

Councilors-at-Large

Mark A. Oram
Michael H. Ossing
Samantha Perlman
Kathleen D. Robey



Ward Councilors

Ward 1 – Laura J. Wagner
Ward 2 – David Doucette
Ward 3 – J. Christian Dumais
Ward 4 – Teona C. Brown
Ward 5 – John J. Irish
Ward 6 – Sean A. Navin
Ward 7 – Donald R. Landers, Sr.

Council President

Michael H. Ossing

Council Vice-President

Kathleen D. Robey

CITY OF MARLBOROUGH CITY COUNCIL MEETING MINUTES MONDAY, FEBRUARY 13, 2023

The regular meeting of the City Council was held on Monday, February 13, 2023, at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Ossing, Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Perlman & Robey. Meeting adjourned at 9:12 PM.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of the City Council meeting, JANUARY 23, 2023, **FILE**; adopted.

That the PUBLIC HEARING on the Proposed Ordinance Amendment to Chapter 315 “Enforcement”, §2 “Non-criminal Disposition” to ensure consistency with state law as submitted by the Mayor and Board of Health, Order No. 23-1008796, all were heard who wish to be heard, hearing closed at 8:06 PM, adopted.

Councilors Present: Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Ossing, Perlman & Robey.

Motion by Councilor Perlman, seconded by the Chair to adopt the following:

ORDERED: That the Communication from Council President Ossing, re: Appointment of Councilor Robey as Council Liaison to assist with the Multifamily Development Review Criteria and Guidelines working group, **FILE**; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$15,500.00 from the MA Emergency Management Agency (MEMA) awarded to Marlborough Emergency Management to be used to fund the acquisition of additional equipment and supplies for an emergency shelter; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptances in the amount of \$175,000.00 from the MA Office of Travel and Tourism awarded to the Department of Public Works to be used for upgrades and repairs to the Westerly Water Treatment Plant and the cost for roof replacement at the Lake Williams pumping station; adopted.

CITY OF MARLBOROUGH									
BUDGET TRANSFERS --									
	DEPT:	Treasurer/Collector				FISCAL YEAR:	2023		
		FROM ACCOUNT:				TO ACCOUNT:			
Available									Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance
\$42,403.63	\$25,100.00	11330002	50520	Principal Clerk	\$25,100.00	11330001	50040	Treasury/Payroll Manager	\$0.00
	Reason:	Vacant position				Original assessment was amended			
\$194,690.51	\$194,690.51	11990006	53565	COVID 19	\$156,803.00	13900006	53280	Assabet Valley Regional	\$2,610,177.50
	Reason:	Funds no longer needed				Original assessment was amended			
\$112,500.00	\$79,112.49	11330006	57850	Bond Issue Expense	\$98,000.00	11490006	53999	Tax Title-Other Services	\$524.42
	Reason:	Costs will be offset with premiums				Aggressively going after delinquent properties			
					\$19,000.00	11440004	53999	Collector-Other Services	\$500.72
	Reason:					Aggressively going after delinquent properties			
	\$298,903.00	Total			\$298,903.00	Total			

	CITY OF MARLBOROUGH										
	BUDGET TRANSFERS --										
	DEPT:	DPW - East Plant					FISCAL YEAR:	2023			
		FROM ACCOUNT:					TO ACCOUNT:				
Available										Available	
Balance	Amount	Org Code	Object	Account Description:		Amount	Org Code	Object	Account Description:		Balance
\$190,120	\$20,000.00	60081001	50850	Treatment Plant Operator		\$20,000.00	60081006	52464	Rep/Maint - East Plant		\$25,700.30
	Reason:	Excess due to vacancy					Increased equipment repair				
\$66,100	\$20,000.00	60081001	50750	Equipment Operator		\$20,000.00	60081006	52464	Rep/Maint - East Plant		\$25,700.30
	Reason:	Excess due to vacancy					Increased equipment repair				
\$510,044	\$183,000.00	60086006	52935	Solid Waste Disposal		\$183,000.00	60081006	55950	East Waste Water		\$25,637.81
	Reason:	Less sludge than anticipated					Increased chemical cost				
\$510,044	\$35,000.00	60086006	52935	Solid Waste Disposal		\$35,000.00	60081003	51310	Overtime - Regular		\$16,588.18
	Reason:	Less sludge than anticipated					Increased overtime usage				
	\$258,000.00	Total				\$258,000.00	Total				

CITY OF MARLBOROUGH BUDGET TRANSFERS --										
	DEPT:	DPW - West Plant					FISCAL YEAR:	2023		
		FROM ACCOUNT:					TO ACCOUNT:			
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$510,044	\$30,000.00	60086006	52935	Solid Waste Disposal	\$30,000.00	60085003	51310	Overtime - Regular		\$21,463.62
	Reason:	Less sludge than anticipated					Increased overtime usage			
\$510,044	\$70,000.00	60086006	52935	Solid Waste Disposal	\$70,000.00	60085006	55980	West Waste Water		\$87,481.57
	Reason:	Less sludge than anticipated					Increased chemical cost			
\$510,044	\$40,000.00	60086006	52935	Solid Waste Disposal	\$40,000.00	60085006	52463	Rep/Maint - West Plant		\$2,514.03
	Reason:	Less sludge than anticipated					Additional repair/maint needed			
\$53,551	\$7,500.00	60081001	50910	Hd Treatment Plant Operator	\$7,500.00	60085006	52463	Rep/Maint - West Plant		\$2,514.03
	Reason:	Excess due to vacancy					Additional repair/maint needed			
	\$147,500.00	Total			\$147,500.00	Total				

CITY OF MARLBOROUGH BUDGET TRANSFERS --										
	DEPT:	DPW - Sewer					FISCAL YEAR:	2023		
		FROM ACCOUNT:					TO ACCOUNT:			
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$510,044	\$27,000.00	60086006	52935	Solid Waste Disposal	\$27,000.00	61090006	52320	Water - MWRA		\$0.00
	Reason:	Less sludge than anticipated					Increased chemical cost			
\$510,044	\$90,000.00	60086006	52935	Solid Waste Disposal	\$90,000.00	60080006	55660	Pumping Station		\$2,625.52
		Less sludge than anticipated					Increased equipment repair			
	\$117,000.00	Total			\$117,000.00	Total				

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT:		DPW - Water				FISCAL YEAR:		2023	
FROM ACCOUNT:						TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$59,500	\$45,000.00	14001101	50700	Grade 2 Engineer	\$45,000.00	60080004	53110	Legal Services	\$0.00
Reason:		Excess due to vacancy				Northborough - legal fees			
\$147,929	\$15,000.00	61090001	50690	Foreman	\$15,000.00	60080004	53110	Legal Services	\$0.00
Reason:		Excess due to vacancy				Northborough - legal fees			
\$190,120	\$20,000.00	60081001	50850	Treatment Plant Operator	\$20,000.00	60080004	53110	Legal Services	\$0.00
Reason:		Excess due to vacancy				Northborough - legal fees			
\$34,864	\$20,000.00	14001503	51240	Part-Time Help	\$20,000.00	60080004	53110	Legal Services	\$0.00
Reason:		Excess due to vacancy				Northborough - legal fees			
\$100,000.00		Total			\$100,000.00	Total			

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT: DPW - Facilities and Administration						FISCAL YEAR: 2023			
FROM ACCOUNT:						TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$97,950.22	\$20,000.00	11920003	50560	Custodian	\$20,000.00	11920006	52469	Rep/Maint Buildings	\$91,529.03
Reason:		Excess due to vacancy				Increased building repair			
\$42,300.00	\$42,300.00	11920001	50291	Asst. Comm. - Facilities	\$42,300.00	13032006	52469	Rep/Maint Buildings	\$177,563.27
Reason:		Excess due to vacancy				Increased building repair			
\$26,140.00	\$8,000.00	13032001	50291	Asst. Comm. - Facilities	\$8,000.00	11920006	53999	Other Services	\$52,639.91
Reason:		Excess due to vacancy				Increased material cost			
\$26,140.00	\$700.00	13032001	50291	Asst. Comm - Facilities	\$700.00	14001002	50062	Financial Anaylst	\$24,789.27
Reason:		Excess due to vacancy				Former employee benefit cost			
\$71,000.00		Total			\$71,000.00	Total			

	CITY OF MARLBOROUGH									
	BUDGET TRANSFERS --									
	DEPT:	DPW - Fleet and RDF				FISCAL YEAR:		2023		
		FROM ACCOUNT:				TO ACCOUNT:				
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$66,100	\$7,000.00	60081001	50750	Equipment Operator	\$7,000.00	14001403	51310	Overtime - Regular		\$3,091.72
	Reason:	Excess due to vacancy				Usage due to vacancy				
\$66,100	\$30,000.00	60081001	50750	Equipment Operator	\$30,000.00	14003003	51310	Overtime - Regular		\$4,915.69
	Reason:	Excess due to vacancy				Usage due to vacancy				
	\$37,000.00	Total			\$37,000.00	Total				

		CITY OF MARLBOROUGH								
		BUDGET TRANSFERS --								
	DEPT:	FIRE					FISCAL YEAR:	2023		
		FROM ACCOUNT:					TO ACCOUNT:			
Available									Available	
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance	
\$337,330.59	\$50,000.00	12200001	50810	Fire Lieutenant	\$50,000.00	12200006	52560	Vehicle Repair & Maint.	\$96,934.49	
	Reason:	Vacancy				Cost increases due to service issues w/ fleet				
\$20,007.00	\$1,500.00	12200002	50400	Part time Clerk	\$1,500.00	12200006	51990	Meal allowance	\$940.82	
	Reason:	Vacancy				Significant events requiring mutual aid from several communities increased rehab expenses				
\$337,330.59	\$10,000.00	12200001	50810	Fire Lieutenant	\$10,000.00	12200007	58512	Fire Dept Equipment	\$10,812.37	
	Reason:	Vacancy				Equipment for new Squad 1				
\$55,005.86	\$15,000.00	12200003	51430	Longevity	\$15,000.00	12200007	58512	Fire Dept Equipment	\$10,812.37	
	Reason:	Retirements				Equipment for new Squad 1				
\$20,007.00	\$10,000.00	12200002	50400	Part time Clerk	\$10,000.00	12200006	58590	Protective Equipment	\$22,494.80	
	Reason:	Vacancy				New hire cost over runs				
	\$86,500.00	Total			\$86,500.00	Total				

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	IT					FISCAL YEAR:	2023		
		FROM ACCOUNT:					TO ACCOUNT:			
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$50,000.00	\$29,000.00	11550002	50520	Principal Clerk - IT	\$29,750.00	11550006	53420	Telephone-City		\$12,691.00
	Reason:	Position vacant for part of the year				Due to upgrade of phone switches				
\$129,758.84	\$30,500.00	16100003	51261	Part-Time Library Clerks	\$29,750.00	11550006	53421	Telephone-School		\$2,533.53
	Reason:	Vacancies				Due to upgrade of phone switches				
	\$59,500.00	Total			\$59,500.00	Total				

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Legal					FISCAL YEAR:	2023		
		FROM ACCOUNT:					TO ACCOUNT:			
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$29,093.62	\$8,000.00	11510001	50030	Paralegal	\$48,500.00	11510004	53110	Legal Services		\$4,552.50
	Reason:	Position vacant for part of the year				Needed to fully fund through June 30th				
\$5,906,264.80	\$40,500.00	10000	35900	Undesignated Fund Balance						
	\$48,500.00	Total			\$48,500.00	Total				

CITY OF MARLBOROUGH									
BUDGET TRANSFERS --									
	DEPT:	Human Resources				FISCAL YEAR:	2023		
		FROM ACCOUNT:				TO ACCOUNT:			
Available									Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance
\$129,758.84	\$22,775.00	16100003	51261	Part-Time Library Clerks	\$15,000.00	11520001	50530	HR Director	\$32,102.15
	Reason:	Vacancies				Needed to fully fund through June 30th			
					\$7,775.00	11520006	57380	Conference & Training	\$33,190.22
	Reason:					To cover requested training through June 30th			
	\$22,775.00	Total			\$22,775.00	Total			

CITY OF MARLBOROUGH									
BUDGET TRANSFERS --									
	DEPT:	Board of Health				FISCAL YEAR:	2023		
		FROM ACCOUNT:				TO ACCOUNT:			
Available									Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance
\$10,595.00	\$1,071.68	15120001	50220	Sealer of Weights-BOH	\$450.00	15120003	51430	Longevity	\$0.00
	Reason:	Available funds				Employee eligible but was not budgeted			
					\$621.68	15120003	51920	Sick Leave Buy Back	\$0.00
	Reason:					Employee eligible but was not budgeted			
	\$1,071.68	Total			\$1,071.68	Total			

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the City Council authorizes increasing the maximum amount that may be expended from the Public Safety Revolving Fund during fiscal year 2023 as set forth in Council Order No. 22-1008604B-1, from \$120,000.00 to \$203,000.00, referred to **FINANCE COMMITTEE**; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Communication from the Mayor, re: Proposed Order to Amend the Senior Citizen Property Tax Work Off Program, to increase the amount of the tax deduction from \$1,000.00 to \$1,500.00 to eligible seniors, referred to the **FINANCE COMMITTEE**; adopted.

WHEREAS, the City of Marlborough accepted Massachusetts General Laws Chapter 59, § 5K (City Council Order No. 12-1004062) authorizing the establishment of a property tax work-off program for senior citizens beginning in FY 2013;

WHEREAS, the City adopted local rules for the program as set forth in City Council Order No. 12-1004062, later amended in 2019 by City Council Order No. 19-1007547;

WHEREAS, the City seeks to increase the maximum abatement that senior citizen volunteers may earn for a fiscal year in this program from \$1,000.00 to \$1,500.00;

NOW THEREFORE, it is hereby ordered that the City adopts the following local rules for the program, superseding the above-referenced prior adopted local rules, **effective** :

CITY OF MARLBOROUGH

SENIOR CITIZEN PROPERTY TAX WORK-OFF ABATEMENT PROGRAM RULES

- A. Age. The individual applying to participate in the program must have attained the age of sixty (60) years prior to the start of the tax year for which that applicant seeks a reduction in his or her real property tax obligation.
- B. Property Ownership. The applicant seeking the reduction must have resided in the City for at least five (5) consecutive calendar years prior to the start of the tax year for which that applicant seeks a reduction in his or her real property tax obligation.

The property as to which the tax reduction is sought must be owned by, or serve as the primary residence of, the applicant seeking the reduction. Qualified rental properties must be owner-occupied.

The property as to which the tax reduction is sought shall be eligible for only one (1) abatement per tax year, no matter how many individuals may be the record owners of that property.

- C. Qualifications The applicant seeking the reduction must have annual gross income, as calculated by the Department of Revenue, that qualifies for the senior circuit breaker tax credit in the calendar year prior to the start of the tax year for which that applicant seeks a reduction in his or her real property tax obligations.

No individual is eligible to seek a reduction in his or her real property tax obligations if, for the tax year he or she would otherwise be eligible, he or she is employed by the City of Marlborough on either a full-time or part-time basis.

All individuals will be required to disclose any potential or perceived conflicts of interest on their application, including but not limited to, residing in the same residence or household with a full or part-time City employee, and working for a business or entity that performs contractual services for the City.

D. Maximum Abatement and Hourly Rate The maximum abatement that a participant may earn is \$1,500.00 per fiscal year. A participant will receive credit for their services at an hourly rate equal to the state's minimum wage rate (currently \$15.00 per hour, therefore, a participant must work a total of 100 hours to receive the maximum abatement).

E. Program Administration Limitations If the number of eligible applicants for this program exceeds the number of available positions in a given fiscal year, a lottery shall be held by the Council on Aging to determine placement. From time to time, eligible applicants who possess unique skills or talents that would aid municipal operations may be placed in positions upon direct approval of the Mayor. The number of annual participants will not exceed 30 (fractional volunteers can be combined to equal one participant) without prior City Council approval.

The Council on Aging, in cooperation with the Assessor's Office and the Personnel Department of the City, shall have the responsibility to maintain a record for each applicant participating in the program, including but not limited to records for the number of hours of service volunteered by each applicant and the total amount by which his or her real property tax obligation has been reduced on his or her tax bill. A copy of such records shall be provided to the applicant prior to the issuance of his or her actual tax bill.

Prior to the end of each fiscal year, the Mayor's office shall furnish an annual report and summary of this program to the City Council.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Appointment of Chad Carter as the Executive Director of the Community Development Authority for a 3-year term to expire on January 31, 2026, **APPROVED**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Reappointment of Diane Smith as City Auditor for a 3-year term to expire on February 24, 2026, **APPROVED**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Reappointment of Michael Hennessy as Director of Veterans' Services for a 3-year term to expire on March 23, 2026, **APPROVED**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That Reappointments to the Council on Aging for 4-year terms of Patricia Gallier and Leslie Biggar to expire on May 4, 2026, **APPROVED**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Reappointments to the Library Board of Trustees for 3-year terms of Thomas Abel to expire January 7, 2025, William Brewin to expire September 23, 2024, Rustin Kyle to expire September 23, 2024, Janice Merk to expire February 2, 2024, and Robyn Ripley to expire February 1, 2025, **APPROVED**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the City Council of the City of Marlborough hereby authorizes the Mayor, on behalf of the City of Marlborough, to enter into and execute a Local Initiative Program (LIP) Regulatory Agreement and Declaration of Restrictive Covenants for Rental Project (Local Action Units), in substantially the form attached hereto, with the Commonwealth of Massachusetts Department of Housing and Community Development and Green District Owner, LLC. Said Regulatory Agreement is relative to the first phase of the "Green District" residential development on Simarano Drive, as required by Condition No. 6 (Affordable Units) of the Special Permit decision of the City Council (Order No. 19-1007762), **APPROVED**; adopted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That the Proposed Ordinance Amendment to Chapter 473 "Poles, Wires and Conduits" to amend §30 "Aesthetics and Additional City Requirements" to address siting requirements for small cell wireless facilities, including installation equipment, referred to the **PUBLIC SERVICES COMMITTEE & ORDERED ADVERTISED**; adopted.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT CHAPTER 473 OF THE CODE OF THE CITY OF MARLBOROUGH BE AMENDED AS FOLLOWS:

- I. By amending Chapter 473 (Poles, Wires and Conduits), Section 473-30 (Aesthetics and additional City requirements), Subsection A(7) to read as follows (new text shown as underlined, deleted text shown as ~~strikethrough~~):

For purposes of this chapter, a small cell wireless facility shall mean "small wireless facilities" as defined in 47 C.F.R. 1.6002(1) as may be amended.

The maximum height of any antenna mounted to an existing pole shall not exceed 24 inches above the height of the then-existing pole, provided that in any event, all small cell wireless facilities shall:

(a) Be mounted on structures 50 feet or less in height including their antennas as defined in 47 C.F.R. § 1.1320(d); or

(b) Be mounted on structures no more than 10 percent taller than other adjacent structures; or

(c) Not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.

~~(a) No small cell wireless facility shall be located on a pole that is less than 26 feet in height; and~~

~~(b) No facility shall exceed 35 feet in height, including but not limited to the pole and any antenna that produces above the pole.~~

- II. By amending Chapter 473 (Poles, Wires and Conduits), Section 473-30 (Aesthetics and additional City requirements), Subsection A(5) to read as follows (new text shown as underlined, deleted text shown as ~~strikethrough~~):

Small cell wireless installation equipment (meters, boxes, etc.) shall be mounted on the pole a minimum of ~~11~~ 8 feet above ground level and a maximum of 9 feet above ground level.

- III. The effective date of these amendments shall be the date of passage.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That the Communication from Assistant City Solicitor Jeremy McManus, re: Application for Special Permit by Brian Martinelli on behalf of Dish Wireless to install 3 new antennas and a 5'x 7' platform on an existing cell tower located on city property located at 860 Boston Post Road, in proper legal form, Order No. 22/23-1008710, **MOVED TO ITEM 24 & FILE**; adopted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That the Communication from Assistant City Solicitor Jeremy McManus, re: Proposed Order of Acceptance along with acceptance plan and description of easements regarding Goodale Estates Subdivision, Acceptance of Jenks Lane as Public Way, in proper legal form, Order No. 22-1008767, **MOVED TO REPORTS OF COMMITTEE & FILE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Request for Approval of a Flat Wall Sign, Harry's Construction, 561 Boston Post Road East, within the Wayside District, referred to the **URBAN AFFAIRS COMMITTEE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Request for Approval of two (2) Replacement Flat Wall Signs, and Replacement of Free-Standing Sign Panels, Home Décor Group, 576 Boston Post Road East, within the Wayside District, **APPROVED**; adopted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That the Communication from the Planning Board, re: Favorable Recommendation of Goodale Estates Subdivision, Acceptance of Jenks Lane as Public Way, Order No. 22-1008767, **FILE**; adopted.

Motion by Councilor Oram, seconded by the Chair to adopt the following:

ORDERED: That the Communication from the Central MA Mosquito Control Project, re: Budget Notification for FY24 and Compliance Certification Policy, **FILE**; adopted.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of following Boards, Commissions and Committees, **FILE**; adopted.

- a) School Committee, January 10, 2023.
- b) Council on Aging, November 29, 2022.
- c) Library Trustees, September 22, 2022.
- d) Zoning Board of Appeals, January 31, 2023.

Motion by Councilor Perlman, seconded by the Chair to adopt the following:

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

- a) Jessica Camara, 43 Curtis Avenue, Unit B, pothole or other road defect.
- b) Emmanuel Diaz, 19B Cook Lane, pothole or other road defect.
- c) Arnold Johansen, 226 Stow Road, residential mailbox claim (2a).
- d) Heath Karp, 113 Highland Street, other property damage and/or personal injury.
- e) Herzen Reis, 12 Gates Avenue, residential mailbox claim (2b).
- f) Kevin Ripston, 10 Dwight Avenue, Natick, pothole or other road defect.
- g) Bruno de Araujo Souza, 15 Girard Street, residential mailbox claim (2a).

Reports of Committees:

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

**City Council Public Services Committee
Monday, January 30, 2023
Minutes and Report**

This meeting convened at 6:30 PM in the City Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8 or Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's website, home page (www.marlborough-ma.gov).

Voting members present were Chair Landers, Councilor Irish and Councilor Brown.

Other Councilors present were Councilors Ossing, Navin, Robey, Perlman and Dumais.

Order No. 22-1008767: Communication from Kevin Gillis on behalf of Northborough Capital Partners, LLC, re: Proposed Order to accept JENKS LANE as a Public Way together with municipal deed and easements.

By email dated January 30, 2023, Asst. Solicitor McManus submitted a revised, clean copy of the Order of Acceptance for Jenks Lane which incorporates edits placing it into legal form. The Solicitor's Office received a new deed on January 30, 2023, but there are additional edits to be made by the applicant to clarify the easement description, per the City Engineering Division, and to fix an error with the LLC's state. Otherwise, it is in legal form. If the Committee desires, Asst. Solicitor McManus recommends the following motion: Move to recommend acceptance of Jenks Lane as a public way subject to receipt of an executed deed from the Applicant and approval of the same by the Legal Department.

By letter dated January 25, 2023, the Marlborough Planning Board voted 5-0 to recommend to the Marlborough City Council that Jenks Lane be accepted as a public way and the appurtenant easement be accepted as municipal easements in the City of Marlborough.

On a motion by Councilor Irish, seconded by Councilor Brown, the committee recommends acceptance of Jenks Lane as a public way subject to receipt of an executed deed from the Applicant and approval of the same by the Legal Department. Vote 3-0

On a motion made, seconded, and approved, the meeting adjourned at 6:37 PM.

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

**City Council Finance Committee
Monday, January 30, 2023
Minutes and Report**

This meeting convened at 7:00 PM in the Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8/Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's home page, www.marlborough-ma.gov.

Voting Members Present: Chair Irish, Councilors Dumais, Perlman, Brown and Oram.

Non-Voting Members Present: Councilors Ossing, Landers, Navin, Robey and Doucette.

Reports of Committee Continued:

Mayor Vigeant; WMCT-TV Executive Director Malyar; DPW Commissioner Divoll and City Engineer DiPersio addressed the following Orders:

Order No. 23-1008794: Communication from Mayor Vigeant with Transfer in the amount of \$100,000.00 from PEG Funds to Marlborough Cable Trust to fund the operation of WMCT-TV for FY2024.

The Mayor explained the splitting of the operational funds for the Cable Trust into two fiscal years avoids exceeding the \$500,000.00 limit and unnecessary annual audits. Director Malyar addressed the transfer and new programming since his tenure at the station.

On a motion by Councilor Perlman, seconded by Chair, the committee voted to recommend approval of the transfer in the amount of \$100,000.00 from PEG funds to the Marlborough Cable Trust for the operation of WMCT-TV for FY2024. Vote 5-0.

Order No. 23-1008795: Communication from Mayor Vigeant with Capital Bond Request in the amount of \$10,270,000.00 which includes various reconstruction of streets, drain and sidewalk repairs throughout the city:

Order No. 23-1008795A: The sum of \$500,000.00 be and is hereby appropriated for SEWER construction and/or reconstruction.

Order No. 23-1008795B: The sum of \$1,000,000.00 be and hereby appropriated for WATER construction and/or reconstructing.

Order No. 23-1008795C: The sum of \$8,770,000.00 be and hereby appropriated for STREET and infrastructure construction, reconstruction and/or rehabilitation.

The Mayor advised this early submittal will allow the city to get in the construction loop as many communities compete for the same contractors for these projects. The Mayor intends to use the future ARPA funding from the State to reduce the bonds. Any ARPA funding will require Council approval. He further explained if the bonds are approved, the city would ban first and not bond for at least a year. The Mayor announced the lead service program is complete. City Engineer DiPersio gave his staff the credit and thanks for completing the program that included over 1000 lead services in the city. The Mayor explained the costly total reconstruction and replacement of lines in a street vs. overlays which may not last as long but greatly improve road conditions and are more cost effective.

On a motion by Councilor Oram, seconded by Chair, the committee voted to recommend approval of Order No. 23-1008795: Bond request in the amount of \$10,270,000.00 which includes various reconstruction of streets, drain and sidewalk repairs throughout the city. Vote 5-0. (Chair Irish called for votes on each bond separately; all approved 5-0).

Motion made and seconded to adjourn; meeting adjourned at 7:42 PM.

Reports of Committee Continued:

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

**City Council Personnel Committee
Monday, January 24, 2023
Minutes and Report**

This meeting convened at 7:00 PM in the City Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8 or Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's website, home page (www.marlborough-ma.gov).

Voting members: Chair Dumais, Councilors Navin and Doucette.

Non-Voting members: Councilors Ossing, Landers, Wagner, and Robey.

Order No. 22-1008690: Communication from Mayor with Reappointment to the Community Development Authority of Rene Perdicaro for a term to expire March 9, 2024.

Order No. 22-1008763: Communication from Mayor with appointment of Joseph Delano to the Board of Registrars of Voters for a 3-year term to expire on April 1, 2024.

Order No. 23-1008784: Communication from Mayor with appointment of Elizabeth Jalonski to the Board of Registrar of Voters for a 2-year term to expire on April 1, 2025.

Order No. 22-1008764: Communication from Mayor with Reappointment of Samantha Khosla to the Library Board of Trustees for a 3-year term to expire April 2, 2024.

Order No. 22-1008764: Communication from Mayor with Reappointment of Fred Haas to the Library Board of Trustees for a 3-year term to expire January 7, 2025.

Order No. 23-1008782: Communication from Mayor with appointment of Dillon LaForce to Planning Board for term to expire February 1, 2027.

Order No. 22-1008756: Communication from Mayor with appointment of John Harmon as Human Resources Director for term to expire 3 years from date of confirmation.

On separate motions by Councilor Doucette, seconded by Chair, the committee recommends approval of the above reappointments and appointments for the terms and expiration dates as submitted by Mayor Vigeant. All Votes were 3-0.

Reports of Committee Continued:

On motion by Councilor Navin, seconded by Chair, the meeting adjourned at 7:25 PM.

**City Council Personnel Committee
Monday, January 30, 2023
Minutes and Report**

This meeting convened at 6:45 PM in the City Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8 or Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's website, home page (www.marlborough-ma.gov).

Voting members: Chair Dumais, Councilors Navin and Doucette

Non-Voting members: Councilors Ossing, Landers, Irish, Brown, Robey and Perlman, Councilor Oram (arrived at 6:52 PM).

Order No. 22-1008735: Communication from Mayor with appointment of Richard Tomanek to the Board of Health for 3-year term to expire on February 5, 2024.

On a motion by Councilor Doucette, seconded by Chair, the committee recommends approval of the appointment of Richard Tomanek to the Board of Health for 3-year term to expire on February 5, 2024. Vote 3-0

Order No. 23-1008798: Communication from Mayor with appointment of James Fortin to the Planning Board, replacing Matthew Elder who recently resigned, for a 5-year term to expire on February 1, 2027. Councilor Oram arrived during the interview of Mr. Fortin to suggest there may be programs to assist new members about the role of the planning board. The Mayor advised councilors of the Solicitor's ongoing in-house training with city boards and plans to provide in-house training to members of the Planning Board when all are seated. Councilor Robey stated the CPTC (Citizen Planner Training Collaborative) has helpful zoom classes on many subjects. She will search and advise of any helpful topics found on their website.

On a motion by Councilor Navin, seconded by Chair, the committee recommends approval of the appointment of James Fortin to the Planning Board, replacing Matthew Elder who recently resigned, for a 5-year term to expire on February 1, 2027. Vote 3-0

On a motion made and seconded, the meeting adjourned at 6:58 PM.

On motion by Councilor Navin, seconded by Chair, the meeting adjourned at 7:25 PM.

Reports of Committee Continued:

Councilor Perlman reported the following out of the Legislative & Legal Affairs Committee:

**City Council Legislative & Legal Affairs Committee
Monday, February 9, 2023
Minutes and Report**

This meeting convened at 7:00 PM. It was held in the City Council Chamber on the second floor of City Hall. Public attendance was permitted. The meeting was televised on WMCT-TV (Comcast Channel 8) and Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's website, home page (www.marlborough-ma.gov).

Committee Members Present: Chair Perlman, Councilors Oram and Robey

Other Councilors Present: Councilors Irish, Landers, Ossing and Wagner

Also Present: Health Director John Garside

Order No. 23-1008796: Communication from Mayor Vigeant and the Board of Health with proposed amendment to City Code, Ch. 315 Enforcement, s.2 "Non-criminal Disposition" to ensure consistency with state law.

Chair Perlman reminded the members that a public hearing on this item will occur at the February 13th Council meeting. She reviewed the original letter submitted by the City Solicitor to provide an overview of the suggested changes. Chair Perlman then reviewed the substantive edits provided by the Solicitor with the following overarching objectives: clarifying a specific penalty as required by state law, describing how penalties are applied to repeat violations, and updating the table of enforcing city personnel and ordinance or regulations which can be enforced by the non-criminal process.

Director Garside confirmed that he worked with the Building Commissioner and Solicitor to also revise local Board of Health regulations. He affirmed that non-criminal disposition ticketing is not a tool they frequently use but may apply in instances of a third offense when there is a compliance issue.

Councilor Oram brought up that this is a useful tool but reiterated that it should not be used all the time. Councilor Perlman confirmed the ordinance changes are effective upon passage and requested that the website be updated accordingly. The city clerk confirmed he will post the information under the new code section on the city website.

Councilor Robey brought up the need to update 'motorized scooters' as defined in the ordinance. She mentioned stormwater management and was curious about the fines listed (#31 in the chart from the proposed ordinance). Councilor Ossing brought up that items outside the scope of this ordinance update could be addressed at a later time. Councilor Robey also brought up that the \$25 per offense for smoking-related to schools (#24) stuck out as very different than fines for other offenses. Director Garside explained that the schools remain the enforcer and this fine is unchanged, even though it is a Board of Health regulation. The numerical value remained at \$25 because of the conversations Director Garside had with the Superintendent. This discussion took up the bulk of the meeting as to whether the Committee should amend this section to align with the other offenses. Councilor Perlman reiterated that the Solicitor would attend the Council meeting on 2/13 and can answer these questions during the public hearing. Director Garside also reiterated that there are state regulations that employ penalties on smoking and that other local fines could come into play outside the \$25 in the table for school violations.

Reports of Committee Continued:

Councilor Oram made a motion to approve the Order. Councilor Ossing shared as a point of information that there was no requirement to hold a public hearing on this item but did so since it is a change in fees, similar to what occurred for the change in transfer station permits. Councilor Robey made a counter motion to move to amend #24 to change the \$25 fine to be in line with the other offenses in the table provided. Neither motion received a second. Discussion continued about the \$25 fine as a low number to allow for students to pay it, which Councilor Landers affirmed.

Noting that there was not a rush on this particular item, Councilor Oram withdrew his initial motion and made a motion, seconded by Chair Perlman, to keep the item in Committee until receipt of more information at the public hearing.

On a motion made by Councilor Oram, seconded by Chair Perlman, and approved 3-0, the Committee adjourned at 7:32 PM.

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

**City Council Urban Affairs Committee
Monday, January 24, 2023
Minutes and Report**

This meeting convened at 7:45 PM in the Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8/Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's home page, www.marlborough-ma.gov.

Urban Affairs & Housing Committee voting members present: Chairman Katie Robey, Councilor Doucette, Councilor Landers, Councilor Navin, and Councilor Wagner.

Other Councilors present: Dumais and Ossing.

Representing the petitioner was Marquel Frink.

Order No. 22-1008723 Application for Special Permit from Marquel Frink and Divino Oliveira on behalf of all Fur Love to operate a dog rooming business at 75 Lincoln Street.

The Chair began by listing items committee received-transcript of Public Hearing, the petitioner's "draft decision," managers' comments and a copy of relevant city code- Chapter 650 Zoning, Article IV Existing and Nonconforming Uses, §650-12 Nonconforming uses.

Ms. Frink described their business as dog grooming, but the property would generate rental income from the two residential units on the site. There would be no day care at this location. Chair Robey discussed the need for a draft Special Permit Decision as what was provided didn't fit the legal requirements. Ms. Frink emailed a new draft decision to the City Council at 7:45 PM on January 24, 2023, and she provided a copy to the Chair. Copies were made and distributed to all councilors at the meeting.

Reports of Committee Continued:

Chair Robey then discussed the issue of the site's status, is it pre-existing, non-conforming or not? For this discussion, the committee should assume it is pre-existing, non-conforming with a business with very little traffic going in and out vs potential traffic and noise with new use. Members of the committee asked questions of applicant. Chair Robey read some of the ZBA decision for this site from 2020 with a denial for failure to comply with city zoning, specifically that a roofing contractor yard was not allowed in this RB zone. The zoning code does not list dog groomer, but prior building commissioners may have used consumer service establishments in the table of uses. Consumer service establishments are not allowed in the RB zone, nor are mixed uses, retail sales and service or dog kennels or animal hospitals. Chair Robey stated the criteria for a pre-existing nonconforming use to be extended or altered requires a determination by the City Council that the expansion or alteration of a nonconforming use or structure is not substantially more detrimental to the neighborhood than the existing nonconforming use.

Councilor Navin receives complaints regarding speeding and backed up traffic from the light at Bolton Street to the light at E. Main. He expressed concern for the new use as the lot backs up to Chandler Street, another residential neighborhood. He stated the proposed use would generate much more daily in and out traffic on a regular basis.

Councilor Landers recounted the history of this site and the current owner's shop, a relatively quiet place. He questioned Ms. Frink's interest in Marlborough at this site and whether she expected a lot of business there. The rental income from the two apartments on the site and Marlborough's dog population at 6,000 registered were two of the reasons for her interest in this location. Ms. Frink stated the business has a good following, so she does not need to be in a commercial area; she is not concerned as she already has many clients from Marlborough that travel to her business in Medway. Councilor Landers replied that there are no other businesses next to 75 Lincoln Street.

Councilor Doucette expressed his understanding of the requirements when changing from one business to another but agreed that there is a shortage of groomers to handle the business in Marlborough.

Councilor Robey reviewed the draft decision and asked councilors for their preference whether to move forward or hold another meeting.

Councilor Landers stated he was unsure another meeting would be useful as this site is not the right place for this business.

Councilor Wagner stated she understood the pros about having the rental income but the impact on the neighborhood would be detrimental and she is not seeing a compelling reason why this is a unique situation that calls for a special permit for this business. She also stated she would welcome the business to Marlborough but not at this location. She did not believe additional meetings would change those concerns.

Councilor Ossing stated the use of a dog grooming business in a residential zone is a difficult leap from a nonconforming furniture upholstery repair business and would be a challenging precedent going forward for others that would want to do similar activities in a residential zone.

There was no further discussion.

Councilor Landers moved to deny the Grant of Special Permit to All Fur Love as their use of the site as a dog grooming business is substantially more detrimental to the neighborhood than the existing nonconforming use. Motion received a second and carried 5-0.

Reports of Committee Continued:

Councilor Doucette moved to adjourn; it was seconded and carried 5-0. The meeting was adjourned at 8:12 PM.

City Council Urban Affairs Committee
Monday, February 9, 2023
Minutes and Report

This meeting convened at 7:45 PM in the Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8/Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's home page, www.marlborough-ma.gov.

Urban Affairs & Housing Committee voting members present were Chairman Katie Robey, Councilor Landers, Councilor Navin, and Councilor Wagner. Councilor Doucette was absent.

Other Councilors present were Irish, Oram, Ossing, and Perlman.

Order No. 22-1008874: Special Permit Application by Attorney Falk on behalf of Octo48, LLC d/b/a Action Precision Machining to convert a preexisting, nonconforming warehouse use to a machine shop at 269 Mechanic Street.

For this item, Representing the petitioner were Attorney Falk and Mr. George Mongeau, principal Action Precision Machining.

The Chair began by stating the order would be reverse of the agenda and invited Attorney Falk and Mr. Mongeau to the well. Attorney Falk reviewed that the public hearing had been held, a draft Special permit with conditions was sent and the applicant has gone to Site Plan review for preliminary review. He also reviewed the site's former use as a commercial operation since early 1900's and although the council rezoned the property from LI to RB in 2019 in anticipation of a residential project that never filed for building permit, the property is preexisting, nonconforming with use by DN Van Lines until May of 2022 when Mr. Mongeau purchased the property. The new use will be a machine shop, a tool and die business. As this is a Special Permit under Section 6, the legal standard the council can grant the special permit is a finding that the new use is substantially not more detrimental to the neighborhood than the existing nonconforming use. He explained the applicant felt the council could grant the permit as the use will be less detrimental—the use would have lower impact, operating hours are shorter, and there would be less truck traffic with smaller trucks delivering and leaving the property.

The chair then reviewed the draft special permit and read the comments from Site Plan Review Committee including their recommendation to add a new condition to Section E titled Site Plan Review to read "The issuance of the Special Permit is further subject to detailed Site Plan Review by the Site Plan Review Committee, in accordance with the City of Marlborough Site Plan Review Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications, or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit, and no occupancy permit shall be issued until the Applicant has complied with all conditions. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plans submitted, reviewed, and approved by the City Council as the Special Permit Granting Authority." No one had an issue with adding this.

Reports of Committee Continued:

Next the chair reviewed Condition #4. Operations which list the hours as Monday through Saturday from 7 am to 6 pm. She brought up a concern a resident mentioned at the Public Hearing regarding Saturday hours. Councilor Landers suggested adding language that there would be no deliveries on Saturday but felt with the few employees, having them there on Saturday wasn't an issue for him. Committee members agreed on adding language "No deliveries on Saturday" leaving specific language for solicitor to add as he reviews the Special Permit.

The chair then reviewed Condition #6 Signs and suggested to strike the draft language and insert "The sign would be substantially the same as the sign shown in Exhibit B" (reference the photo in the packet-69 Action Precision Machining). Committee members agreed.

The chair then went back to new Condition 2 which adds an additional sentence to what was read- "Site Plan Review shall consider among other things the adequacy of the Site's existing driveway for the Use, options to improve drainage behind the building in the vicinity of the rail trail, options for visual improvements along the rail trail, including plantings, and options to improve screening for abutting properties." Committee members agreed.

The final discussion was whether to add language for snow storage and members felt that could be left to Site Plan Review Committee.

Councilor Landers moved to approve the Grant of Special Permit as amended; motion received a second and carried 4-0.

The chair will report this out at the February 13th meeting and ask for a suspension of rules to have the draft language referred to solicitor to be put in proper form for the February 27th Council meeting.

There was a short break before the next item was taken up.

The chair called the meeting back to order.

The next item is Order #22-1008741: Application for Special Permit from Attorney Terrance Morris on behalf of 272 Lincoln LLC to build a 12-unit multifamily dwelling with accessory parking to be located at 272 Lincoln St.

Representing the applicant were Attorney Morris; Ron Bourque, architect and Charles Zammuto, manager.

The chair reminded members of the time extension approved until March 28 and stated members have the draft special permit, minutes of the Public Hearing held December 19 and comments from managers. Attorney Morris stated they had been to Site Plan Review Committee with a number of minor changes to Site Plan including parking and setbacks. Revised plans discussed at Site Plan review were given to councilors.

The chair read the comments from Site Plan Review Committee into the record and then began reviewing the draft Decision on a Special Permit. The chair suggested an amendment to #5 in the Findings of Facts by inserting "and as further amended on February 2, 2023" after September 12, 2022 and deleting "approved by Site Plan Committee on December ____, 2022." No one had an issue with this change.

Reports of Committee Continued:

The chair continued reviewing the Findings of Facts and the conditions. There was discussion on Condition #8. Crosswalk Painting specific to language of painting at later time if authorized by City Engineer. It was agreed to amend the language by striking “or at such later time, if authorized by the City Engineer” and “its successors and/or assigns.”

Discussion continued on Condition 9 which was an addition from Site Plan Review Committee- Cashman St. Improvements with language that removed a sidewalk on the eastern side of Cashman. Members agreed a sidewalk was necessary but also wanted ability to park on Cashman. It was agreed to amend Condition 9 to read: “The traveled way of Cashman Street shall be widened to the extent possible along the site frontage while maintaining a sidewalk. Final details shall be approved by the City Engineer.”

The chair then brought up the additional suggestion from Site Plan Review Committee on the billboard and its removal and the timing of the removal. The language agreed to was-“The existing billboard shall be taken down during demolition of the building on the site. In the future no billboard shall be allowed on the site.”

Next discussion was on snow removal. As a rental property, the manager will be responsible with removing snow. Committee members were comfortable with this being finalized by Site Plan Review Committee.

Councilor Oram brought up traffic issues with turning from the parking lot on Lincoln St. It was suggested that a sign could be put on the property stating no left turn.

Councilor Perlman brought up the corner of property (Cashman and Lincoln St.) which was discussed during public hearing as having it be public space. After lengthy discussion, it was decided to not add any language in the Special Permit related to the corner of the property.

Councilor Wagner moved to approve the draft Decision on Special Permit with Conditions as amended. The motion was seconded and carried 4-0.

The chair will report this out at the February 13 meeting and ask for a suspension of rules to have the draft language referred to solicitor to be put in proper form for the February 27th council meeting.

Councilor Wagner moved to adjourn, motion was seconded and carried 4-0. Meeting adjourned at 8:57 PM.

Suspension of the Rules requested –granted.

ORDERED: WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience and necessity require:

that JENKS LANE be accepted as a public way

from GOODALE STREET at the westerly end of JENKS LANE to the cul-de-sac at the easterly end of JENKS LANE

and that the appurtenant easements be accepted as municipal easements,

as shown on plans thereof and as hereinafter described and as set forth in Schedule A and Schedule B attached hereto:

DESCRIPTION

Plan entitled, “Plan of Acceptance Goodale Estates LLC Jenks Lane, City of Marlborough, Middlesex County, Commonwealth of Massachusetts,” Prepared By: Control Point Associates, Inc., 352 Turnpike Road, Southborough MA 01772; Dated: February 28, 2022, which plan is to be recorded herewith.

Title to the roadways shown as Jenks Lane on said plan, and title to all the municipal easements shown on said plan as “Drainage Easement” and set forth in “**Schedule A**” attached hereto, has been granted to the City of Marlborough in a quitclaim deed from Northborough Capital Partners, LLC, a Florida limited liability company with an address of 1236 Par View Drive, Sanibel, Florida 33957, said deed to be recorded herewith at the Middlesex County (South District) Registry of Deeds.

IT IS THEREFORE ORDERED THAT:

JENKS LANE be accepted as a public way, and the appurtenant easements be accepted as municipal easements, in the City of Marlborough.

APPROVED; adopted.

Suspension of the Rules requested –granted.

Motion by Councilor Perlman, seconded by the Chair to adopt the following:

Motion by Councilor Robey, seconded by Councilor Navin to amend Chapter 315, §2 #24 to strike out \$25.00 per offense and insert the amount of \$100.00 per offense – Motion **DOES NOT CARRY**.

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 AS FOLLOWS:

- I. Chapter 315 (entitled “Enforcement”), Section 315-2 (entitled “Noncriminal disposition”), Subsection (A), is hereby amended by inserting the following sentence at the end of the existing paragraph:

In addition to any other enforcing municipal personnel, the code enforcement officer(s) may also be a designee of any enforcing agent for all such ordinances, rules or regulations.

- II. Chapter 315, Section 315-2, Subsection (B), is hereby amended by inserting the following sentences after the existing second sentence:

Where no specific penalty amount is stated in an ordinance, rule, or regulation, the specific penalty amount shall be: \$100 for First Offense, \$200 for Second Offense, and \$300 for Third and Any Subsequent Offense. Unless otherwise specified, second and any subsequent offenses shall mean additional offenses after a first offense which are committed by the same offender within a twelve-month period.

- III. Chapter 315, Section 315-2, Subsection (B), Table Row numbers “20”, “21”, “22”, “23”, “25”, “27”, “28.1”, “29”, and “31”, are hereby amended as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

	Ordinance Violation (Chapter/Section)	Penalty	Enforcing Agent
20)	Human Habitation, City Health Code <u>Board of Health:</u> <u>Regulations for</u> <u>Minimum Standards</u> <u>for Human Habitation</u>	\$50 <u>1st offense: \$100</u> <u>2nd offense: \$200</u> <u>3rd and subsequent offense: \$300</u>	Board of Health, <u>Director of Public</u> <u>Health, agent,</u> sanitarian and assistant sanitarian (hereinafter, Board of Health)
21)	Subsurface Disposal of Sanitary Sewage, City Health Code <u>Board of Health:</u> <u>Regulations for</u> <u>Minimum Standards</u> <u>for Onsite Sewage</u> <u>Treatment & Disposal</u> <u>Systems</u>	\$50 <u>1st offense: \$100</u> <u>2nd offense: \$200</u> <u>3rd and subsequent offense: \$300</u>	Board of Health
22)	Food Establishments, City Health Code <u>Board of Health:</u> <u>Regulations for</u> <u>Minimum Standards</u> <u>for Food</u> <u>Establishments</u>	\$50 <u>1st offense: \$100</u> <u>2nd offense: \$200</u> <u>3rd and subsequent offense: \$300</u>	Board of Health
23)	City Wetland Regulations (Ch. 627)	<u>Penalty amounts set forth in Ch.</u> <u>627.</u>	Conservation Officer
25)	Plumbing	For violation of any provisions of Ch. 270, Art. II, § 270-7.1 or any provision of the State Plumbing Code (248 CMR): no less than \$50 nor more than \$100 <u>\$100</u> for 1st offense; <u>\$200</u> for 2 nd offense; no less than \$200 not more than \$300 <u>\$300</u> for each succeeding offense; each day or part thereof, whether continuous or intermittent, construed as separate and succeeding offense	Plumbing Inspector or Assistant Plumbing inspector (in his absence)

27)	Building Regulations Building Permits, etc., Ch. 270, § 270-8	For violation of § 270-8 or any provision of State Building Code (780 CMR): <u>\$100 for 1st offense; \$200 for 2nd offense; \$300 for each succeeding offense</u> no less than \$100 nor more than \$300 \$X for each offense ; each day or part thereof, whether continuous or intermittent, construed as separate and succeeding offense	Building Commissioner or his or her designee, in his absence
	Certificate of legal multifamily dwelling units, Ch. 420	Not less than \$100 nor more than \$300 <u>\$100 for 1st offense; \$200 for 2nd offense; \$300 for 3rd and subsequent offense</u>	Building Commissioner or his or her designee
28.1)	Motorized Scooters, Ch. 503	First offense: not more than \$25 ; second: not less than \$25 nor more than \$50 ; subsequent offenses: not less than \$50 nor more than \$100	Police Department
29)	<u>Antiblitz; Nuisances (Ch. 485, Art. I)</u> Registration and Maintenance of Abandoned and/or Foreclosing Residential Properties, Ch. 485, <u>Art. II</u>	<u>\$200</u> \$300	<u>Building Commissioner or his or her designee;</u> <u>Board of Health</u> Building Commissioner
31)	Stormwater Management, Ch. 271	<u>1st offense: \$100</u> <u>2nd offense: \$200</u> <u>3rd and subsequent offense: \$300</u>	City Engineer

- IV. Chapter 315, Section 315-2, Subsection (B), Table Row number “24”, is hereby deleted in its entirety and replaced with the following:

	Ordinance Violation (Chapter/Section)	Penalty	Enforcing Agent
24)	Board of Health: Regulation XII, Smoking and other use of tobacco products in school buildings, upon school grounds or in pupil transport vehicles	\$25 per offense	Superintendent of Marlborough School District; all district principals, assistant principals, directors of athletics; Superintendent-Director and Principal of Assabet Valley Regional Vocational High School, as well as police officers
24.1)	Board of Health Regulations: All other Board of Health regulations not listed in Section 315-2.	Amount as set forth in the Board of Health Regulation. If no specific penalty is listed in the regulation, then: 1 st offense: \$100 2 nd offense: \$200 3 rd and subsequent offense: \$300	Board of Health

- V. Chapter 420 (entitled “Multifamily Dwellings”), Section 420-3 (entitled “Violations and Penalties”) is hereby amended as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

Every day that a person violates § 420-2 shall constitute a separate offense. Each offense shall be subject to a noncriminal fine of not less than \$100 and not more than \$300 as set forth in the Code of the City of Marlborough §315-2B, as enforced by the Building Commissioner or his/her designee.

- VI. Chapter 485 (entitled “Property Maintenance”), Section 485-3 (entitled “Administration”), Subsection (A)(3), is hereby amended as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

In addition to the foregoing remedy, whoever violates any provision of this article or fails to obey any lawful order issued by the enforcing authority in enforcing this article shall be liable to a noncriminal fine of not more than \$200 for each violation as set forth in the Code of the City of Marlborough §315-2B. Each violation of this article shall constitute a separate offense. Each day that any such violation continues shall constitute a separate violation. The enforcing authority may also issue a cease-and-desist order for any hazardous situation.

VII. Effective Date. These amendments shall take effect upon passage.

APPROVED.

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain; adopted. No objection to passage in one evening.

Suspension of the Rules requested – granted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Denial of the Application for Special Permit from Marquel Frink and Divino Oliveira on behalf of All Fur Love, to operate a dog grooming business to be located at 75 Lincoln Street, referred to the **CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FORM FOR THE FEBRUARY 27, 2023, COUNCIL MEETING**; adopted.

Suspension of the Rules requested – granted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Application for a Special Permit from Attorney Brian Falk, on behalf of Octo48, LLC d/b/a Action Precision Machining to convert a preexisting nonconforming warehouse use to a machine shop at 269 Mechanic Street, referred to the **CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FORM FOR THE FEBRUARY 27, 2023, COUNCIL MEETING**; adopted.

Suspension of the Rules requested – granted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Application for Special Permit from Attorney Terrence Morris, on behalf of 272 Lincoln LLC, to build a 12-unit multi-family dwelling with accessory parking to be located at 272 Lincoln Street, referred to the **CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FORM FOR THE FEBRUARY 27, 2023, COUNCIL MEETING**; adopted.

Councilor Dumais Recused.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED:

IN CITY COUNCIL

**DECISION ON A SPECIAL PERMIT
DISH WIRELESS, LLC**

ORDER NO. 22/23-1008710C

The City Council of the City of Marlborough hereby **GRANTS** the Application for a Special Permit to Dish Wireless L.L.C. (the “Applicant”) to allow for the co-location of a new Wireless Communications Facility (3 antennas and associated equipment) on an existing monopole tower with accessory ground equipment pursuant to the submitted plans, as provided in the DECISION and subject to the Findings of Fact and Conditions therein.

FINDINGS OF FACT

1. The Applicant is a duly organized and existing corporation and FCC Licensee having a principal office located at 9601 S. meridian Blvd., Englewood, CO 80112 c/o Brian Martinelli, 114 E. Clinton Ave., Oaklyn, NJ 08107.

2. The Applicant is a sublessee of a portion of the property located at 860 Boston Post Road (Assessor's Map 61, Parcel 16), Marlborough, Massachusetts (the "Site").
3. On October 3, 2022, the Applicant filed with the City Clerk of the City of Marlborough an application (hereinafter referred to as the "Application") for a Special Permit under Chapter 650 (Zoning) of the Code of the City of Marlborough (hereinafter referred to as the "Zoning Ordinance"), Section 650-25 entitled Wireless Communications Facilities.
4. In accordance with Article V, Section 650-18(A)(20) and Section 650-25 of the Zoning Ordinance, the Applicant proposes the co-location of a new Wireless Communications Facility (3 antennas and associated equipment) on an existing monopole tower) with accessory ground equipment (the "Use") at the Site, as shown in the plans submitted with the Application and referenced in paragraph 5 below.
5. In connection with the Application, the Applicant submitted a certified list of abutters, filing fees, and plans by A.T. Engineering Service, with the last revision date of May 11, 2022, (collectively the "Plans"), attached hereto as **"Attachment A."**
6. Pursuant to the Application, the Applicant is licensed by the FCC to provide personal wireless services in the City of Marlborough and surrounding areas and currently has a problem with significant gaps in coverage and capacity issues with coverage that could be alleviated by installing the Use on the subject location as shown on the Plans.
7. The Site is located in the Rural Residential (RR) Zoning District which allows a Special Permit to be issued for a Wireless Communication Facility ("WCF").
8. Pursuant to the Rules and Regulations of the City Council of the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing on the Application, and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters and the planning boards of all surrounding towns entitled thereto in accordance with applicable regulations and law.
9. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, opened a public hearing on the Application on November 21, 2022. The public hearing was held in the City Council Chamber, at the Marlborough City Hall, 140 Main Street. The public hearing was closed on November 21, 2022.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the Use meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.
11. At the Public Hearing, there were no members of the public speaking in opposition to the Use.
12. The Council, in reviewing the Application, considered the Review Standard and Development Requirements, as enumerated in Article VI, Section 650-25 and Article VII, Section 650-59 of the City of Marlborough Zoning Ordinance, applicable to the Use.

**BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING
FINDINGS AND TAKES THE FOLLOWING ACTIONS:**

- A. The Applicant has complied with the Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.

- B. The City Council finds the proposed Use of the Site is in harmony with the intent and general purpose of the Zoning Ordinance of the City of Marlborough when subject to appropriate terms and conditions as provided in this Decision. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth herein.
- C. The City Council finds that the proposed Use is consistent with the purposes of Section 650-25 governing WCFs in the City.
- D. The proposed WCF and location are consistent with both the applicable review standards in Section 650-25(D) and the development requirements in Section 650-25(E).
- E. The City Council recognizes the Applicant is a federal licensee afforded certain protection under federal telecommunications law, to the extent provided by law.
- F. The City Council confirms the Applicant has demonstrated the need to construct the proposed facility to solve certain wireless coverage and capacity issues that currently exist in its network in the vicinity.
- G. The City Council finds that there are adequate, ample parking spaces on the host parcel.
- H. The City Council finds the proposed Use, which consists of an unmanned and unoccupied facility, will have no impact on traffic and pedestrian safety in the area.
- I. The City Council finds the proposed Use will not be contrary to the public health, safety, convenience, and welfare and will not be offensive or detrimental.
- J. The City Council, pursuant to its authority under MGL Chapter 40A and the City of Marlborough Zoning Ordinance **GRANTS** to the Applicant a Special Permit for construction of the Use, a wireless communications facility on the existing monopole, **SUBJECT TO THE FOLLOWING CONDITIONS**, which conditions shall be binding on the Applicant, its successors and/or assigns:
 - 1. Construction in Accordance with Applicable Laws. Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts and shall be built according to the Plans as may be amended during Site Plan Review.
 - 2. Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review by the Site Plan Review Committee, in accordance with the City of Marlborough Site Plan Review Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications, or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit, and no occupancy permit shall be issued until the Applicant has complied with all conditions. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plans submitted, reviewed, and approved by the City Council as the Special Permit Granting Authority.
 - 3. Incorporation of Submissions. All plans, photo renderings, site evaluations, briefs and other documentation provided by the Applicant as part of the Application, and as amended or revised during the application/hearing process before the City Council and/or the City Council's Public Services Committee, 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.

4. Compliance with Applicable Laws. The Applicant, its successors and/or assigns agrees to comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of the Use.
5. All work performed on the Site shall comply with this Decision. No other building or construction or activity (including but not limited to any other communications device, WCF, tower, etc.) shall occur without further modification of this Special Permit. This condition shall be interpreted consistent with federal law governing WCF's.
6. Signage. No signage or advertising of any sort shall be permitted as part of the Use.
7. As a condition of approval, the Applicant will schedule and hold a pre-construction meeting with the Department of Public Works to discuss access to the site during construction.
8. Prior to issuance of a building permit for the Use, all required lease amendments authorizing the Use on the Site shall be completed in legal form acceptable to the City Solicitor.
9. The Applicant shall comply with all applicable conditions for WCFs as set forth in Section 650-25(F), each of which shall constitute conditions of this special permit.
10. Recording of Decision. In accordance with the provisions of Massachusetts General Laws Chapter 40A, Section 11, the Applicant, its successors and/or assigns, at its expense shall record this Special Permit in the Middlesex South 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, and before the Applicant has applied to the Building Commissioner for a building permit. Upon recording, the Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council Office, the Building Department and the City Solicitor's Office.

Yea: 11 – Nay: 0

Yea: Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Ossing, Perlman, & Robey.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

Suspension of the Rules requested to allow City Engineer DiPersio to speak– granted.

Motion by Councilor Robey, seconded by the Chair to amend condition number 3 to adding the words “if possible” after “street side of sidewalk” and striking the word “from” and adding the word “down”. Councilor Doucette asked that the word “down” be changed to “heading east on” – Amendment **CARRIED**.

ORDERED: That the Petition from Massachusetts Electric, to install a new Pole/Anchor P0-5 on Manning Street to support pole with wires, **APPROVED WITH THE FOLLOWING CONDITIONS;** adopted.

1. National Grid shall confirm the new pole and anchor are located in the Public Way prior to placement of the new utilities.
2. Petition is subject to the eleven (11) standard conditions.
3. Pole 0-5 shall be located on the street side of sidewalk if possible and no further than fifteen (15') feet heading east on Manning Street.

STANDARD CONDITIONS

1. Any necessary easements are to be obtained from affected property owners.
2. A street opening permit must be applied for by the proposed contractor performing the work.
3. The contractor performing the work must obtain a street opening bond with the City of Marlborough.
4. The contractor shall provide the Engineering Division preconstruction photos of driveways, sidewalks, lawn areas, and roadway areas impacted by all construction activities.
5. A proper staging area is to be located/acquired before work commences – material and equipment is not to be parked/stockpiled within the city right of way and or private property unless permission is granted in writing by the property owner.
6. The contractor is to ensure residents are always able to enter and exit their driveways (have necessary steel plating on site and accessible).
7. Ensure construction safety controls are established (signage, drums, police details, etc...) and are in accordance with the latest MUTCD standards.
8. Trench backfilling, compacting, temporary, and final paving are to be done in accordance with the City of Marlborough standard trenching details.
9. Trenches are to be paved or completely backfilled and compacted at the end of each workday. Trenches are never to be left unattended.
10. Post construction loaming and seeding are to be done in accordance with the 1995 MHD Standard Specifications sections 751 & 765.
11. Proposed utility pole(s) shall not put any sidewalks or sidewalk ramps into non-compliance with current ADA standards.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED There being no further business, the regular meeting of the City Council is herewith adjourned at 9:12 PM; adopted.