



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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MAY 11, 2009**

Regular meeting of the City Council held on Monday May 11, 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 9:05 p.m.

ORDERED: Minutes, City Council Meeting, April 27, 2009, **FILE**; adopted.

ORDERED: Now being the time set for the **PUBLIC HEARING** On the Application for Special Permit from Attorney Valeriani, on behalf of Verizon Wireless, to permit, construct, operate and maintain a wireless communications facility at 303 Boundary St. , all were heard who wish to be heard, hearing adjourned at 8:15 p.m.; adopted.

ORDERED: That the Council President recognized Boy's Scout Troop 41 who are working on their Citizenship, Community Merit Badges and Communication Merit Badges, **FILE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, JUNE 8, 2009** as date for a **PUBLIC HEARING** for the proposed FY10 budget, refer to **FINANCE COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That pursuant to Chapter 44, section 31D of the General Laws of the Commonwealth of Massachusetts, which authorizes the City to incur liability and make expenditures for any fiscal year in excess of appropriation for snow and ice removal, the City Council of the City of Marlborough, upon the recommendation of the Mayor, approves expenditures in excess of available appropriation for snow and ice removal for fiscal year 2010, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the budget transfer request in the amount of \$1,538,617.00 which moves funds from Undesignated to fund the following requests for Capital Outlay, be and is herewith refer to **FINANCE COMMITTEE & REQUEST THAT THE MAYOR PROVIDE CITY COUNCIL WITH A STATUS REPORT PERTINENT TO EXISTING BONDS**; adopted.

FROM:

Acct. # 10000-35900	\$1,538,617.00
Undesignated	

TO:

Acct. # 19300006-58311	\$64,000.00
Street Sign Replacement	
Acct. # 19300006-58462	\$153,000.00
DPW Water	
Acct. # 19300006-58467	\$200,000.00
Public Facilities	

Acct. # 19300006-58508	\$54,000.00
Police Vehicles	
Acct. # 19300006-58513	\$36,500.00
Fire Protective	
Acct. # 19300006-58731	\$542,200.00
DPW Equipment	
Acct. # 19300006-58618	\$350,000.00
Hardware	
Acct. # 19300006-58596	\$138,917.00
Emergency Management	

ORDERED: That the budget transfer request in the amount of \$1,506,917.81 which moves funds from Undesignated to DPW/Snow Removal to cover snow and ice deficits incurred during FY09, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 10000-35900	\$1,506,917.81
Undesignated	

TO:

Acct. # 14001206-52960	\$1,506,917.81
DPW/Snow Removal	

ORDERED: That the following intra-departmental budget transfer requests from various departments necessary to balance year-end FY09, refer to **FINANCE COMMITTEE**; adopted.

Transfer in the amount of \$8,000.00 from Account No. 11920003-50560 (Custodian) to Account No. 11920001-50385 (Electrician)

Transfer in the amount of \$700.00 from Account No. 12410004-53150 (Advertising) to Account No. 12410001-50380 (Electrical Inspector)

Transfer in the amount of \$3,200.00 from Account No. 1241006-57100 (In-state Travel) to Account No. 12410001-50380 (Electrical Inspector)

Transfer in the amount of \$4,018.00 from Account No. 12410004-53180 (Professional & Technical Services) to Account No. 12410002-50770 (Senior Clerk)

Transfer in the amount of \$2,150.00 from Account No. 14001503-50740 (Equipment Operator) to Account No. 14001002-50770 (Senior Clerk)

Transfer in the amount of \$200.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001505-54220 (Office Supply/Expense- FP & C)

Transfer in the amount of \$900.00 from Account No. 14001503-50740 (Equipment operators- FP & C) to Account No. 14001505-54610 (General Materials- FP & C)

Transfer in the amount of \$400.00 from Account No. 14001503-50740 (Equipment operators- FP & C) to Account No. 14001505-54680 (Cemetery Supplies- FP & C)

Transfer in the amount of \$7,200.00 from Account No. 14001503-50740 (Equipment operators- FP & C) to Account No. 14001505-54680 (Stump Removal- FP & C)

Transfer in the amount of \$9,900.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001403-51240 (Temp. Part-time- Repair)

Transfer in the amount of \$4,000.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001503-51241(Temp. Help- Downtown- FP &C)

Transfer in the amount of \$1,400.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001504-53810 (Insect & Pest Control- FP & C)

Transfer in the amount of \$6,600.00 from Account No. 14001503-50740 (Equipment Operators- FP &C) to Account No. 14001306-52600 (Traffic & Fld light- Streets)

Transfer in the amount of \$10,000.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001305-55440 (Drainage Maintenance- Streets)

Transfer in the amount of \$1,000.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001306-55500 (Stream Maintenance- Streets)

Transfer in the amount of \$240.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001303-51240 (Temp. Part-time- Streets)

Transfer in the amount of \$12,146.00 from Account No. 14001501-50690 (Foreman- FP & C) to Account No. 14001303-51310 (Overtime- Regular- Streets)

Transfer in the amount of \$10,000.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001305-55310 (Highway Constr. Materials- Streets)

Transfer in the amount of \$16,000.00 from Account No. 61090001-50460 (Meter Reader) to Account No. 61090006-52322 (Water Marlboro Plant)

Transfer in the amount of \$24,100.00 from Account No. 61090001-50740 (Equipment Operator) to Account No. 61090006-52322 (Water Marlboro Plant)

Transfer in the amount of \$7.86 moving funds from Account No. 14001003-51920 (Sick Leave Buy Back) to Account No. 14001003-51430 (Longevity)

Transfer in the amount of \$1,000.00 from Account No. 12100003-51920 (Sick Leave Buy Back) to Account No. 12100003-51195 (Detention Attendant)

ORDERED: That the following inter-departmental budget transfer requests from the Fringes account necessary to balance year-end FY09, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 11990006-51500	\$19,649.00
Fringes	

TO:

Acct. # 11520001-50530	\$7,000.00
Director of Personnel	
Acct. # 11550001-50210	\$45.00
IT/Sr. System Analyst	
Acct. # 14001303-51920	\$12,109.00
DPW/Street/SLBB	
Acct. # 14001303-51430	\$495.00
DPW/Street/Longevity	

ORDERED: That pursuant to the provisions of § 53E½ of Chapter 44 of the General Laws of the Commonwealth of Massachusetts, the City Council of the City of Marlborough, upon the recommendation of the Mayor, does hereby re-authorize a revolving fund during fiscal year 2010 for Geographical Information System (GIS) purposes to be administered by the Department of Public Works. It is further ordered that:

- (a) departmental receipts credited to the fund shall be limited to payments and fees due the City from those who purchase data and related copy-written material that has been created by the City of Marlborough Geographical Information System, unless otherwise directed by the General Laws; and
- (b) that expenditures from said fund shall be limited to the maintenance, improvement and related expenses for the maintenance and improvement of the City of Marlborough Geographical Information System; and
- (c) that the Commissioner of Public Works shall be the only officer authorized to approve expenditures from the fund; and
- (d) no more than \$10,000.00 shall be expended during fiscal year 2010, unless otherwise authorized by the City Council and Mayor; and
- (e) the Commissioner of Public Works shall prepare a year-end report identifying funds received, funds expended, description of expenditures and year-end balance; and
- (f) no provisions of this order shall be changed unless approved by the Mayor and City Council, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That pursuant to the provisions of § 53E½ of Chapter 44 of the General Laws of the Commonwealth of Massachusetts, the City Council of the City of Marlborough, upon the recommendation of the Mayor, does hereby re-authorize a revolving fund during fiscal year 2010 for parks and playground improvement purposes to be administered through the Department of Public Works. It is further ordered that:

- (a) departmental receipts credited to the fund shall be limited to lease payments and fees due the City from owners of antennae and related telecommunications equipment located on Fairmount Hill; and
- (b) that expenditures from said fund shall be limited to the maintenance and improvement of neighborhood parks and playgrounds, and that priority for such expenditures shall, through fiscal year 2010, be utilized for the maintenance and improvement of Artemus Ward Park; and
- (c) that the Commissioner of Public Works shall be the only officer authorized to approve expenditures from the fund; and
- (d) no more than \$100,000.00 shall be expended during fiscal year 2010, unless otherwise authorized by the City Council and Mayor; and
- (e) the Commissioner of Public Works shall prepare a year-end report identifying funds received, funds expended, description of expenditures and year-end balance; and
- (f) no provisions of this order shall be changed unless approved by the Mayor and City Council, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That pursuant to the provisions of § 53E½ of Chapter 44 of the General Laws of the Commonwealth of Massachusetts, the City Council of the City of Marlborough, upon the recommendation of the Mayor, does, to be effective during fiscal year 2010, re-authorize the revolving fund utilized by the Public Facilities Department. It is further ordered that:

- (a) departmental receipts credited to the fund shall be limited to lease payments and fees due the City from owners of antennae and related telecommunications equipment on property that is maintained by, or assigned or transferred to be maintained by, the Public Facilities Department, unless otherwise directed by the General Laws; and
- (b) that expenditures from said fund shall be limited to the maintenance and related expenses for Sligo Hill and Stevens Park; and
- (c) that the Director of Public Facilities shall be the only officer authorized to approve expenditures from the same; and

- (d) no more than three hundred thousand dollars shall be expended during Fiscal Year 2010, unless otherwise authorized by the City Council and Mayor; and
- (e) the Director of Public Facilities shall prepare a year-end report identifying funds received, funds expended, description of expenditures and year-end balance; and
- (f) no provisions of this order shall be changed unless approved by the Mayor and City Council, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That a Water Conservation Grant in the amount of \$35,000.00 awarded to DPW from the Massachusetts Department of Environmental Protection (DEP) to provide funding for a third party vendor to conduct a city-wide leak detection service, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That Agenda #12, Communication from the City Solicitor regarding Special Permit from MetroPCS for 115 Onamog St., in proper form, be moved to Reports of Committees; **APPROVED**; adopted.

ORDERED: That the application to renew Pool Table (2) licenses, Marlboro Cozy Café, 487A Lincoln St., refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the application of Tekoa DaSilva, d/b/a Gold party LLC for Junk Dealer's License, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

Councilor Schafer abstained

ORDERED: That the Central Massachusetts Mosquito Control Project, Annual Report for 2008, **FILE**; adopted.

ORDERED: That Department of Public Utilities, Condensed Financial Return, for Year Ending December 31, 2008, **FILE**; adopted.

ORDERED: That the minutes, Planning Board, March 23 & April 6, 2009, **FILE**; adopted.

ORDERED: That the minutes, Community Development Authority, March 26, 2009, **FILE**; adopted.

ORDERED: That the minutes, Traffic Commission, April 28, 2009, **FILE**; adopted.

ORDERED: That the minutes, Marlborough High School Council, April 1, 2009, **FILE**; adopted.

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

- A. 1st Church of Marlborough, 37 High St., Other Property Damage
- B. Patricia Gorman, 8 Fairview Dr., Southborough, Pothole or Other Road Defect

Reports of Committees:

Councilor Clancy reported the following out of the Personnel Committee:

Order No. 09-1002186 – Communication from the Mayor regarding reappointments of Mr. Michael Hogan and Ms. Camille Duridas to the Community Development Authority for three year terms ending April 15, 2012 and June 25, 2012 respectively. Recommendation of the Personnel Committee is to approve the reappointments of Michael Hogan and Camille Duridas to the Community Development Authority for three year terms – Michael Hogan's term to expire on April 15, 2012; Camille Duridas' term to expire on June 25, 2012, 3-0.

Councilor Ossing reported the following out of the Finance Committee:

Order No. 09-1002179 – Transfer \$29,400.00 from DPW Fuels and Lubricant to the Rubbish Collection Account: The Finance Committee reviewed the Mayor’s letter dated April 15, 2009 requesting the transfer of \$29,400.00 from the DPW Fuels and Lubricants account to the Rubbish Collection account. **Recommendation of the Finance Committee is to approve 5-0.**

Councilor Pope reported the following out of the Urban Affairs Committee:

Order No. 08/09-1002051B – Application for Special Permit from The Gutierrez Co. to develop Map 67, Lot 45 & Map 68, Lot 30A, Lakeside Ave. and Elm St., located in the Business District for multi-family dwellings per Article 200, Section 13, Paragraph C, Sub-paragraph 4 of the City of Marlborough Zoning Bylaws. Chairman Pope read a letter from Ward 3 Councilor Schafer in opposition to this Special Permit. The Committee reviewed the revised decision with Attorney Gadbois. **Recommendation of the Urban Affairs Committee is to recommend approval 3-1, Councilor Pope opposed and Council Schafer was absent and to Suspend the Rules to refer to City Solicitor to be put in proper form and place item on the June 8, 2009 agenda.**

Suspension of Rules requested-granted

ORDERED: That the following inter-departmental budget transfer request from the Fringes account necessary to balance year-end FY09, **APPROVED**; adopted.

FROM:

Acct. # 11990006-51500	\$5,000.00
Fringes	

TO:

Acct. # 15430006-57710	\$5,000.00
Veteran's Benefits	

Suspension of Rules requested-granted

ORDERED: That the appointment of David Brumby for position of Personnel Director, **APPROVED**; adopted.

Suspension of Rules requested - granted

ORDERED: That the application for Special Permit from The Gutierrez Co. to develop Map 67, Lot 45 & Map 68, Lot 30A, Lakeside Ave. and Elm St., located in the Business District for multi-family dwellings per Article 200, Section 13, Paragraph C, Sub-paragraph 4 of the City of Marlborough Zoning Bylaws, refer to the **CITY SOLICITOR TO BE PUT IN PROPER FORM FOR JUNE 8, 2009 CITY COUNCIL MEETING.**

ORDERED: That no person shall smoke, ingest, or otherwise use or consume marihuana or tetrahydrocannabinol (as defined in G.L. c. 94C, § 1, as amended) while in or upon any street, sidewalk, public way, footway, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, schoolhouse, school grounds,

cemetery, parking lot, or any area owned by or under the control of the City of Marlborough; or in or upon any bus or other passenger conveyance operated by a common carrier; or in any place accessible to the public. This ordinance may be enforced through any lawful means in law or in equity including, but not limited to, enforcement by criminal indictment or complaint pursuant to G.L. c. 40, § 21, or by noncriminal disposition pursuant to G.L. c. 40, § 21D, by any police officer. The fine for violation of this ordinance shall be three hundred dollars (\$300) for each offense. Any penalty imposed under this ordinance shall be in addition to any civil penalty imposed under G.L. c. 94C § 32L, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

Councilor Schafer abstained

ORDERED: That the appointment of Nancy Savoie for the position of City Planner which expires two years from the date of confirmation, **TABLED UNTIL THE JUNE 8, 2009 CITY COUNCIL MEETING**; adopted.

ORDERED:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE 2008 CODE OF THE CITY OF MARLBOROUGH BE ADOPTED, ORDAINED AND ENACTED AS FOLLOWS:

A R T I C L E I I I **ADOPTION OF 2008 CODE**

1-25. Adoption of Code.

The ordinances and legislation of the City of Marlborough of a general and permanent nature, including the 1986 Code adopted by the City Council of the City of Marlborough on March 23, 1987, as supplemented and republished by General Code Publishers Corp. with chapter reassignments as set forth in the Derivation Table attached hereto and published in said Code, are hereby approved, adopted, ordained and enacted as the "Code of the City of Marlborough," hereinafter known and referred to as the "Code."

1-26. Nonsubstantive changes in previously adopted legislation.

In compiling and preparing the ordinances and 1986 Code for publication as the 2008 Code of the City of Marlborough, no changes in the meaning or intent of such ordinances have been made. Certain grammatical changes and other minor nonsubstantive changes were made in one or more of said pieces of legislation. It is the intention of the City Council that all such changes be adopted as part of the Code as if the ordinances had been previously formally amended to read as such.

1-27. Code supersedes prior ordinances.

This ordinance and the Code shall supersede all other general and permanent ordinances enacted prior to the enactment of this Code, except such ordinances as are hereinafter expressly saved from repeal or continued in force.

1-28. Incorporation of provisions into Code.

The provisions of this ordinance are hereby made Article III of Chapter 1, General Provisions, of the Code of the City of Marlborough, such ordinance to be entitled "Article III, Adoption of 2008 Code," and the sections of this ordinance shall be numbered §§ 1-25 to 1-39, inclusive.

1-29. When effective.

This ordinance shall take effect immediately upon passage and publication according to law.

1-30. Copy of Code on file.

A copy of the Code in loose-leaf form has been filed in the Office of the City Clerk and shall remain there for use and examination by the public until final action is taken on this ordinance; and, if this ordinance shall be adopted, such copy shall be certified to by the Clerk of the City of Marlborough by impressing thereon the seal of the City as provided by law, and such certified copy shall remain on file in the office of the City Clerk to be made available to persons desiring to examine the same during all times while the said Code is in effect.

1-31. Publication; filing.

The Clerk of the City of Marlborough, pursuant to law, shall cause to be published in the manner required, a copy of this adopting ordinance in a newspaper of general circulation in the City. Sufficient copies of the Code shall be maintained in the office of the Clerk for inspection by the public at all times during regular office hours. The enactment and publication of this adopting ordinance, coupled with the availability of copies of the Code for inspection by the public, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

1-32. Amendments to Code.

Any and all additions, amendments or supplements to the Code, when passed and adopted in such form as to indicate the intent of the City Council to make them a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code of the City of Marlborough shall be understood and intended to include such additions, amendments or supplements. Whenever such additions, amendments or supplements to the Code shall be adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing the said Code as additions, amendments and supplements thereto.

1-33. Inclusion of new legislation prior to adoption of Code.

All ordinances of a general and permanent nature adopted subsequent to the date given in § 1-39.A and prior to the effective date of this ordinance given in § 1-29 are hereby deemed to be part of the Code and shall, upon being printed, be included therein. Attested copies of all such legislation shall be temporarily placed in the Code until printed supplements are included.

1-34. Code book to be kept up-to-date.

It shall be the duty of the Clerk, or someone authorized and directed by the Clerk, to keep up-to-date the certified copy of the book containing the Code required to be filed in the Clerk's office for the use of the public. All changes in said Code and all ordinances adopted subsequent to the effective date of this codification which shall be adopted specifically as part of the Code shall, when finally adopted, be included therein by reference until such changes or new ordinances are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

1-35. Sale of Code book.

Copies of the Code book containing the Code may be purchased from the Clerk upon the payment of a fee to be set by City Council, which may also arrange for procedures for the periodic supplementation thereof.

1-36. Altering or tampering with Code; penalties for violation.

It shall be unlawful for anyone to improperly change or amend, by additions or deletions, any part or portion of the Code, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the City of Marlborough to be misrepresented thereby. Anyone violating this section of this ordinance shall be subject, upon conviction, to a fine of not more than two hundred dollars (\$200.00).

1-37. Severability.

- A. **Severability of Code provisions.** Each section of the Code, and every part of each section, is an independent section or part of a section, and the holding of any section or a part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.
- B. **Severability of ordinance provisions.** Each section of this ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.

1-38. Repeal of ordinances.

All ordinances or parts of ordinances of a general and permanent nature adopted and in force on the date of the adoption of this ordinance and not contained in the Code are hereby repealed as of the effective date of this adopting ordinance, except as hereinafter provided.

1-39. Ordinances saved from repeal.

The adoption of this Code and the repeal of ordinances provided for in § 1-38 of this ordinance shall not affect the following ordinances, rights, and obligations, which are hereby expressly saved from repeal:

- A. Any ordinance adopted subsequent to December 17, 2007.
- B. Any right or liability established, accrued or incurred under any legislative provision prior to the effective date of this ordinance, or any action or proceeding brought for the enforcement of such right or liability.
- C. Any offense or act committed or done before the effective date of this ordinance in violation of any legislative provision, or any penalty, punishment, or forfeiture which may result therefrom.
- D. Any prosecution, indictment, action, suit or other proceeding pending, or any judgment rendered, prior to the effective date of this ordinance, brought pursuant to any legislative provision.
- E. Any franchise, license, right, easement or privilege heretofore granted or conferred.
- F. Any ordinance providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place, or any portion thereof.
- G. Any ordinance or resolution appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond or other instruments or evidence of the City's indebtedness.
- H. Ordinances authorizing the purchase, sale, lease or transfer of property, or any lawful contract or obligation.
- I. The levy or imposition of taxes, assignments or charges.
- J. The dedication of property or approval of preliminary or final subdivision plans.
- K. Any ordinance providing for salaries or compliments.

- L. Any ordinance relative to parking or traffic,
TABLED UNTIL THE JUNE 8, 2009 CITY COUNCIL MEETING;
 adopted.

ORDERED: That the acquisition from Upper River Road LLC of the sewer pump station located at 728 Donald Lynch Boulevard, as per the terms and conditions set forth in the Bill of Sale attached hereto, and

That the acceptance of an easement from Shops at the Pond, LLC to provide access to the above sewer pump station for various purposes, including its operation, repair and maintenance, as per the terms and conditions set forth in the Grant of Easement attached hereto,

APPROVED; adopted.

Yea: 11 – Nay: 0

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

ORDERED: That the budget transfer request in the amount of \$10,000.00 which moves funds from Undesignated to Public Safety which represents the first installment by Genzyme in satisfaction of condition #12 of the First Student Special Permit #07-1001650B,
APPROVED AND TO REQUEST A LEGAL OPINION FROM THE CITY SOLICITOR REGARDING MISREPRESENTATION OF THE APPLICANT;
 adopted.

FROM:

Acct. # 100-35900	\$10,000.00
Undesignated Fund	

TO:

Acct. # 83600-32701	\$10,000.00
Public Safety	

ORDERED: That the budget transfer request in the amount of \$75,000.00 which moves funds from Undesignated to Water MR Plant for the purpose of maximizing water production at the Millham Water Treatment Facility and minimizing use of the MWRA water, therefore enabling DPW to immediately authorize the accelerated production at Millham,
APPROVED; adopted.

FROM:

Acct. # 100-35900	\$75,000.00
Undesignated Fund	

TO:

Acct. # 61090006-52322	\$75,000.00
Water MR Plant	

ORDERED: The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to METROPCS MASSACHUSETTS, LLC, having a usual place of business at 285 Billerica Road, Third Floor, Chelmsford, MA 01824, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is METROPCS MASSACHUSETTS, LLC, having a usual place of business at 285 Billerica Road, Third Floor, Chelmsford, MA 01824 (hereinafter "Applicant").
2. Through its Application to City Council for Issuance of Special Permit (hereinafter "Special Permit Application"), the Applicant seeks permission to allow co-location of six (6) wireless communications panel antennas on an existing water tank, and one (1) GPS antenna mounted on a proposed ice bridge, and supporting equipment on the ground within an existing compound (hereinafter "Proposed Wireless Communications Device Project" or "Proposed WCD Project"), substantially as depicted on a set of plans entitled "BOS0483B ONAMOG WATER TANK MARLBOROUGH," by Dewberry-Goodkind, Inc, dated 1/7/09, as submitted with the Special Permit Application, and also to include the structural details dated 10/9/08 and revised on 10/17/08, as well as an October 20, 2008 structural report by Dewberry-Goodkind, Inc.'s Structural Engineer Dennis W. Reip, P.E. and its enclosures (hereinafter "Plans").
3. The location of the Proposed WCD Project is 115 Onamog Street., Marlborough, MA and is more particularly identified on the Assessor's Map of the City of Marlborough as Map 81, Lot 238 (hereinafter "the Site"). The owner of record for the Site is the CITY OF MARLBOROUGH.
4. The Applicant is a prospective lessee of the City of Marlborough, which owns the existing water tank at the Site as well as the underlying compound area.
5. The Site is zoned A-3 (Residence). Wireless Communication Devices are allowed by grant of Special Permit in A-3 (Residence) Zoning Districts.
6. The Special Permit is being sought pursuant to Article VI, Section 200-25 and Article VIII, Section 200-59 of the Zoning Ordinance set forth in the City Code of the City of Marlborough (hereinafter "Marlborough Zoning Ordinance").
7. Pursuant to the Rules and Regulations of Application for Special Permit (hereinafter "Rules and Regulations"), the Building Commissioner on behalf of the City Planner certified that the Special Permit application materials are
8. complete and conform to said Rules and Regulations and that the Plans conform in all respects to the City Code.
9. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
10. The City of Marlborough City Council held a public hearing on the Proposed WCD Project on March 9, 2009, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.

11. The Applicant presented oral testimony and demonstrative evidence at the public hearing demonstrating that the Proposed WCD Project meets all the applicable Special Permit criteria of Article VI, Section 200-25 and Article VIII, Section 200-59 of the Marlborough Zoning Ordinance.
12. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCD Project's compliance with the applicable Special Permit criteria.
13. The Council, in reviewing the Applicant's Special Permit Application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the Marlborough Zoning Ordinance, applicable to the Proposed WCD Project.

**BASED UPON THE ABOVE, THE MARLBOROUGH CITY
COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT
AND TAKES THE FOLLOWING ACTIONS**

- A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Special Permit Application.
- B) The Site is an appropriate location for the Proposed WCD Project and the Proposed WCD Project is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this decision.
- C) The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to Wireless Communications Facilities, including Wireless Communication Devices, enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, by siting, designing and screening its Proposed WCD Project to minimize adverse impact on the abutting neighborhood and on nearby residential properties.
- D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the Marlborough Zoning Ordinance, **GRANTS** the Applicant a Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 12:**
 - 1) The Proposed WCD Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Applicant's Special Permit Application, as amended during the application/hearing process, and in compliance with the Conditions of the Grant of Special Permit as well as with the conditions set forth in Chapter 200-25F of the Marlborough Zoning Ordinance.

- 2) All plans, site evaluations, briefs and other documentation provided by the Applicant as part of its Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
- 3) The Applicant shall comply with all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of the Proposed WCD Project.
- 4) All terms, conditions, requirements, approvals, plans and drawings required hereunder are hereby made a part of and incorporated herein as a condition to the issuance of this Special Permit.
- 5) Applicant shall minimize the visual impacts of the Proposed WCD Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Special Permit Application.
- 6) Applicant shall pay to City of Marlborough Account #10093-43600, as mitigation for the alleged impacts upon open space caused by the subject of this Special Permit, the annual sum of One Thousand Five Hundred (\$1,500.00) dollars, the first payment due and payable to the City's Building Department at the time of the issuance of the building permit hereunder, or within one year of the approval of Special Permit, whichever is earlier, and the subsequent payments to be due and payable to the City's Public Facilities Department on January 2, or the first business day thereafter, of each calendar year in which the WCD referenced in this Special Permit is still in operation. Failure to make the payment in a timely manner shall constitute a violation of the Special Permit, and the Applicant shall pay an additional sum of \$500 per quarter or portion thereof after the payment due date that the Applicant has failed to make payment.
- 7) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCD Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCD Project only in cases of power outages to the Proposed WCD Project and for purposes of routine testing and maintenance. No fuel shall be stored at the Site. The noise produced by the temporary generator shall conform to the City's noise ordinance set forth in Chapter 134 of the City Code of the City of Marlborough.
- 8) The Applicant shall provide any and all plans, specifications, calculations, etc as may be required by the Commissioner of Public Works to complete his review of the Proposed WCD Project. The Applicant shall not proceed with any work associated with this Special Permit unless and until the Commissioner of Public Works has issued to the Applicant a Notice to Proceed in writing. Similarly, no

operation of this Proposed WCD Project shall commence until the Applicant has received written approval from the Building Inspector that all the conditions herein have been satisfied.

- 9) Applicant shall be subject to site plan review if applicable.
- 10) Applicant shall securely attach cables to the outside of the tank in such a manner as to prevent noise and/or other disturbance that would be obtrusive to the neighborhood.
- 11) In accordance with the provisions of Mass. Gen. Laws c. 40A, § 11, the Applicant at its expense shall record this Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed.
- 12) As soon as practicable but in any event within one (1) month after the date when a certificate of use and occupancy has been issued to the Applicant by the City of Marlborough's Building Commissioner for the Proposed WCD Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCD Project has not yet become operational within the one-month period after said issuance date, then the Applicant must immediately provide the City Council with written notification as to the date when the Proposed WCD Project does become operational and, further, must submit said written report within one (1) month after said operational date. The written report to the City Council i) shall provide measurements as to the actual output of radio frequency energy emitted by the Proposed WCD Project; ii) shall include a professional opinion by a third party certifying that the Proposed WCD Project fully complies with all applicable health and safety standards; and iii) shall provide measurements of the actual output of the total radio frequency energy being emitted by all Wireless Communications Facilities (as defined in Section 200-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its Proposed WCD Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCD Project that may increase the actual output of radio frequency energy emitted by the Proposed WCD Project, the Applicant shall submit a letter to the City Council as soon as practicable but in any event within one (1) month after the date of completion of those changes or upgrades. The letter i) shall state what the changes or upgrades are; ii) shall provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCD Project has been increased; iii) shall provide measurements of the actual output of all radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site; and iv) shall include a professional opinion by a third party certifying that the Applicant's changes or upgrades have not caused the total radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site to exceed any applicable health and safety standards.

Yea: 11 – Nay: 0

**Yea: Delano, Ferro, Schafer, Juairé, Seymour, Clancy, Landers, Ossing, Pope,
Vigeant, Levy**

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:05 p.m.