



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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

**Marlborough, MA 01752
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August 17, 2009**

Regular meeting of the City Council held on Monday, August 17, 2009 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Pope, Vigeant, Delano, Ferro, Juairé, Clancy and Landers. Councilors absent: Ossing, Schafer, and Seymour. Meeting adjourned at 8:32 p.m.

ORDERED: That the minutes of the City Council Meeting JULY 20, 2009, **FILE**; adopted.

ORDERED: Now being the time set for the **CONTINUED PUBLIC HEARING** on the Application for Special Permit from Cheraq Patel to construct a 104 room hotel at 257 Simarano Dr. as it is in an industrial zone, be and is herewith **CONTINUED UNTIL SEPTEMBER 14, 2009**; adopted.

ORDERED: Now being the time set for the **PUBLIC HEARING** on the Application for Fuel Storage Permit for 250 Locke Dr., all were heard who wish to be heard, hearing adjourned at 8:02 p.m.; adopted.

ORDERED: That the following budget transfer request in the amount of \$1,000.00 from Professional and Technical to Advertisement account for the purpose of covering current and anticipated advertisements from the City Clerk's budget, **APPROVED**; adopted.

FROM:

Acct. # 11610004-53180 \$1,000.00
Professional & Technical

TO:

Acct. # 11610004-53150 \$1,000.00
Advertisements

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

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

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

ORDERED: That the appointment of William Short and re-appointment of Joseph Moineau to the Board of Registrars with terms expiring April 1, 2011 and April 1, 2012 respectively, refer to **PERSONNEL COMMITTEE**; adopted.

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

ORDERED:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 485, ENTITLED "ANTIBLIGHT; NUISANCES," AS FOLLOWS:

1. Section 485-2, entitled "Definitions," is hereby amended by amending the definition of "Nuisance" by striking out the words "Unregistered motor vehicles " in the first line of subsection B(7) thereof and inserting in place thereof the following words:-- All motor vehicles (registered and unregistered).
2. This amendment shall become effective immediately upon passage, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 517, ENTITLED "SEX OFFENDERS," AS FOLLOWS:

1. Section 517-1, entitled "Findings and intent," is hereby amended by striking out in the last line of subsection D thereof the words "where the state law is silent" and inserting in place thereof the following words:-- to the extent state law is silent.
2. Section 517-2, entitled "Definitions," is hereby amended:
 - a. by amending the definition of "day care center" by striking out in the third line thereof the words "Office of Child Care Services" and inserting in place thereof the following words:-- Department of Early Education and Care.
 - b. by adding the following definition: "Loitering – To remain for more than fifteen (15) minutes within a five hundred (500) foot distance of the location in question."
 - c. by amending the definition of "park" by striking out in the second and third lines thereof the words ", the Commonwealth of Massachusetts or other governmental subdivision,".
 - d. by amending the definition of "registered sex offender":
 - i. by striking out in the second line thereof the words "Chapter 6, § 178C" and inserting in place thereof the following words:-- Chapter 6, § 178K(2)(c).
 - ii. by adding in the fifth line thereof, after the word "who", the following words:-- , for so long as such person.
 - iii. by adding after the word "Registry" in the sixth line thereof the following word:-- Board.
 - iv. by adding in the eighth line thereof, after the word "who", the following words:-- , for so long as such person.
 - v. by adding after the word "Registry" in the ninth line thereof the following word:-- Board.

3. Section 517-3, entitled "Residency restrictions," is hereby amended:
 - a. by amending subsection A thereof, entitled "Prohibition," by adding after the word "retarded" in the third line thereof the following words: ; provided, however, that the prohibition contained in this section shall not apply to any Level 3 offender, to the extent and in the manner such Level 3 offender is already governed by MGL c. 6, § 178K(2)(e).
4. Section 517-4, entitled "Safety zones," is hereby amended:
 - a. By striking out in subsection A, entitled "Prohibitions," in the first through third lines of sub-subsection 4 the words "A registered sex offender is prohibited, after having received notice from the Marlborough Police Department that he/she is loitering within five hundred (500) feet of a school, a day care center, a park, any recreational facility, elderly housing facility or facility for the mentally retarded, from continuing to so loiter or from returning thereto" and inserting in place thereof the following words:-- A registered sex offender, after having received notice from the Marlborough Police Department that he/she is loitering by having remained for more than fifteen (15) minutes within a five hundred (500) foot distance of a school, a day care center, a park, any recreational facility, elderly housing facility or facility for the mentally retarded, is prohibited from continuing to so loiter.
 - b. By striking out in subsection A, entitled "Prohibitions," in the first and second lines of sub-subsection 5 the words "A registered sex offender is prohibited, after having received notice from the Marlborough Police Department that he/she is loitering within five hundred (500) feet of a school bus stop, from continuing to so loiter or from returning thereto" and inserting in place thereof the following words:-- A registered sex offender, after having received notice from the Marlborough Police Department that he/she is loitering by having remained for more than fifteen (15) minutes within five hundred (500) feet of a school bus stop, is prohibited from continuing to so loiter.
 - c. By striking out in subsection C, entitled "Penalties," in the third through the fifth lines thereof the words "In lieu of non-criminal disposition, registered sex offenders who commit an additional violation under this section, except for those who are not yet seventeen (17) years of age when they commit any such additional violation, **may be subject to immediate arrest under state law.**"
5. These amendments shall become effective immediately upon passage, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, SEPTEMBER 28, 2009** as date for a **PUBLIC HEARING** on the Application for Special Permit from Attorney Hoyt, on behalf of Clear Wireless LLC, for modification of a wireless communications facility located at 157 Union St., refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, SEPTEMBER 28, 2009** as date for a **PUBLIC HEARING** on the Application for Special Permit from Attorney Hoyt, on behalf of Clear Wireless LLC, for modification of a wireless communications facility located at 115/109 Onamog St., refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, SEPTEMBER 28, 2009** as date for a **PUBLIC HEARING** on the Application for Special Permit from Attorney Hoyt, on behalf of Clear Wireless LLC, for modification of a wireless communications facility located at 75 Donald Lynch Blvd., refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That a request for permission to use the Rail Trail for the annual Sgt. William Kirby Road Race which will take place on September 12, 2009, **APPROVED**; adopted.

ORDERED: That the communication from Thomas Wellen, Executive Director of Marlborough 2010 Inc. re: FY09 Financial Report, **FILE**; adopted.

ORDERED: That the communication from the Central Massachusetts Mosquito Control Project re: investigating resident's complaints on August 5, 12, 19, 26, and September 2, **FILE**; adopted.

ORDERED: That the minutes, Planning Board, June 8, 2009, **FILE**; adopted.

ORDERED: That the minutes, Traffic Commission, June 30, 2009, **FILE**; adopted.

ORDERED: That the communication from the Central Massachusetts Mosquito Control Project re: investigating resident's complaints on July 1, 8, 15, 22 and 29, **FILE**; adopted.

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

- A. Thomas and Barbara Etre, 36 Dove Rd., other property damage
- B. John Emond, 103 Old Charter Rd., pothole or other road defect
- C. Louis Albanesi, 92 Carey Ave., Revere, pothole or other road defect
- D. Charles Wehlage, 27 Ball Hill Rd., Berlin, pothole or other road defect
- E. Beverly Barber, 21 Highgate Rd., pothole or other road defect
- F. David Camara, 3 Davis Rd., Hudson, pothole or other road defect
- G. Bernie LeBlanc, 566 Bigelow St., other property damage
- H. Mark St. Jean, 39 Boise Rd., pothole or other road defect

Reports of Committees:

Councilor Ferro reported the following out of the Finance Committee:

Order No. 09-1002269 – Marlboro Savings Bank Tax Increment Financing (TIF): Councilor Delano excused himself from the City Council Chamber. The Finance Committee reviewed the Mayor's letter dated July 16, 2009 requesting the approval of the TIF proposal for the Marlboro Savings Bank. **Recommendation of the Finance Committee is to recommend approval 4-0 (Delano abstained).**

- The TIF agreement (Note the Solicitor will adjust the dates for the minimum cumulative new positions in Section B – page 3 to reflect the fiscal year the new employees are credited)

- The TIF plan
- The certified project application
- The economic opportunity area
- The City Council Resolution (Note the Solicitor will put the resolution in proper order with all the exhibits numbered for the August 17, 2009 council meeting)

Recommendation of the Finance Committee was to Suspend the Rules to vote on the Marlborough Savings Bank TIF; however with the lack of members present, the Acting Chair opted not to Suspend the Rules.

Suspension of the Rules requested - granted

ORDERED: That the re-appointment of Rustin Kyle to the Library Board of Trustees for a term expiring February 1, 2012, **APPROVED**; adopted.

Suspension of the Rules requested - granted

ORDERED: That the re-appointment of Leland Woodworth and appointment of Nena Bloomquist to the Arts Lottery Council for terms ending May 1, 2011, **APPROVED**; adopted.

Suspension of the Rules requested - granted

ORDERED: That the appointment of Mitchell Gorka as an alternate member of the Zoning Board of Appeals for a term ending three years from date of approval, **APPROVED**; adopted.

Suspension of the Rules requested - granted

ORDERED: That the appointment of Jay Whittaker as an alternate member of the Zoning Board of Appeals which expires two years from the date of Council approval, **APPROVED**; adopted.

Suspension of the Rules requested - granted

ORDERED: That the reappointments of William King and Lynn Faust to the Zoning Board of Appeals with terms expiring May 5, 2014, **APPROVED**; adopted.
Councilor Juairé abstained

Suspension of the Rules requested - granted

ORDERED: That an FY08 State and Tribal grant in the amount of \$286,000.00 offered through the US Environmental Protection Agency which provides reimbursement monies for the design and construction of upgrades to the Westerly Wastewater Treatment Facility in accordance with MGL, Chapter 44, Section 53A for purposes outlined, **APPROVED**; adopted.

Suspension of the Rules requested - granted

ORDERED: That the communication from Attorney Valeriani, on behalf of Verizon Wireless, re: request to **further** extend time limitations to permit, construct, operate and maintain a wireless communications facility at 303 Boundary St., to October 30, 2009 at 5:00 PM, Order No. 09-1002161B, **APPROVED**; adopted.

ORDERED: That the Operations and Oversight Committee review the City's policies and controls on postage and the reason(s) for the discontinued use of the City's bulk mail permit, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: That the Operations and Oversight Committee review the City's ordinances and policies regulating Street Openings and Restoration of Street Surfaces and the enforcement of the same, specifically with respect to Chapters 473 and 551 of the 2008 Marlborough City Code, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: That a Special Committee be established to oversee the upgrades of the Wastewater Treatment Plants. Said Committee will consist of Councilors Ossing and Delano to be chaired by the City Council President and will meet at 7PM prior to the first regular meeting of the month, with the first meeting to be held on Monday, September 14, 2009. The Mayor and/ or DPW Commissioner will be requested to attend to provide 10 – 15 minute updates to any attending members of the City Council, **APPROVED**; adopted.

ORDERED:

Eminent Domain Order of Taking

WHEREAS, the City Council of the City of Marlborough has determined that the public welfare, safety, and common convenience require that a certain portion of land located on the northerly corner of Maple Street and Valley Street as more particularly described herein be taken for the purpose of maintaining public safety improvements, including the use and maintenance of this area for highway purposes, and for other municipal purposes, and that the taking by eminent domain is reasonable and necessary to carry out the aforementioned purposes; and,

WHEREAS, all preliminary requirements of Massachusetts General Laws Chapter 79 having been complied with;

NOW, THEREFORE, IT IS HEREBY ORDERED that the City Council of the City of Marlborough, acting in accordance with the power and authority conferred by the City Charter, Division 1, Section 30, Massachusetts General Laws, Chapter 79 and every power and authority thereto enabling, and in the exercise of the power and authority conferred by said laws, does hereby take by Eminent Domain the fee simple interest and any other rights and interests in the following described land, including all trees and other vegetation thereon.

DESCRIPTION OF LAND TAKEN

A certain portion of land located on the northerly corner of Maple Street and Valley Street in Marlborough, Middlesex County, Massachusetts and being shown as LC Lot 9 on a plan entitled, "Taking Plan, Subdivision of Land Court Plan No. 8742C, Marlborough, Massachusetts (Middlesex County); Scale 1"=40'; Date: November 10, 2008, Prepared For: L-A 175 Maple Street Land Owner LLC, 900 Chapel Street, New Haven, Connecticut, Prepared By: GLM Engineering Consultants, Inc., 19 Exchange Street, Holliston, MA." said Plan to be recorded with the Middlesex South District Registry of Deeds together with an attested copy of this Order. Meaning and intending to take and taking by Eminent Domain the fee simple interest, shown as LC Lot 9 as described in the aforementioned plan, which is a portion of the land as described in

the deed recorded with the Middlesex South District Registry of Deeds in Book 48218, Page 138 and also recorded with the Middlesex South District Registry of Deeds in Certificate Number 237805 at Book 1327, Page 2.

OWNERS: L-A 175 Maple Street Land Owner LLC
 900 Chapel Street
 New Haven, Connecticut

The land consisting of LC Lot 9 as referred to in the description above is also shown on the City of Marlborough Assessors Map as a portion of Parcel 132 on Map 82. The total land area being taken consists of 459 ± square feet or 0.01 ± acres.

AWARDS

The City Council hereby makes the following awards for damages for the owner or owners of record:

<u>OWNER</u>	<u>MARLBOROUGH ASSESSORS MAP/PARCEL</u>	<u>AREA</u>	<u>AWARD</u>
L-A 175 Maple Street Land Owner, LLC	Portion of Map 82, Parcel 132	459 ±SF or 0.01 ± acres	\$0.00

APPROVED; adopted.

Yea: 8 – Nay: 0

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

Absent: Schafer, Seymour, Ossing

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:32 p.m.