



**CITY OF MARLBOROUGH**  
**OFFICE OF CITY CLERK**  
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**OCTOBER 29, 2007**

Regular meeting of the City Council held on Monday October 29, 2007 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Katz, Ferro, Juairé, Schafer, Webster, Clancy and Towle. Meeting adjourned at 9:08 p.m.

**ORDERED:** President Vigeant requested a moment of silence in memory of Steve Baldelli who passed away October 27, 2007. Out thoughts and prayers are with the family, **FILE**; adopted

**ORDERED:** Minutes, City Council meeting, OCTOBER 15, 2007, **FILE**; adopted.

**ORDERED:** That the WELCOME ceremony for our Japanese students from our sister city of Akiruno Japan, **FILE**; adopted.

**ORDERED:** Now being the time set for the PUBLIC HEARING on the petition of NSTAR to install 2000' of 8.00" plastic gas main as a system improvement to supply the Regency @ Assabet Ridge Development off Fitchburg St. and Crowley Dr., all were heard who wish to be heard, hearing adjourned at 8:17 p.m.; **IN PUBLIC SERVICES COMMITTEE**; adopted.

**ORDERED:** Now being the time set for the PUBLIC HEARING on the communication from the Council President re: proposed amendment to Section 200-17 "Table of Uses" of the City's Zoning Ordinance., all were heard who wish to be heard, hearing adjourned at 8:23 p.m.; **IN URBAN AFFAIRS COMMITTEE**; adopted.

**ORDERED:** At the Mayor's request to convene an executive session for the purpose of discussing strategy with respect to collective bargaining and/or litigation, the City Council moved to EXECUTIVE SESSION, **APPROVE**, returned to open meeting at 8:37 p.m.; adopted.

**Yea: 6 – Nay: 4**

**Abstain: 1 (Councilor Juairé)**

**Yea: Katz, Webster, Clancy, Towle, Pope, Levy**

**Nay: Ferro, Schafer, Ossing, Vigeant**

ORDERED: That the following budget transfer in the amount of \$1,400,000 for General Fund Health Insurance Trust to Stabilization account, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. #870-59610 \$1,400,000.00  
General Fund Health Insurance Trust

TO:

Acct. #836000-11515 \$1,400,000.00  
Stabilization

ORDERED: That the communication regarding certification of free cash, **FILE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, November 5, 2007** as date for a **PUBLIC HEARING** on the petition by NSTAR to relocate existing vaults in Maple St. with state of the art equipment and to provide non interruptible access to Marlborough Fire Department's parking facility, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, DECEMBER 3, 2007** as a date for a **PUBLIC HEARING** on the application for Special Permit from Sprint Wireless Broadband Company LLC, to modify the existing wireless facility located at 75 Donald Lynch Blvd, refer to **WIRELESS COMMUNICATION COMMITTEE , AND ADVERTISE**; adopted.

ORDERED: That the communication from the Marlborough Veterans Council regarding the Veteran's Day Parade, **FILE**; adopted.

ORDERED: That the communication from David B. Perini, Commissioner of the Executive Office for Administration and Finance, Division of Capital Asset Management, re: surplus state owned real property located in the City of Marlborough, refer to **OPEN SPACE PRESERVATION COMMITTEE**; adopted.

ORDERED: That Comprehensive Wastewater Management Plan and Environmental Impact Report Phase IV re: Assabet River Consortium, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the minutes of the Traffic Commission meeting of September 25, 2007, **FILE**; adopted.

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

**REPORTS OF COMMITTEES:**

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

**Order No. 07-1001675** - Communication from the Mayor re: amending the existing licensing agreement between the owner(s) of the property at 19 Weed Street and the City of Marlborough.

L&L reviewed the Mayor's letter dated September 20, 2007 and a proposed order drafted by the City Solicitor. The Solicitor brought into question City Council's ability to authorize the full extent of the requested amendment as well as the previously granted license as a portion of the layout on Weed Street may, in fact, be owned by the CDA

though the Redevelopment Authority. As such, the Solicitor recommended rescinding the previous License and issuing a new License both for the previously approved encroachments along with the new request to the extent City Council has such authority.

There was also discussion as to the inclusion of a “hold harmless” clause protecting the city from future claims for damage to the new brick façade as a result of the normal use and maintenance of the sidewalk areas. The Chair was in favor of including the “hold harmless” language; other members were not. **Recommendation of the Legislative and Legal Affairs Committee is to approve 2-1 (Levy opposed) the proposed order rescinding a prior License to Encroach as amended and grant a new License to Encroach for existing footings and handicap access ramp as well as a new brick façade , with no “hold harmless” language.**

Councilor Ossing reported the following out of the Finance Committee:

**Order No. 07-1001693 - Maximum Step for Firefighter Ms. Richards** - The FINCOM reviewed the Mayor’s letter dated October 10, 2007 that recommended that Tricia Richard of the Fire Department receive the maximum salary step commensurate with her experience and overall length of service. Councilor Juaire read a public disclosure statement so that he could participate in the discussions. **Recommendation of the Finance Committee is to approve 3-2 (Webster/Juaire opposed) a step 2 salary adjustment to \$46,799 retroactive to the start of employment.**

**Order No. 07-1001692 - Public Facilities Transfers for Clothing and Custodian Overtime** – The FINCOM reviewed the Mayor’s letter dated October 10, 2007 requesting transfers for the Public Facilities Department totaling \$15,200.00 from Reserve for Salaries (\$3,200.00) to Clothing and from Custodian (\$12,000) to Overtime account. The additional funding for clothing is the result of the contract for same coming after the FY08 budget submittal. The Public Facilities Department FY08 budget had \$8,800.00 approved due to the resignation of one employee and a second out on injury. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

**Order No. 07-1001654 - Fund Clerical Position for Code Enforcement Team** – The FINCOM reviewed the Mayor’s letter dated August 20, 2007 to consider the feasibility of establishing a CODE ENFORCEMENT TEAM to formalize and facilitate code enforcement in the City and that the Mayor be requested to fund a clerical position in the Building Department to assist the Code Enforcement Team in the housing code functions of the office. **Recommendation of the Finance Committee is to accept and place the order on file 5-0.** The Mayor was requested to develop a job description for the Code Enforcement team and the requested clerical position. Councilors are to provide the Mayor with input on the job description.

**Suspension of the Rules requested – granted; adopted.**

ORDERED: That the City Council **APPROVE** the application of NSTAR to install 2000 feet of 8.00” plastic gas main as a system improvement to supply the Regency @ Assabet Ridge Development off Fitchburg Street and Crowley Drive in Marlborough with the following conditions; adopted:

- a) Conditions set forth in the DPW road opening permit;
- b) Satisfactory completion and outcome of public hearing on October 29, 2007.

**Suspension of the Rules requested – granted; adopted.**

ORDERED: That the City Council of the City of Marlborough **APPROVE**, having received the attached notification from the Chief of the Marlborough Fire Department that municipal property previously purchased by the City, consisting of a deed to the Town of Marlborough dated January 3, 1869, recorded with the South Middlesex Registry of Deeds, Book 1063, Page 137, and deed to the City of Marlborough dated April 23, 1908, recorded with the South Middlesex Registry of Deeds, Book 3362, Page 359 (“the Property”), identified and described on a plan, to be recorded in the South Middlesex District Registry of Deeds, is no longer needed for Fire Department purposes, the City Council, by two-thirds vote pursuant to Mass. Gen. Laws c. 40, § 15A, hereby transfers the care, custody, management and control of the Property to itself for the purpose of disposition by sale; adopted.

**Yea: 11 – Nay: 0**

**Yea: Katz, Ferro Schafer, Juair, Webster, Clancy, Towle, Ossing, Pope, Vigeant, Levy**

**Suspension of the Rules requested – granted; adopted.**

ORDERED: That the City Council of the City of Marlborough **APPROVE**, having transferred to itself the care, custody, management and control of the Property, as described in Order No. 07-1001598, for the purpose of disposition by sale, hereby declares, pursuant to Mass. Gen. Laws c. 30B, § 16(a), that the Property is available for disposition by sale, and that said sale is subject to the following restrictions and terms, which shall run with the Property and shall be expressly included in any lease pertaining to said Property:

- 1) In the event that a restaurant, any entity serving alcoholic beverages of any kind to the public, and/or any entity providing entertainment of any kind to the public, is operating at the premises, then:
  - a) the serving of said alcoholic beverages, and the providing of said entertainment, shall be prohibited at said premises after 12:00 midnight on any day when said premises is open for operation;
  - b) appropriate ventilation shall be installed so as, in the opinion of the Marlborough Board of Health, to minimize any restaurant odors at neighboring properties to the greatest extent possible on any day when said restaurant is open for operation.

2) The exterior façade of the existing building, including brickwork, original lighting, entry-way doors (including garage bay doors) and windows, shall be retained as identical as possible to the building’s finished condition as previously proposed by Grantor. Any exterior changes proposed by Grantee shall be subject to review and written approval by the Mayor of the City of Marlborough or by the Mayor’s authorized designee. Grantee acknowledges that Grantee is aware that the building is within the Marlborough Center Historic District, a historic district on the National Register of Historic Places.

The Property is also subject to the agreement of the Grantee not to request from the City of Marlborough a Tax Increment Financing (TIF) agreement for the premises; and also to Grantee’s conveyance of an appropriate easement(s).

And, further, that the City Council sets the price to be paid to be \$850,000.00, and thus authorizes the Mayor, by simple majority vote pursuant to Mass. Gen. Laws c. 40, § 3, to execute the deed of the Property to WRT Management Corp., subject to the above restrictions and terms; adopted.

**Yea: 11 – Nay: 0**

**Yea: Katz, Ferro Schafer, Juairé, Webster, Clancy, Towle, Ossing, Pope, Vigeant, Levy**

**ORDERED:** That the City Council **APPROVE** the following budget transfer in the amount of \$115,000.00 for the Hemenway sidewalk project; adopted.

**FROM:**

Acct. # 83600-11515 \$115,000.00  
Stabilization

**TO:**

Acct. # 19300006-58514 \$115,000.00  
DPW Projects

**ORDERED:** That all orders before the City Council and its committees shall become null and void and have no effect at the end of the two-year legislative session; provided, however, that this rule shall not apply to any order pertaining to an application for a special permit or for an amendment to a special permit already issued, which order the City Council shall take final action upon at its earliest convenience after the start of the new two-year legislative session so as to comply with the statutory requirement that such action be taken within ninety days, as may from time to time be extended, after the date of the relevant public hearing, refer to **RULES COMMITTEE**; adopted.

**ORDERED:** That the City Council **APPROVE** the transfer of \$1,000,000.00 from Health Insurance Trust to Stabilization Account; adopted.

**FROM:**

Acct. # 870-59610 \$1,000,000.00  
Health Insurance Trust

**TO:**

Acct. # 836000-11515 \$1,000,000.00  
Stabilization

ORDERED: That the City of Marlborough **APPROVE** a donation in the amount of \$10,000 from Robert Valchuis for tree restoration relative to his Farm Rd. subdivision project with following:

**MOTION:** To accept the gift of \$10,000 from Robert Valchuis, thank Mr. Valchuis for the generous gift, and allow the DPW Commissioner to approve the expenditure of the funds for tree replacement with priority given to Farm Rd. and other adjacent streets; adopted.

ORDERED: That the City Council of the City of Marlborough, **APPROVE** having received the attached notification from the Commissioner of Public Works that municipal property, previously taken by the City through eminent domain, consisting of a portion of a sewer trunk line off Phelps Street (“the Property”) identified and described as “Parcel B” on a plan, to be recorded in the South Middlesex District Registry of Deeds, entitled “Plan of Land in Marlborough, MA, Municipal Utility Easement and Right-of-Way at 107 Phelps St., Owners: City of Marlborough, Date: 05/17/07, Scale: 1”=40,” by InLand Survey, Inc. dba Zanca Land Surveying, and containing approximately 9,725 sq. ft. +/-, is no longer needed for such purpose as long as the various contingencies specified in the Commissioner’s notification are met, the City Council, pursuant to the provisions of § 16(a) of Chapter 30B, hereby declares that the Property is available for disposition by sale;

Provided, however, that the Property may only be used for driveway improvements to the home, existing as of the date of the deed’s execution, at 107 Phelps Street, shown as Map 72, Parcel 11A on the Marlborough Assessors Maps; and further may only be used to allow the development of one new lot upon Map 72, Parcel 11A, subdivided to conform to the subdivision control law, as applicable, as well as setback and related requirements, all in accordance with a plan entitled “107 Phelps Street, Sketch Plan #3, Date: 03/14/06, Scale: 1”=20,” by InLand Survey, Inc. DBA Zanca Land Surveying;

And, further, that the City Council sets the minimum price to be paid pursuant to a determination of value attached hereto to be \$9,725.00, and thus authorizes the Mayor, by two-thirds vote, to convey the Property on such terms and conditions consistent with this order; adopted.

**Yea: 11 – Nay: 0**

**Yea: Katz, Ferro Schafer, Juairé, Webster, Clancy, Towle, Ossing, Pope, Vigeant, Levy**

ORDERED: The City Council **APPROVE**, by simple majority vote, a permanent sewer easement granted to the City, to include a right of way to and over the Property at 107 Phelps St. for the purpose of constructing and maintaining said easement for sewer purposes, and the easement area shall be kept free by the easement’s grantors, their successors and assigns, of all buildings, trees or vegetation which would affect said easement; adopted.

**Yea: 11 – Nay: 0**

**Yea: Katz, Ferro Schafer, Juairé, Webster, Clancy, Towle, Ossing, Pope, Vigeant, Levy**

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned 9:08 p.m., **FILE**; adopted.