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# **CITY OF MARLBOROUGH**

## OFFICE OF CITY CLERK

**Lisa M. Thomas**

**140 Main St.**

**Marlborough, MA 01752**

**(508) 460-3775 FAX (508) 460-3723**

**APRIL 23, 2018**

Regular meeting of the City Council held on Monday, April 23, 2018 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Delano, Juaire, Oram, Ossing; Robey; Doucette, Dumais, Tunnera; Irish and Landers. Absent: Clancy. Meeting adjourned at 8:55 PM.

ORDERED: That the Minutes of the City Council meeting APRIL 2, 2018, **FILE**; adopted.

ORDERED: That the MCDA transfer request in the amount of $400,000.00 which moves funds from Open Space Stabilization to the Marlborough Community Development Authority to convey 19 properties to the City of Marlborough, including a large parcel on Winter Street abutting Stevens Park, refer to **LEGISLATIVE & LEGAL AFFAIRS COMMITTEE & FINANCE COMMITTEE**; adopted.



ORDERED: That the City Clerk transfer request in the amount of $8,000.00 which moves funds from Reserve for Salaries to the City Clerk’s Advertising to fund legal advertisements, **APPROVED**; adopted.



ORDERED: That the Communication from the Mayor re: City of Marlborough Management Letter for FY2017, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the City of Marlborough hereby accepts section 3 of c. 64N of the Massachusetts General Laws, as amended, to impose an excise on the retail sales of marijuana for adult use at the rate of 3 percent, said excise to be deposited into the General Fund, refer to **FINANCE COMMITTEE**; adopted.

**Councilor Juaire recused**.

ORDERED: That the Communication from City Solicitor, Donald Rider re: Application for Special Permit, NEH Inc., d/b/a New England Hydroponics, 19 Brigham Street, Unit 6 in proper legal form, **MOVE TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That the Communication from City Engineer, Thomas DiPersio, re: Recommendations on the Petition from NGrid to install a new pole for service to the Shell Station at 342 Boston Post Road East, **MOVE TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That the Communication from Retirement Board, Chairman Brewster, re: Adoption of Section 34 of Chapter 176 of the Acts of 2011 which provides for an increase in the stipend paid to members of the Retirement Board not to exceed more than $4,500.00, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, JUNE 18, 2018** as **DATE FOR PUBLIC HEARING** On theApplication for Special Permit from Sandra Colligan, to demo existing house and build a new two story home at 21 Patten Drive, refer to **URBAN AFFAIRS COMMITTEE & ADVERTISE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, JUNE 18, 2018** as **DATE FOR PUBLIC HEARING** On theApplication for Special Permit from Attorney Falk, on behalf of Jefferson Street Residences, 27 Jefferson LLC, to build an 11 unit 2 story, multifamily condominium building at 27 Jefferson Street, refer to **URBAN AFFAIRS COMMITTEE & ADVERTISE**; adopted.

ORDERED: That the Application for Renewal of Junk Dealer’s/Second Hand License, Best Buy Stores, LP 1966, 601 Donald Lynch Boulevard, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Application for Renewal of Junk Dealer’s/Second Hand License, Best Buy Stores, LP 820, 769 Donald Lynch Boulevard, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Communication from Tiffany O’Hearn, of O’Hearns Tavern, 11b Florence Street, to add outdoor seating to their establishment, refer to **LEGISLATIVE & LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Communication from various residents and companies re: Opposition to the Proposed Farm Road Retirement Community Overlay District, refer to **URBAN AFFAIRS COMMITTEE AND LEGAL DEPARTMENT**; adopted.

ORDERED: That the Minutes, Parks & Recreation Commission, January 17, 2018 & February 14, 2018, **FILE**; adopted.

ORDERED: That the Minutes, Zoning Board of Appeals, March 27, 2018, **FILE**; adopted.

ORDERED: That the Minutes, License Board, January 31, 2018, February 28, 2018 & March 15, 2018; adopted.

ORDERED: That the Minutes, Conservation Commission, March 15, 2018, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, February 5, 2018 & March 5, 2018, **FILE**; adopted.

ORDERED: That the Minutes, School Committee, March 27, 2018, **FILE**; adopted.

ORDERED: That the Minutes, Board of Health, March 6, 2018, **FILE**; adopted.

ORDERED: That the Minutes, Commission on Disabilities, June 6, 2017, July 11, 2017, October 3, 2017, November 14, 2017 & March 6, 2018, **FILE**; adopted.

ORDERED: That the Minutes, Board of Assessors, March 28, 2018, **FILE**; adopted.

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

* 1. Jonathan Pezzoni, 125 Arrowhead Circle, Ashland, pothole or other road defect.
  2. Ray Giglio, 615 Concord Road, residential mailbox claim 2(b) & other property damage and/or personal injury.
  3. Richard Wiggin, 455 Farm Road, residential mailbox claim 2(b).

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

Marlboro City Council Finance Committee

**Monday April 9, 2018**

## In Council Chambers

Finance Committee Members Present: Chairman Ossing; Councilors Robey, Oram, and Irish.

Finance Committee Members Absent: Councilor Dumais.

Other Councilors in Attendance: Councilor Clancy and Landers.

The meeting convened at 7:00 PM.

1. **Order No. 18-1007208 – Transfers $17,807.50 from Reserve for Salaries to DPW Forestry & Parks Sick Leave Buy Back account** - The Finance Committee reviewed the Mayor’s letter dated March 15, 2018 requesting a transfer of $17,807.50 from the Reserve for Salaries Account to the DPW Forestry & Parks Sick Leave Buy Back account for an employee retirement. **The Finance Committee voted 4 - 0 to approve the transfer**.
2. **Order No. 18-1007236 – Review FY18 Abbreviated Budget and Recommend FY19 Budget Format** – The Finance Committee reviewed an order submitted by Councilor Ossing that appeared on the April 2, 2018 City Council agenda (Agenda item 25) to review the results of the FY18 abbreviated budget process and approve the abbreviated budget authorization format for all departments for the FY19 City budget.

By way of background information, the City Council approved the abbreviated budget process for FY18 on April 24, 2017 (Order Number 17-1006856A). In its 2006 Financial Management Review of the City of Marlboro, the Massachusetts Department of Revenue recommended that the City adopt several best financial practices including approving the City budget with the salary and expenditure accounts for each department as opposed to the past practice of approving each individual line item. This recommendation was also made in the City’s Fiscal Year 2016 audit performed by Roselli, Clark & Associates. Department heads would be able to add funds to their approved salary or expenditure accounts without City Council approval. The Auditor will provide a summary of all transfers within a department’s budget each month to the City Council.

The Finance Committee reviewed the FY18 abbreviated budget process (summarized in Attachment 1) and voted 4 – 0 that the process was working properly.

**The Finance Committee voted 4 - 0 to approve the order for the abbreviated budget format for the FY19 budget process that includes the sunset clause to have the City Council assess the results in April 2019 to determine if the practice will continue**.

Reports of Committee Cont’d:

**The Finance Committee agreed to support suspending the rules at the April 23, 2018 City Council meeting to approve the Order to review the results of the FY18 abbreviated budget process and approve the abbreviated budget authorization format for all departments for the FY19 City budget**.

The Finance Committee adjourned at 7:23 PM.

Councilor Irish reported the following out of the Personnel Committee:

Meeting Name: City Council Personnel Committee

Date: April 9, 2018

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 6:45 PM – Adjourned: 6:57 PM

Present: Chairman (Acting) Irish; Personnel Committee Member Councilor Landers; Councilors Clancy, Oram, and Ossing

Absent: Councilor Tunnera

**Order No. 18-1007196 - Communication from the Mayor regarding the Reappointments of Robin Williams and Jim Griffin to the Board of Health for three year terms, expiring the first Monday in February 2021.** Recommendation of the Personnel Committee is to approve the reappointments of Robin Williams and Jim Griffin to the Board of Health. Ms. Williams stated the Board of Health was busy and their most recent activity was the adoption of the FDA 2013 Food Code. Massachusetts still operates under the 1999 Food Code, but the Board of Health felt it was important to adopt the most recent regulations (the 2017 Food Code was not yet released). Mr. Griffin was originally appointed to the Board of Health in April 2013 and Ms. Williams was first appointed in 2014. **Motion made by Councilor Landers, seconded by the Chair, to approve the reappointments of Robin Williams and Jim Griffin. The motion carried 2-0.**

**Order No. 18-1007220 - Communication from the Mayor re: Reappointment of Assistant City Solicitor, Cynthia Panagore Griffin for a term to expire three years from date of confirmation.** Recommendation of the Personnel Committee is to approve the reappointment of Cynthia Panagore Griffin as Assistant City Solicitor. Ms. Panagore Griffin has been Assistant City Solicitor for the past eleven years and her diverse background makes her an asset to the City. **Motion made by Councilor Landers, seconded by the Chair, to approve the reappointment of Cynthia Panagore Griffin. The motion carried 2-0.**

**Motion made and seconded to adjourn. The motion carried 2-0. The meeting adjourned at 6:57 PM.**

***Reported by: Chairman (Acting) Irish***

***April 23, 2018***

Reports of Committee Cont’d:

Councilor Landers reported the following out the Public Services Committee:

Meeting Name: City Council Public Services Committee

Date: April 9, 2017

Time: 7:30 PM

Location: City Council Chambers, 2nd Floor, City Hall, 140 Main Street

Convened: 7:30 PM – Adjourned: 8:17 PM

Present: Chairman Landers; Public Services Committee Members Councilors Doucette and Irish; and Councilor Clancy

**Order No. 18-1007200 - Petition of National Grid to install new pole 34-5 for service to Shell Gas Station, 342 Boston Post Road East.** Josh Sztabor of National Grid appeared before the Public Services Committee to discuss National Grid’s petition to install new pole 34-5 for service to the Shell Gas Station at 342 Boston Post Road East. Mr. Sztabor did not have a schedule for the installation and he explained the existing poles would remain to continue service to the back. The new pole installation was strictly for the Shell gas station as they are updating to a new footprint for their Seasons Corner Market. The new pole would be thirty-five feet from an existing pole and it would be up to the other utilities to move their service to the new pole. **Motion made by Councilor Doucette, seconded by the Chair, to approve the petition. The motion carried 3-0.**

**Order No. 18-1007211 - Application for Renewal of Junk Dealer's/Second Hand License, ecoATM, LLC, 601 Donald Lynch Boulevard.** Police Chief Giorgi approved the CORI report for ecoATM and had no objection to their application for a Junk Dealer's/Second Hand License. ecoATM is an automated system to collect old cell phones and other small electronic devices and either provide payment or recycling services for the device if it has no monetary value. They are based in California and a representative’s attendance has not been required at their renewal hearing. There have been no complaints to the mall where the machine is located or the Marlborough Police Department regarding its operation. **Motion made by Councilor Doucette, seconded by the Chair, to approve the license renewal. The motion carried 3-0.**

**Order No. 18-1007212 - Application for Renewal of Junk Dealer's/Second Hand License, Roman Kimyagarov, Arthur & Sons Shoe Repair, 107 Main Street.** Police Chief Giorgi approved the CORI report for Roman Kimyagarov and had no objection to his application for a Junk Dealer's/Second Hand License. Mr. Kimyagarov appeared before the Public Services Committee to request renewal of his license to provide a service to his customers to buy their used and broken jewelry. He does not repair jewelry, only shoes in addition to leather items such as jackets, belts, and purses. **Motion made by Councilor Irish, seconded by the Chair, to approve the license renewal. The motion carried 3-0.**

Reports of Committee Cont’d:

**Order No. 18-1007225 - Application for Renewal of Junk Dealers/Second Hand License, Tony Bitar, Hannoush Jewelers, 601 Donald Lynch Boulevard.** Police Chief Giorgi approved the CORI report for Tony Bitar and had no objection to his application for a Junk Dealer's/Second Hand License. Mr. Bitar explained there is not much business for the purchase of gold, in the last year it was not more than $3,000.00 compared to the recession level highs during the years of 2008, 2009, and 2010. Jewelry sales are currently flat, not what they used to be, but the store has a loyal customer base dating back to when he started with this location’s opening in 1996. **Motion made by Councilor Irish, seconded by Councilor Doucette, to approve the license renewal. The motion carried 3-0.**

**Order No. 18-1007226 - Application for Renewal of Junk Dealers/Second Hand License, TVI, Inc. d/b/a Savers, 222A East Main Street.** Police Chief Giorgi approved the CORI report for Roger Gauthier and had no objection to their application for a Junk Dealer's/Second Hand License. David Manoogian, an attorney representing Savers, and Roger Gauthier, Store Manager for Savers, appeared before the committee to request renewal of their license. Mr. Gauthier reported their store has seen a significant increase in sales as well as profit. They met their profit goal as well as a stretch profit goal to receive their company’s President’s Award which was received by fifty out of the company’s three-hundred stores. Their stores fill a need within a community and recycle items if they cannot be resold or reused. Also, they offer donation drives to local non-profits who receive a payment from Savers for items collected during their drive.

The following conditions and waivers are part of their license:

Conditions

1. The license shall not be transferred without prior review and approval of the City Council.
2. The license hereby granted is issued to TVI, Inc. d/b/a Savers only and is applicable only to the 222A East Main Street location.
3. There will be no exterior storage, display or sales of merchandise, other than a recycle trailer, a cloth delivery trailer with items waiting to be processed, and a local trailer from one of Savers' charitable partners delivering merchandise to the store. No more than three such trailers and trucks shall be parked at the loading dock area in the rear of the building at any one time, and no such trailers or trucks shall be parked on any other side of the building at any time.
4. Donations shall take place only during the hours of operation which shall be 9:00 A.M to 9:30 P.M. Monday through Saturday and 10:00 A.M. to 7:00 P.M. on Sundays, and during the month of October from 9:00 A.M. to 10:00 P.M. Monday through Saturday and 10:00 A.M. to 10:00 P.M. on Sundays.
5. No Savers' donation boxes shall be permitted outside of the building.

Reports of Committee Cont’d:

1. No scrolling or rotating message signs shall be permitted as part of Savers' signage plans.
2. Glue boards shall be installed at locations within the business premises satisfactory to the Marlborough Board of Health and Savers, and a monthly monitoring program shall be implemented consisting of a log book for said glue boards satisfactory to the Board of Health.
3. This license shall be subject to revocation or suspension for noncompliance of the above conditions or other applicable local ordinances or state laws.
4. The waivers granted as part of this license shall no longer be applicable should Savers commence paying the general public for merchandise delivered without first obtaining the review and approval of the City Council.

Waivers

1. The waiver of Section 377-4 of the Ordinance as requested by Savers is not granted because Section 377-4 is not applicable to Savers' operations.
2. The waiver of Section 377-5 of the Ordinance is granted with respect to the last sentence thereof requiring the City Clerk to keep a list of persons employed by Savers. All other provisions of Section 377-5, other than the duty of the City Clerk to keep a record of the name and residence of each dealer, are not applicable to Savers.
3. The provisions of Sections 377-6, 377-7 and 377-9 of the Ordinance are waived in their entirety.

**Motion made by Councilor Irish, seconded by Councilor Doucette to approve the license renewal. The motion carried 3-0.**

**Order No. 18-1007227 - Application for Renewal of Junk Dealers/Second Hand License, Jean Rabelo, Post Road Used Auto Parts of Marlboro, Inc., 785 Boston Post Road.** Police Chief Giorgi approved the CORI report for Jean Rabelo and had no objection to their application for a Junk Dealer's/Second Hand License. Jean Rabelo and Julio Rabelo appeared before the committee to request renewal of their license. Their business has been good over the past year and they supply cars to firefighters for training purposes such as jaws of life practice. Their business is affected by the economy and they feel every rise and fall of the market. **Motion made by Councilor Doucette, seconded by Councilor Irish to approve the license renewal. The motion carried 3-0.**

Reports of Committee Cont’d:

**Order No. 18-1007228 - Application for Renewal of Junk Dealers/Second Hand License, Gerald Dumais, Dumais & Sons Second Hand Store, 65 Mechanic Street.** Police Chief Giorgi approved the CORI report for Gerald Dumais and had no objection to his application for a Junk Dealer's/Second Hand License. Mr. Dumais has no set hours, his procedure for opening is people call and leave a message with him and he arranges a time to meet them at his store. He has probably only opened between five and six times in the past year. He has several business endeavors one of which is cleaning out homes which is how he supplies his store and he has not done that in at least two to three months. He keeps his license up to date so he can continue this business. **Motion made by Councilor Irish, seconded by the Chair to approve the license renewal. The motion carried 3-0.**

**Motion made by Councilor Irish, seconded by Councilor Doucette, to adjourn. The motion carried 3-0. The meeting adjourned at 8:17 PM.**

***Reported by: Chairman Landers***

***April 23, 2018***

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

Meeting Name: City Council Urban Affairs Committee

Date: April 3, 2018

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 5:30 PM – Adjourned: 6:43 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Juaire, Landers, Doucette, and Tunnera; and Councilors Clancy, Ossing, and Robey; **Cynthia Panagore Griffin (Assistant City Solicitor, City of Marlborough); Arthur Bergeron and Brian Falk (**Mirick O’Connell)**; Gerry Carroll (**Williams Street Holdings, LLC)

**Order No. 17/18-1007054B - Application for Special Permit to construct an Ancillary Residential Community in a single 28-unit building to be built at 615 Williams Street in conjunction with the Village at Crane Meadow Retirement Community.** Urban Affairs Committee Chairman Delano read two letters, one from Building Commissioner Cooke and the other from Assistant City Solicitor Panagore Griffin, explaining why an Ancillary Residential Community was not allowed per the City of Marlborough’s Zoning Code. City Council Order No. 11-1002806-1A, dated April 25, 2011, removed Marlborough General Code section 650-22.C.14 containing reference to “ancillary residential community” and since that time an ancillary residential community has not been an allowable use in Retirement Community Overlay Districts.

However, the published versions of Section 650-22 of the Zoning Code erroneously included that section until the week of March 12, 2018 when the error was discovered. Attorney Arthur Bergeron spoke on behalf of his client requesting more time for them to determine if there is a suitable project for the site. Councilors were sympathetic to the applicant however as advised by the City’s Legal Department, an ancillary residential community is not an allowable use and they may not issue a special permit to Williams Street Holdings, LLC.

Reports of Committee Cont’d:

**Motion made by Councilor Juaire, seconded by the Chair, to deny the special permit application. The motion carried 5-0.**

**Motion made and seconded to adjourn. The motion carried 5-0. The meeting adjourned at 6:43 PM.**

***Reported by: Chairman Delano***

***April 23, 2018***

Meeting Name: City Council Urban Affairs Committee

Date: April 10, 2018

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 5:31 PM – Adjourned: 6:40 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Juaire, Landers, and Doucette; and Councilors Clancy, Ossing, and Robey; **Donald Rider (City Solicitor, City of Marlborough); Ethan Holmes (New England Hydroponics)**

**Absent: Councilor Tunnera**

**Order No. 18-1007199 - Application for Special Permit from New England Hydroponics, to use an existing property for retail sales of gardening supplies, 19 Brigham Street, Unit 6.** The Urban Affairs Committee met with Ethan Holmes of New England Hydroponics for a discussion of his application for a special permit to use an existing property for retail sales of gardening supplies at 19 Brigham Street, Unit 6. Mr. Holmes explained the business would sell a whole range of gardening supplies including but not limited to soils, organic soils, different fertilizers, growing equipment (hydroponic systems, buckets, and nursing pots), and various lighting. The applicant agreed there would no outside storage displays and it would be included as a condition (“No outdoor storage or product displays shall be permitted”) in the special permit. Mr. Holmes stated the signage would be like their Framingham location, with store name and logo, and it would be a backlit sign box 144” by 30” that he would obtain a sign permit from the City. Most fertilizers/chemicals would be consumer sized and the Fire Chief would be aware of their presence on the site and MSDS Sheets would be available as well.

Mr. Holmes indicated his lease was contingent on the special permit approval and he hoped to have the new location open by June 1st. The Urban Affairs Committee agreed to request a suspension of the rules at the April 23, 2018 City Council meeting to act on the special permit application. Chairman Delano requested the Legal Department place the Special Permit Decision in final legal from for the next agenda.

**Motion made by Councilor Juaire, seconded by the Chair, to approve the special permit application as amended. The motion carried 4-0.**

**Motion made by Councilor Juaire, seconded by the Chair, to request a suspension of the rules at the April 23, 2018 City Council meeting to act on the special permit application. The motion carried 4-0.**

Reports of Committee Cont’d:

Councilor Delano orally reported information pertinent to the following Orders which are still in Committee:

**Order No. 18-1007160 - That the Mayor Vigeant, DPW Commissioner Ghiloni, and Assistant DPW Commissioner Higgins address the Urban Affairs Committee regarding the closing of the Millham Water Treatment Plant last year, including the present status of the facility, associated financial impacts, and future plans for the site**.

**Order No. 18-1007209 - Communication from the Mayor re: City’s Water Infrastructure**.

**Motion made and seconded to adjourn. The motion carried 4-0. The meeting adjourned at 6:40 PM.**

***Reported by: Chairman Delano***

***April 23, 2018***

Meeting Name: City Council Urban Affairs Committee

Date: April 17, 2018

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 5:30 PM – Adjourned: 6:50 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Landers, Doucette, and Tunnera; and Councilors Clancy, Dumais, Ossing, and Robey; **Cynthia Panagore Griffin (Assistant City Solicitor, City of Marlborough)**

**Absent: Councilor Juaire (recused)**

**Order No. 18-1007163-2B (X18-1007151): Review of Proposed Zoning Ordinance Amendment to Chapter 650, several subsections as it pertains to Adult (formerly “Recreational”) Use Marijuana.** The Urban Affairs Committee met with Assistant City Solicitor Panagore Griffin for a discussion of the draft document for “Adult Use Marijuana, Marijuana Accessories Retail, and Marijuana Cultivator, Testing Lab, Manufacturer or Transporter and Revisions to Medical Marijuana Treatment Centers which enable integration of these other uses into Section 650-32”, dated April 6, 2018. Assistant City Solicitor Panagore Griffin made changes to the draft regulations based upon the previous meeting of the Urban Affairs Committee held on March 6, 2018 as well as State regulations. During their review of the document the committee made several amendments:

* 4. (47) (a) Remove reference to “Massachusetts State Highway”;
* 4. (47) (e) No outside displays or storage of marijuana, related supplies, equipment, or educational materials is permitted;
* 9. B. It was requested this paragraph be made more concise;
* 11. Definitions: Marijuana Accessories – Councilor Doucette made a motion, seconded by the Chair to include the word “exclusively” to the definition “, devices or materials of any kind that are exclusively intended or designed for use in planting,” The motion did not carry, 1-3.

Councilor Ossing encouraged the Urban Affairs Committee to report its recommendation of the amended ordinance out of committee and request the Legal Department place it in final form while awaiting the Planning Board’s recommendation.

Reports of Committee Cont’d:

Councilor Juaire recused.

**Motion made by Councilor Doucette, seconded by the Chair, to approve as amended. The motion carried 4-0.**

**Motion made and seconded to adjourn. The motion carried 4-0. The meeting adjourned at 6:50 PM.**

***Reported by: Chairman Delano***

***April 23, 2018***

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

ORDERED: That the City Council adopted an abbreviated budget format for the FY19 Budget process which includes a sunset clause to have the City Council assess the results in April 2019 to determine if the practice will continue, **APPROVED**; adopted.

ORDERED: That the Communication from City Engineer, Thomas DiPersio, re: Recommendations on the Petition from NGrid to install a new pole for service to the Shell Station at 342 Boston Post Road East, **FILE**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider re: Application for Special Permit, NEH Inc., d/b/a New England Hydroponics, 19 Brigham Street, Unit 6 in proper legal form, **FILE**; adopted.

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

ORDERED:

**DECISION ON A SPECIAL PERMIT**

**CITY COUNCIL ORDER NO. 18-1007199B**

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to NEH Inc., d/b/a New England Hydroponics (hereinafter “Applicant Tenant”), as provided in this Decision and subject to the following Findings of Facts and Conditions:

**FINDINGS OF FACTS**

# The landlord is Ivy Brigham Property, LLC, a limited liability company organized under the laws of Delaware with its principal place of business located c/o Ivy Realty, 102 Chestnut Ridge Road, Suite 204, Montvale, New Jersey 07645. Applicant Tenant is a duly organized and existing Massachusetts corporation with its principal place of business at 855 Worcester Road, Suite 2, Framingham, Massachusetts 01701 and has duly filed its Articles of Incorporation with the City Clerk of the City of Marlborough to operate its business at the subject location.

# The landlord is the title owner of the property located at 19 Brigham Street (the “Site”). The landlord and Applicant Tenant have executed a lease regarding Unit 6 at the Site, and its use pursuant to the terms of this special permit regarding Unit 6 at the Site. The Site is located within the Industrial zoning district, and Unit 6 consists of 6,000 square feet of gross floor area.

# The Applicant Tenant seeks permission to utilize Unit 6 at the Site as a commercial establishment for selling indoor and outdoor gardening supplies, equipment and merchandise, and products incidental thereto.

# The Applicant Tenant, on February 28, 2018, filed with the City Clerk of the City of Marlborough, an Application for a Special Permit under the provisions of § 650-17 and pursuant to the procedures specified in § 650-59 of the Marlborough Zoning Ordinance (the “Application”).

# The Site contains an existing commercial building. Unit 6 is shown in that building on plans submitted with the Application, the first said plan entitled “Site Plan,” and the second plan being a floor plan entitled “19 Brigham St. Unit # 6” (collectively, the “Plans”). No modifications are proposed to the exterior of the building, no structural modifications are proposed to the interior of the building, and no parking areas will be created or modified.

# The Applicant Tenant seeks a special permit allowing for a commercial establishment selling indoor and outdoor gardening supplies, equipment and merchandise, and products incidental thereto. The proposed establishment may be specially permitted within the Industrial zoning district as retail sales and service with less than 75,000 square feet of gross floor area.

# The Plans have been certified by the Building Commissioner, acting on behalf of the City Planner, as having complied with Rule 7 of the Rules and Regulations promulgated by the City Council for the issuance of a special permit.

# Pursuant to the Rules and Regulations of the City Council and the provisions of M.G.L. c. 40A, the City Council established a date for public hearing for the Application and the City Clerk caused to be advertised said date in the MetroWest Daily News and sent written notice of said hearing to those abutters entitled to notice under law.

# The Marlborough City Council pursuant to M.G.L. c. 40A held a public hearing on April 2, 2018, concerning the Application. The hearing was opened and closed at that meeting.

# The Applicant presented evidence at the public hearing detailing the proposed use and its limited impact upon City services, the neighborhood and traffic.

# At the public hearing, Ethan Holmes, who will be managing the operation of the business and is the Applicant Tenant, described the proposed business as being a commercial establishment selling indoor and outdoor gardening supplies, equipment and merchandise and products incidental thereto. In response to questions from city councilors, he indicated that the facility would be open to the general public as a retail operation.

# No member of the public spoke, either in favor or in opposition to the proposal.

1. Following the public hearing, the Urban Affairs Committee held a meeting on April 10, 2018 during which this Application was discussed.

**REASONS FOR APPROVAL OF APPLICATION FOR SPECIAL PERMIT**

## The City Council finds that the Applicant Tenant has complied with all Rules and Regulations promulgated by the Marlborough City Council for an application as they pertain to the requested special permit (the “Special Permit”).

## The use of Unit 6 for a commercial establishment selling indoor and outdoor gardening supplies, equipment and merchandise, and products incidental thereto is an appropriate use of the Unit 6-portion of the Site and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough, subject to appropriate terms and conditions provided for herein. The use sought and its impacts and characteristics are not in conflict with the public health, safety, convenience and welfare, provided the safeguards and limitations imposed herein are met.

## The City Council, pursuant to its authority under M.G.L. c. 40A, § 9 and Chapter 650 of the Marlborough City Code, GRANTS the Applicant Tenant, its successors and assigns, a Special Permit to operate for a commercial establishment selling indoor and outdoor gardening supplies, equipment and merchandise, and products incidental thereto, as per plans filed with the City Council and the City Clerk, SUBJECT TO THE FOLLOWING CONDITIONS, which shall be applicable to Applicant Tenant’s successors and assigns, and a violation of which shall be a violation of this Special Permit:

**CONDITIONS**

# Signage. Any signage installed or erected on the Site shall meet the requirements of the Sign Ordinance of the City of Marlborough, without variance.

# Parking. No on-street parking shall be permitted on Brigham Street or any other abutting side street or public way.

# Limits of Use. The proposed use of the premises is for use as a commercial establishment selling indoor and outdoor gardening supplies, equipment and merchandise, and products incidental thereto.

# No Outdoor Storage or Outdoor Product Display. No outdoor storage or outdoor product display shall be permitted at the Site.

1. Certificate of Occupancy Required. No use of the premises will be made pursuant to this Special Permit unless and until a Certificate of Occupancy has been obtained from the Building Commissioner regarding the change of use of the premises.
2. No Expansion of Use Area or Change in Area Configuration. Only the area of Unit 6, containing approximately 6,000 sq. ft., which has been specified in the Plans attached hereto, will be used for the proposed use. To the extent that a substantial increase in, or a change in the configuration of, the area used for this use is desired, the Building Commissioner shall determine whether such increase or change constitutes a substantial change of the permitted use, and if so, no such area increase or configuration change shall be permitted unless and until this Special Permit has been modified by the City Council.
3. Recordation. In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant Tenant shall, at its expense, record this Special Permit with 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 hearing being filed. The Applicant Tenant shall provide a copy of the recorded Special Permit to the City Clerk, the City Solicitor, and the Building Commissioner.

**Yea: 10 – Nay: 0 – Absent: 1**

**Yea: Delano, Doucette, Dumais, Tunnera, Irish, Landers, Juaire, Oram, Ossing & Robey**.

**Absent: Clancy**.

ORDERED:

**K-5 ELEMENTARY SCHOOL BOND**

That the City of Marlborough, Massachusetts (the “City”) appropriate the amount of Fifty-Six Million, Four Hundred Eighteen Thousand, Three Hundred and Thirty-Eight Dollars ($56,418,338) for the purpose of paying the cost of (i) the construction of a proposed new K-5 Elementary School, including parking lots for such facility, to be constructed in the City on the site of an existing athletic field located on a portion of land on Poirier Drive, which land is owned by the City and known and numbered on the Assessors Map of the City as Map 30, Parcel 12, (ii) the reconstruction of Poirier Drive, which is a public way that will provide access to the school, and (iii) the renovation of athletic fields located on Poirier Drive adjacent to the school, including the payment of all costs incidental or related thereto (collectively, the “Project”), which school facility shall have an anticipated useful life as an educational facility for the instruction of school children for at least 50 years, and for which the City may be eligible for a grant from the Massachusetts School Building Authority (“MSBA”), said amount to be expended under the direction of the School Building Committee. To meet this appropriation, the Comptroller/Treasurer is authorized to borrow said amount under M.G.L. Chapter 44, as amended and supplemented, or pursuant to any other enabling authority and to issue bonds or notes of the City therefor. Any premium received by the City upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. Chapter 44, Section 20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount. The City acknowledges that the MSBA’s grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any project costs the City incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the City; provided further that any grant that the City may receive from the MSBA for the proposed Project shall not exceed the lesser of (1) sixty-seven and seventy-one hundredths percent (67.71%) of eligible approved project costs, as determined by the MSBA, or (2) the total maximum grant amount determined by the MSBA, and that, if invited to collaborate with the MSBA on said Project, the amount of borrowing which is authorized pursuant to this vote shall be reduced by any grant amount set forth in the Project Funding Agreement that may be executed between the City and the MSBA.

**APPROVED**; adopted.

**Yea: 8 – Nay: 2 – Absent: 1**

**Yea: Delano, Doucette, Dumais, Irish, Juaire, Oram, Ossing & Robey**.

**Nay: Tunnera & Landers**.

**Absent: Clancy**.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:55 PM.