



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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SEPTEMBER 24, 2012

Regular meeting of the City Council held on Monday, SEPTEMBER 24, 2012 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Ossing, Pope, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, and Landers. Meeting adjourned at 9:40 PM.

ORDERED: That the Metropolitan Area Planning Council - General Overlay Zoning Presentation by Mark Racicot, Land Use Planning Director, **FILE**; adopted.

ORDERED: That the Minutes of the City Council Meeting, SEPTEMBER 10, 2012, **FILE AS AMENDED**; adopted.

ORDERED: That the **PUBLIC HEARING** On the Application for Special Permit from David Scarfo, agent for T-Mobile, for minor upgrades to existing wireless facility at 157 Union St., Order No. 12-1005150, all were heard who wish to be heard, hearing recessed at 8:45 p.m.; adopted.

Councilors Robey and Seymour abstained

ORDERED: That the **PUBLIC HEARING** On the Application for Special Permit from Attorney Brian Falk, on behalf of 54 Main St. LLC, to install a drive-thru service window which would be part of a new structure on the property for Dunkin Donuts restaurant replacing the existing Dunkin Donuts restaurant, which does not have a drive-thru service window at 54 Main St., Order No. 12-1005152, all were heard who wish to be heard, hearing recessed at 9:18 p.m; adopted.

ORDERED: That the Police Department transfer request in the amount of \$42,576.00 which moves funds from Fringes to Sick Leave and Patrolman to fund benefits associated with the retirement of a Police Department employee, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 11990006-51500 \$42,576.00
Fringes

TO:

Acct. # 12100003-51920 \$23,949.00

Sick Leave Buy Back

Acct. # 12100001-50420 \$18,627.00
Patrolman

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Conservation Acceptance Grant from Massachusetts Department of Conservation and Recreation in the amount of \$12,000.00 to enhance natural resources and allow for a more diverse 10 acre parcel of forest area that lies both in Marlborough and Sudbury; adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Council on Aging Grant from BayPath Elder Services in the amount of \$8,000.00 to assist in outreach efforts in underserved communities; adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Council on Aging Grant from the Executive Office of Elder Affairs in the amount of \$46,921.00 which will be utilized for programming needs and support services provided by the Council on Aging; adopted.

RESOLUTION:

WHEREAS, on November 23, 1998, the City Council of the City of Marlborough (“the City”) adopted an order (Order No. 98-7900A) approving a Tax Increment Financing Agreement (“the TIF Agreement”) between the City and Ken’s Foods, Inc./MIP Realty Trust (“Ken’s Foods”); and

WHEREAS, the TIF Agreement between the City and Ken’s Foods recites that the Ken’s Foods facility at 1 D’Angelo Drive in Marlborough is located within the South-West Quadrante Economic Opportunity Area (“South-West Quadrante EOA”), and that that facility consists of Parcel 8 on Map 116 and Parcel 5 on Map 115 of the Marlborough Assessors’ Maps; and

WHEREAS, however, due to an apparent scrivener’s error, the South-West Quadrante EOA, approved by the City Council on August 26, 1996 (Order No. 96-6753) and later approved by the Massachusetts Economic Assistance Coordinating Council (“EACC”) on October 30, 1996, in fact does not include either Parcel 8 on Map 116 or Parcel 5 on Map 115 of the Marlborough Assessors’ Maps; and

WHEREAS, parcel 8 on map 116 and parcel 5 on map 115 of the Marlborough Assessors’ Maps, among other parcels, had been included in an amendment to the Cedar Hill Economic Opportunity Area (“Cedar Hill EOA”), adopted by the City Council on August 28, 1995 (Order No. 95-5962A), later approved by the EACC on September 27, 1995; and

WHEREAS, Mass. Gen. Laws c. 23A, § 3E(4)(d) provides in relevant part that an EOA retains its designation as an economic opportunity area “for at least five years and not more than twenty years from the date it is so designated, as determined by the EACC;” and

WHEREAS, since the effective period for the Cedar Hill EOA was designated by the EACC on September 27, 1995 to be five years, the Cedar Hill EOA ceased to retain its designation as an economic opportunity area on September 27, 2000; and

WHEREAS, the TIF Agreement between the City and Ken’s Foods calls for the tax exemptions recited therein to run through Fiscal Year 2014 (ending on June 30, 2014); and

WHEREAS, both the City and Ken's Foods desire that the TIF Agreement remain in full force and effect from September 27, 2000 through Fiscal Year 2014, including that Ken's Foods continue to receive, from September 27, 2000 through Fiscal Year 2014, the benefit of the tax exemptions contemplated by the TIF Agreement between the City and Ken's Foods; and

WHEREAS, since the effective period for the South-West Quadrangle EOA was designated by the EACC on October 30, 1996 to be twenty years, the South-West Quadrangle EOA will continue to retain its designation as an economic opportunity area until October 30, 2016;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marlborough that a petition be submitted by the City to the Massachusetts Economic Assistance Coordinating Council ("EACC"):

- a. 116 and Parcel 5 on Map 115 of the Marlborough Assessors' Maps, effective retroactive to the date of the EACC's approval of the Cedar Hill EOA on September 27, 1995; and
- b. to amend the South-West Quadrangle EOA so as to include Parcel 8 on Map 116 and Parcel 5 on Map 115 of the Marlborough Assessors' Maps, effective retroactive to the date of the EACC's approval of the South-West Quadrangle EOA on October 30, 1996.

Refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the Minutes, Community Development Authority, August 30, 2012 & September 12, **FILE**; adopted.

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

Order 12-1005143 – Transfer \$51,945.15 to Fund Non-Union Employee Salaries. The Finance Committee reviewed the Mayor's letter dated August 23, 2012 requesting the transfer of \$51,945.15 from Reserve for Salaries to fund a 2% increase for nonunion employees for fiscal year 2013. **Recommendation of the Finance Committee is to approve a transfer of \$49,856.35 for all nonunion employees except the City Council 5-0. The City Council salaries will remain level funded.**

Order 12-1005144 – Transfer \$50,904.00 to Fund Retirement of a Police Officer. The Finance Committee reviewed the Mayor's letter dated August 23, 2012 requesting the transfer of \$50,904.00 from Fringes to Sick Leave Buy back and Longevity accounts to cover the retirement of a Police Officer. **Recommendation of the Finance Committee is to approve 5-0.**

Councilor Landers reported the following out of the Public Services Committee:

Order No. 12-1005156 - Application for Livery License, Marc Marlegni, d/b/a Toy Motorsports, LLC, 896 Boston Post Rd. East. Chief Leonard is without object to the grant of a livery to Toy Motorsports, LLC at 896 Boston Post Road East. The CORI is in order. Applicants operate an existing business in Marlborough, Toy Motorsports, at 896 Boston Post Road East. Applicants will begin the new livery operation with one (8-passenger) vehicle that will be stored in the yard at 896 Boston Post Rd. East and overnight there is available garage space. Toy Motorsports performs mild winterization, boat wrapping and works with dealerships on after-market items. The business has been in operation for three years. The livery operation will provide transportation to customers for events such as concerts, proms, sporting events, weddings and airport runs. In the future, they may consider adding a second vehicle, such as a Chevy Tahoe, for executive transportation. **Recommendation of the Public Services Committee is to recommend approval, seconded by Jenkins, of a livery license to Marc Marlegni, d/b/a Toy Motorsports, LLC, 896 Boston Post Road East 3-0.**

Order No. 12-1005155 - Junk Dealer's License, Andrew Spaventa, d/b/a ecoATM, 601 Donald Lynch Blvd. Chief Leonard is without objection to the grant of a Junk Dealer License to ecoATM. The CORI is in order. A local representative will appear as noted on package submitted/cc: councilors' mailboxes 9/17/12. ecoATM is an unmanned kiosk that will be placed in the common area of the mall in a space set aside for vending or carts. Customers can deposit their old cellular devices and will be paid cash for them at the time of transaction. Every transaction is verified by a live attendant in the ecoATM call center via webcam. The information from each transaction including pictures of the person, the device, and the ID are sent real time via internet to ecoATM's database. Law enforcement can choose to receive reports by whichever frequency and method they choose; for example, realtime via an online reporting tool or daily or weekly reports via hardcopy mail or email. Tom Tullie, father of ecoATM's Chief Executive Officer, President and Chairman, Tom Tullie, addressed the committee. Mr. Tullie stated that local contact information will be noted on the machine and available from 8AM to 12 midnight. During questioning by the committee, Mr. Tullie stated that even if there is no value in the cell phone deposited in the machine, the phone will be accepted and disposed of in a proper manner. The kiosk will be emptied as often as required. **Recommendation of the Public Services Committee is to recommend approval seconded by Jenkins, of a Junk Dealer's License to Andrew Spaventa, d/b/a ecoATM, 601 Donald Lynch Blvd. 3-0.**

Order No. 12-1005153 - Communication from Attorney Beattie, re: Acceptance as Public Way of Dufrense Drive.

The Committee discussed the acceptance with Atty. Beattie.

- **Vote/Action taken: Motion made by Councilor Clancy, seconded by Jenkins, to refer to the Planning Board for their required recommendation to the City Council as to the acceptance of Dufrense Drive as a Public Way in the City of Marlborough 3-0.**
- **Vote/Action taken: Motion made by Councilor Clancy, seconded by Jenkins, to refer to the Legal Department requesting submission to the City Council of the required Order of Acceptance and related documents in proper legal form 3-0.**

Order No. 12-1005121 - National Grid, Petition, to relocate existing P. 2 25' in a NE direction from existing location and installation of a new anchor off relocated P. 2 on Manning St. Email and sketch plan from City Engineer attached to the package. The City Engineer respectfully requests that the petition be approved subject to his final approval and attached sketch indicating the location of the proposed pole and the guy anchor. Crystal Tognazzi from NGrid discussed the petition with committee members. The existing pole fell during a storm. The new pole will maintain 8' clearance from the hydrant and will be erected in conformance with amended sketch plan submitted by the City Engineer. Responding to Councilor Clancy, Ms. Tognazzi stated that the yellow guard on guy wire is maintained and NGrid should be contacted for its replacement if necessary. **Recommendation of the Public Services Committee is to recommend approval, seconded by Jenkins, of the NGrid Petition to relocate existing Pole 2 on Manning Street, subject to final approval by City Engineer, Tom Cullen and per the attached sketch indicating the location of the proposed pole and the guy anchor 3-0.**

Councilor Elder verbally reported that the Urban Affairs Committee met on September 11, 2012 pertinent to the Cumberland Farms Orders, 12-1005082 and 12-1005083. The City Solicitor has advised that a new public hearing is required by the City Council due to changes they have proposed and the time in which to act will expire at the next meeting.

Suspension of the rules requested – granted

ORDERED: That the City Clerk transfer request in the amount of \$3,000.00 which moves funds from Assistant City Clerk to Sick Leave Buy Back to fund costs associated with the resignation of an employee from the City Clerk's Office, **APPROVED**; adopted.

FROM:

Acct. # 11610002-50290	\$3,000.00
Assistant City Clerk	

TO:

Acct. # 11620003-51920	\$3,000.00
Sick Leave Buy Back	

Suspension of the rules requested – granted

ORDERED: That the Communication from the Mayor dated September 21, 2012 pertinent to the proposed long term lease of Bigelow School including a letter of intent from the Assabet Valley Collaborative, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

Councilor Elder filed a disclosure statement

Suspension of the rules requested – granted

ORDERED: That the City Council of the City of Marlborough, confirms a grant of license to Nissan Automobiles of Marlborough, Inc./Marlboro Nissan (hereinafter, "Marlboro Nissan") to expand an existing shared driveway located on City property adjacent to the westerly side of Marlboro Nissan's building at 740 Boston Post Road, which license is a condition of the special permit granted to Marlboro Nissan by Order No. 12-1004033C, dated March 26, 2012, **APPROVED**; adopted.

Suspension of the rules requested – granted

ORDERED: That the amended draft Tax Increment Financing (TIF) proposal from Ken's Food Incorporated, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the City Council invite Commissioner LaFreniere and/or Assistant Commissioner Temple, along with a representative of Allied/Republic, to attend an Operations and Oversight Committee meeting to update the City Council and the viewing public on the progress of the new curbside trash pickup program. Included in this review would be a discussion about remaining challenges, recycling rates, and a forum for questions from councilors, and a platform to further educate the public, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: That the Application for Taxi and Livery license, Yan Chun Zhang d/b/a Japan Car Service for Livery License at 197 Boston Post Rd. West, **APPROVED**; adopted.

ORDERED: That the Application, Junk Dealer's License, Gerald Dumais, d/b/a Dumais & Sons, 67 Mechanic St., **APPROVED**; adopted.

ORDERED: That the Application, Junk Dealer's License, Richard Jenkins, d/b/a MetroWest Rubbish Service, 19 Indian Lane, **APPROVED**; adopted.

Councilor Jenkins abstained

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:40 PM.