements.)

G. Coordination with Other City Permits

1. This ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, statute, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence.



2. No order of conditions from the Marlborough Conservation Commission, building permit, special permit, variance or finding shall constitute compliance with this ordinance. For a project or activity to which this ordinance is applicable, no work may commence until the developer submits to the City Engineer the required documentation of compliance, the City Engineer issues a Stormwater Management Permit, and the developer certifies that all land clearing, construction, and development will be done pursuant to the approved plans and Stormwater Management Permit.
3. If a project or activity to which this ordinance is applicable falls within the specific jurisdiction of the Planning Board for definitive subdivision review and/or the specific jurisdiction of the Site Plan Review Committee, then the Stormwater Management Permit review and approval process may, but need not, occur in conjunction with the definitive subdivision plan review process and/or the Site Plan Review Committee approval process. The application submission requirements, public notices, and fee requirements of the above processes shall govern. Notwithstanding these requirements, such projects or activities are subject to the provisions of this ordinance. Documentation of compliance with this ordinance, as described in Section J herein, shall accompany each application for definitive subdivision approval by the Planning Board and for approval by the Site Plan Review Committee.

Applicants under this ordinance should refer to the Subdivision Regulations (Chapter A676, Article III, § A676-10) for definitive plan application and submission requirements, and to Site Plan Review and Approval (Chapter 270, Article II § 270-2) for site plan application and submission requirements.

No work may commence without prior written approval of the City Engineer, confirming that the project or activity is in compliance with the Stormwater Standards and Design Guidance in Section I herein.

- a. The City Engineer's sign-off on the Site Plan Review Permit shall constitute approval of the Stormwater Management Permit.
- b. Before a definitive subdivision plan is approved, the City Engineer will document, in his written statement to the Planning Board, actions taken regarding the Stormwater Management Permit.
- c. The City Engineer shall state in writing reasons for disapproval or recommended modifications to the plan and shall rescind such disapproval if and when the plan has been amended to conform to the rules, regulations, and recommendations of the City Engineer.

H. Administration

1. Stormwater Authority. The City Engineer is hereby designated as the Stormwater Authority. The City Engineer, or his/her agent, shall administer, implement and enforce this ordinance. The City Engineer may delegate in writing another City department, commission or board to act as his/her authorized agent for site inspections and enforcement of this ordinance.
2. Stormwater Regulations. The City Engineer may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, procedures and administration of this ordinance after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation at least seven (7) days prior to the hearing date. After public notice and public hearing, the City Engineer may promulgate rules and regulations to effectuate the purposes of this ordinance. Failure of the City Engineer to promulgate such rules and regulations, or a legal declaration of their invalidity by a court, shall not act to suspend or invalidate the effect of this ordinance.
3. Stormwater Management Handbooks. The City Engineer will utilize the Massachusetts Stormwater Management Policy and Massachusetts Stormwater Handbooks Volumes 1, 2 and 3, as amended from time to time, for criteria and information including specifications and standards for the execution of the provisions of this ordinance. These include a list of acceptable stormwater treatment practices, with specific design criteria for each. Unless specifically made more stringent in this ordinance and the rules and regulations promulgated hereunder, stormwater management practices that are designed, constructed, and maintained in accordance with the Massachusetts Stormwater Management Handbooks' design and sizing criteria shall be presumed by the City Engineer to be protective of Massachusetts water quality standards.
4. Actions by the Stormwater Authority. The City Engineer may take any of the following actions as a result of an application for a Stormwater Management Permit as more specifically defined as part of the rules and regulations promulgated as part of this ordinance: Approval, Approval with Conditions, Disapproval, or Disapproval without Prejudice.
5. Appeal of Action by the Stormwater Authority. An action by the City Engineer, acting in his or her capacity as the Stormwater Authority, shall be final. Further relief of an action by the City Engineer made under this ordinance shall be reviewable in the Superior Court in a complaint filed within 60 days thereof, in accordance with MGL c. 249, § 4.

I. Stormwater Standards and Design Guidance

All projects shall meet the Massachusetts Stormwater Management Standards to the maximum extent practicable as determined by the City Engineer, as detailed in the Massachusetts Stormwater Handbook, as amended from time to time. Additional guidance on applying the Massachusetts Stormwater Management Standards to applicable projects is contained in the City of Marlborough rules and regulations for stormwater.

J. Permit Procedures and Documentation of Compliance

1. Permit procedures and requirements, including permit submittals, right-of-entry, and the public hearing process, shall be defined and included as part of the rules and regulations promulgated under Section H.2 of this ordinance.
2. All projects shall document compliance with the Stormwater Standards and Design Guidance criteria contained in this ordinance in accordance with the

Massachusetts Stormwater Handbook, as amended from time to time. Submittal requirements are further specified in the City of Marlborough rules and regulations for stormwater.

K. Enforcement

1. The City Engineer or his/her authorized agent shall enforce this ordinance and resulting regulations, orders, violation notices, and enforcement orders, and may pursue all criminal and civil remedies, including injunctive relief and monetary damages and costs of litigation and attorney fees, for such violations and for abatement and mitigation and compliance actions taken by the City Engineer.
2. As an alternative to criminal prosecution or civil action, the City Engineer may elect to utilize the non-criminal disposition procedure set forth in MGL c. 40, § 21D and Chapter 315-2 of the Marlborough City Code. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the City Engineer's agents, officers, and designees may enter upon privately owned property for the purpose of performing their duties under this ordinance and may make or cause to be made such examinations, surveys or sampling as the City Engineer deems reasonably necessary to determine compliance with a permit issued under this ordinance. Enforcement shall be further defined and included as part of the rules and regulations promulgated under Section H.2 of this ordinance.

L. Severability

The provisions of this ordinance are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

M. Effective Date

This ordinance shall become effective immediately upon passage, **ADVERTISED AND PLACE ON NOVEMBER 23, 2009 AGENDA.**

**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 A NEW CHAPTER 511, ENTITLED “DETECTION AND ELIMINATION OF ILLICIT DISCHARGE TO MUNICIPAL STORM DRAIN SYSTEM,” AS FOLLOWS:

**CHAPTER 511. DETECTION AND ELIMINATION OF ILLICIT DISCHARGE TO MUNICIPAL STORM DRAIN SYSTEM**A. Purpose

1. This ordinance complies with the requirements of Phase II of the National Pollutant Discharge Elimination System (NPDES) stormwater program promulgated on December 8, 1999 (and as may be subsequently amended) under the Federal Clean Water Act (CWA). Under the Phase II stormwater program, the U.S. Environmental Protection Agency (EPA) requires regulated municipalities to reduce the discharge of pollutants in stormwater to the maximum extent practicable and to adopt ordinances to address the control of sources of pollutants entering the municipal storm drain system.
2. Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding.
3. Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the City of Marlborough’s water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment.

B. Objectives

The objectives of this ordinance are:

1. to prevent pollutants from entering the City of Marlborough’s municipal storm drain system;
2. to prohibit illicit connections and unauthorized discharges to the municipal storm drain system;

3. to require the removal of all such illicit connections;
4. to comply with state and federal statutes and regulations relating to stormwater discharges; and
5. to establish the legal authority to ensure compliance with the provisions of this ordinance through inspection, monitoring, and enforcement.

C. Definitions

The following definitions shall apply in the interpretation and enforcement of this ordinance:

1. **ENFORCEMENT AUTHORITY:** The City Engineer shall be authorized to enforce this ordinance.
2. **CLEAN WATER ACT:** The Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.), as amended.
3. **DISCHARGE OF POLLUTANTS:** The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth.
4. **GROUNDWATER:** Water beneath the surface of the ground.
5. **ILLICIT CONNECTION:** A surface or subsurface drain or conveyance which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this ordinance.
6. **ILLICIT DISCHARGE:** Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section H herein.
7. **MUNICIPAL STORM DRAIN SYSTEM:** The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of Marlborough.
8. **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT:** A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

9. NON-STORMWATER DISCHARGE: Discharge to the municipal storm drain system not composed entirely of stormwater.
10. PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.
11. POLLUTANT: Any element or property of sewage, and any residential, municipal, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or non-point source, that is or may be introduced into any storm drainage system or waters of the Commonwealth. Pollutants shall include, without limitation:
  - a. paints, varnishes, and solvents;
  - b. oil and other automotive fluids;
  - c. non-hazardous liquid and solid wastes and yard wastes;
  - d. refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
  - e. pesticides, herbicides, and fertilizers;
  - f. toxic or hazardous material or waste; sewage, fecal coliform, and pathogens;
  - g. dissolved and particulate metals;
  - h. animal wastes;
  - i. rock, sand, salt, soils;
  - j. construction wastes and residues; and
  - k. noxious or offensive matter of any kind.
12. POLLUTION: A stormwater condition caused by or involving a pollutant.
13. PROCESS WASTEWATER: Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.
14. STORMWATER: Storm water runoff, snow melt runoff, and surface water runoff and drainage.

15. SURFACE WATER DISCHARGE PERMIT: A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.
16. TOXIC OR HAZARDOUS MATERIAL OR WASTE: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under MGL c. 21C and c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.
17. WATERCOURSE: A natural or man-made channel through which water flows, or a stream of water, including a river, brook or underground stream.
18. WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.
19. WASTEWATER: A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwaters, surface waters and stormwaters as may be present, which is contributed to or permitted to enter the publicly-owned treatment works.

D. Authority

This ordinance is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.

E. Applicability

This ordinance shall apply to all discharges of pollutants entering the municipal storm drain system.

F. Responsibility for Administration

The City Engineer shall administer, implement and enforce this ordinance. Any powers granted to or duties imposed upon the City Engineer may be delegated in writing by the City Engineer to another City department, commission or board to act as his/her authorized agent.

G. Prohibited Activities

1. Illicit Discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge or wastewater into the municipal storm drain system, into a watercourse, or into the waters of the Commonwealth.
2. Illicit Connections. No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
3. Obstruction of Municipal Storm Drain System. No person shall obstruct or interfere with the flow of stormwater into or out of the municipal storm drain system without prior written approval from the City Engineer.

H. Exemptions

1. Discharge or flow resulting from fire fighting activities.
2. The following non-stormwater discharges are exempt from the prohibitions of this ordinance, provided that, in the opinion of the City Engineer, the source is not a significant contributor of a pollutant to the municipal storm drain system:
  - a. Waterline flushing;
  - b. Flow from potable water sources;
  - c. Springs;
  - d. Natural flow from riparian habitats and wetlands;
  - e. Diverted stream flow;
  - f. Rising groundwater;
  - g. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
  - h. Water from exterior foundation drains, footing drains, crawl space pumps, or air conditioning condensation;
  - i. Discharge from landscape irrigation or lawn watering;
  - j. Water from individual residential car washing;



- k. Discharge from de-chlorinated swimming pool water (less than 1.0 ppm chlorine), provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
- l. Discharge from street sweeping;
- m. Dye testing, provided verbal notification is given to the City Engineer prior to the time of the test;
- n. Non-stormwater discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
- o. Discharge for which advanced written approval is received from the City Engineer as necessary to protect public health, safety, welfare or the environment.

I. Emergency Suspension of Storm Drainage System Access

The City Engineer may suspend municipal storm drain system access to any person or property without prior notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Enforcement Authority may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

J. Notification of Spills

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system or waters of the Commonwealth, that person shall immediately take all necessary steps to ensure containment and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal fire and police departments and the City Engineer. In the event of a release of non-hazardous material, the reporting person shall notify the City Engineer no later than the next business day. The reporting person shall provide to the City Engineer written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years following the date of discharge.

K. Enforcement

1. General. The City Engineer or his/her authorized agent shall enforce this ordinance, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.
2. Civil Relief. If the City Engineer finds that a person is in violation of the provisions of this ordinance, or any permit, notice, or order issued thereunder, the City Engineer may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
3. Orders. In order to enforce the provisions of this ordinance, the City Engineer or his/her agent may issue a written order to the person found by the City Engineer to be in violation of this ordinance. Such order may include:
  - a. elimination of illicit connections or discharges to the municipal storm drain system;
  - b. performance of monitoring, analyses, and reporting;
  - c. cessation of unlawful discharges, practices, or operations; and
  - d. remediation of pollution in connection therewith.

If the City Engineer determines that abatement or remediation of pollution is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the City of Marlborough may, at its option, undertake such work, and that the expenses thereof shall be charged to the violator.

Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the City of Marlborough, including administrative costs. Within thirty (30) days of receipt of the notification of the costs incurred by the City, the violator or property owner may file with the City Engineer a written protest objecting to the amount or basis of those costs. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the City Engineer affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in MGL c. 59, § 57 after the thirty-first day on which the costs first become due.

4. Criminal Penalty. Any person who violates any provision of this ordinance or any order issued hereunder shall be punished by a fine of \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

5. *Non-Criminal Disposition.* As an alternative to criminal prosecution or civil action, the City Engineer may elect to utilize the non-criminal disposition procedure set forth in MGL c. 40, § 21D and Chapter 315 of the Code of the City of Marlborough. The penalty for the 1st violation shall be \$100. The penalty for the 2nd violation shall be \$200. The penalty for the 3rd and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
6. *Entry to Perform Duties under this Ordinance.* To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the City Engineer and his/her agents may enter upon privately owned property for the purpose of performing their duties under this ordinance, and may make or cause to be made such examinations, surveys or sampling as the City Engineer deems reasonably necessary.
7. *Appeals.* The decisions or orders of the City Engineer shall be final. Further relief shall be to a court of competent jurisdiction.
8. *Remedies Not Exclusive.* The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law.

L. Severability

The provisions of this ordinance are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

M. Effective Date

This ordinance shall become effective immediately upon passage, **ADVERTISED AND PLACE ON NOVEMBER 23, 2009 AGENDA.**

**Suspension of the Rules requested – granted**

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 315, ENTITLED “ENFORCEMENT,” AS FOLLOWS:

Chapter 315 is hereby amended by adding to section B the following new sub-sections:

31. Stormwater Management (City Code, Chapter 271); and
32. Detection and Elimination of Illicit Discharge to Municipal Storm Drain System (City Code, Chapter 511), **ADVERTISED AND PLACE ON NOVEMBER 23, 2009 AGENDA.**

**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 DELETING §7-33 OF CHAPTER 7 IN ITS ENTIRETY, AND INSERTING IN ITS PLACE THE FOLLOWING:

**§7-33. Tree Warden.**

- A. Pursuant to the provisions of M.G.L. c. 41, §106, there shall be a “Tree Warden,” who shall be appointed for a term of three (3) years by the Mayor subject to confirmation by the City Council.
- B. The Tree Warden shall be the officer charged with the care of public shade trees with all of the powers and duties conferred and imposed on tree wardens under M.G.L. c. 41, §106 and M.G.L. c. 87, as provided under M.G.L. c. 87, §13, and with all of the powers and duties of the superintendent of shade tree management and pest control as provided under M.G.L. c. 132, §13. The Tree Warden shall report directly to the Commissioner of the Department of Public Works.
- C. The Tree Warden shall be qualified to carry out the powers and duties of the position by experience and training in arboriculture and licensed in the use of pesticides and herbicides in accordance with M.G.L. c. 41, §106 and M.G.L. c. 132, §13.
- D. Any person requiring the services of the Tree Warden shall pay for such services at an hourly rate equal to the hourly rate of the general foreman of the Forestry, Parks & Cemetery Division of the Department of Public Works. Such compensation shall be paid directly to the Tree Warden. If the Tree Warden is also a City employee, such employee shall receive his or her regular compensation from the City when he or she provides services as Tree Warden during his or her regular working hours, regardless of whether such services are provided for the City or for a person or entity other than the City, and any compensation ordinarily due to the Tree Warden for services under this paragraph shall instead be paid to the City.
- E. The Tree Warden must obtain prior written authorization to perform services on City-owned property from the City department with care, custody, and control of the particular City property, **ADVERTISED AND PLACE ON NOVEMBER 23, 2009 AGENDA.**

ORDERED: Whereas, the City Council of the City of Marlborough has a civic interest in the thoughtful preservation of historic buildings in the City of Marlborough; and,

Whereas, the former Armory building located on Lincoln Street in Marlborough, Massachusetts is a brick and mortar reminder of a past time and a place where young men gathered to train for the armed services and was the headquarters of Company K, our local national guard and later served as a meeting place for the Boys’ Scouts of America; and,

Whereas, the Armory has been the focal point of many social activities, serving as the City’s civic auditorium, for events including the Mayor’s Inaugural Ball; and,

Whereas, the Armory has played a diverse role in the history of the City of Marlborough and is deserving of preservation for future generations to come; therefore,

The City Council of the City of Marlborough hereby goes on record in support of any and all reasonable efforts for the preservation of the building known as the “Marlborough Armory” located on Lincoln Street in Marlborough, Massachusetts, **APPROVED AND SUBMIT CERTIFIED RESOLUTIONS TO MASS HISTORICAL AND MARLBOROUGH HISTORICAL COMMISSIONS.**

**Councilor Ossing requested to be recorded in opposition.**

ORDERED: That the re-appointment of Joe Moineau to the Board of Registrars with a term expiring on April 1, 2012 **APPROVED**; adopted.

ORDERED: That the appointment of Robert Page to the as an alternate member of the Zoning Board of Appeals which expires two years from the date of City Council approval, **APPROVED**; 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 NOVEMBER 23, 2009.**

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