



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK
Steven W. Kerrigan
140 Main St.
Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723**

MAY 6, 2019

Regular meeting of the City Council held on Monday, May 6, 2019 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Juaire, Oram, Ossing, Robey, Delano, Doucette, Dumais, Tunnera, Irish and Landers. Meeting adjourned at 8:53 PM.

ORDERED: That the Announcement of Veteran of the Year, made by the President of the Marlborough Veteran's Council, Richard Jenkins, along with City Council President Clancy, who presented Michael A. Ferro with the prestigious honor of Veteran of the Year, an award plaque and a proclamation from the Mayor were presented, **FILE**; adopted.

ORDERED: That the Minutes of the City Council meeting, APRIL 29, 2019 **FILE AS AMENDED**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, MAY 20, 2019** as date for a **PUBLIC HEARING** for the Proposed FY20 Budget as submitted by Mayor Vigeant in the amount of \$169,023,174.00 for review and appropriation in which this spending plan reflects an increase of 3.8% over last year's appropriation, refer to **FINANCE COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Acceptance of Deed Conveying 10.09 Acres of land located on Berlin Road identified as Map 41, Parcel 37B, Order No. 19-1007584C, **MOVED TO ITEM 21**; adopted.

ORDERED: That the Communication from the Retirement Board re: Consideration of a cost of living increase (COLA) pursuant to MGL Chapter 32, §103(i), **FILE** adopted.

ORDERED: That the Communication from the Planning Board, re: Favorable Recommendation and comments on the Proposed Zoning Ordinance Amendment, Chapter 650, §5, §17, §18 & §48 relative to adding Food Trucks to the Table of Uses, Order No. 19-1007543A, **FILE**; adopted.

ORDERED: That the Communication from the Planning Board, re: Favorable Recommendation on the Proposed Zoning Map Amendment, land at 31 and 35 John Street, Order No. 19-1007569A, **FILE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, JUNE 17, 2019** as **DATE FOR PUBLIC HEARING** On the Application for Sign Special Permit, from Attorney Elizabeth McDonough Noonan on behalf of Colbea Enterprises, LLC, 342 Boston Post Road East, refer to **URBAN AFFAIRS COMMITTEE, ADVERTISE**; adopted.

ORDERED: That the Communication from Melynda & JP Gallagher, of Lost Shoe Brewing and Roasting Company, 19 Weed Street, to add outdoor seating to their establishment, refer to **LEGISLATIVE & LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY MAY 20, 2019** as **DATE FOR PUBLIC HEARING** on the Petition from TC Systems, Inc., on behalf of AT&T, to install new underground conduits with cable on Forest Street from Pole #24 To Verizon MH #516 for a distance of 65' within the Public Way, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Communication from Attorney Brian Falk on behalf of David Skarin, re: Proposed Zoning Amendment, to Chapter 650 §12 Nonconforming Uses, refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE PUBLIC HEARING FOR MONDAY, JUNE 17, 2019**; adopted.

Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as most recently amended, be further amended by amending certain provisions of (new text underlined, deleted text in strikethrough):

§650-12 Nonconforming uses.

- A. No building or other structure nor any land shall be used nor shall any building or other structure or part thereof be erected or altered except in conformity with the provisions of this chapter and any amendments thereof which apply to the district in which the building, structure or premises shall be located; provided, however, that this chapter shall not apply to the existing use of any building or structure or of land to the extent to which it was lawfully used at the time of the adoption of this chapter.
- B. This chapter shall apply to any change of use thereof and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration or for its use for the same purpose to a substantially greater extent, ~~provided that~~ unless the City Council determines, by the grant of a special permit, that expansion or alteration of a nonconforming use or structure is not substantially more detrimental to the neighborhood than the existing nonconforming use, except that an alteration, reconstruction, extension or structural change of or to a lawful pre-existing nonconforming single-family dwelling or two-family house shall be governed by Section 650-58B(3), and subject, however, to the following provisions:
 - (1) Such use has not been abandoned for a period of two years or more, except in the case of land used for agriculture, horticulture or floriculture for a period of less than five years.
 - (2) Such use is not enlarged to more than 25% of the floor and ground areas of use existing at the time of adoption of the original Zoning Ordinance, or any amendments thereto, except that any nonconforming farm may be enlarged up to the total area owned by the nonconforming farmer at the time of adoption of this chapter, and there shall be no limit as to the expansion of farm buildings.

- (3) In case the use is destroyed or damaged by fire, explosion or other catastrophe to not greater than 75% of the fair market value of the building or structure, exclusive of foundation, based upon replacement cost immediately prior to such damage, the structure or use may be restored or rebuilt at the same location and used as previously, provided that:
- (a) The building, structure or use of land as restored or rebuilt shall be no greater in floor or land area than the maximum permitted under Subsection B(3)(b) of this section.
 - (b) The restoration or rebuilding shall conform to this chapter so far as practicable and shall be completed within two years of the catastrophe, unless approved by the City Council in writing in accordance with Article VIII.
- (4) The building or structure is completed if a permit for construction was granted prior to the adoption of this chapter and construction is accomplished within two years after the date of adoption of this chapter.
- (5) The provisions of the above Subsection B(1), (2) and (4) shall not apply to a single-family dwelling.

ORDERED: That the Minutes, School Committee, April 9, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Board of Assessors, April 17, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Board of Health, March 4, 2019, **FILE**; adopted.

ORDERED: That the Minutes, License Board, March 27, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, March 27, 2019, **FILE**; adopted.

Reports of Committees:

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

Meeting Name: City Council Public Services Committee

Date: April 30, 2019

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

Convened: 6:50 PM – Adjourned: 7:31 PM

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

Order No. 19-1007628: Application for Renewal of Junk Dealer/Second Hand Dealer License, TVI, Inc., d/b/a Savers, 222A East Main Street. Police Chief Giorgi approved the CORI report from the store manager since 2018, Jerry A. Moore Jr., and had no objection to the renewal of Savers' application for a Junk Dealer's/Second Hand License. David Manoogian, an Attleboro attorney, once again appeared on behalf of applicant, TVI, Inc., d/b/a Savers. Attorney Manoogian stated the store has been operating smoothly for the past twelve-month period, and they were prepared to answer questions from the committee. Atty. Manoogian and Mr. Moore discussed the history of the store since its first junk dealer license was issued in 2013 and its positive impact on the community.

Reports of Committee Continued:

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.
6. No scrolling or rotating message signs shall be permitted as part of Savers' signage plans.
7. 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.
8. This license shall be subject to revocation or suspension for noncompliance of the above conditions or other applicable local ordinances or state laws.
9. 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.

Reports of Committee Continued:

Motion made by Councilor Doucette, seconded by the Chair, to approve the license renewal with all conditions and waivers. The motion carried 3-0.

Order No. 19-1007588: Application for Renewal of Junk Dealer's/Second Hand Dealer's License, ecoATM, LLC, 601 Donald J. Lynch Boulevard. The company, ecoATM, LLC, with headquarters in California, has a machine located at the Solomon Pond Mall which collects used cell phones and other small electronic devices and provides payment to its customers. It is a good way to dispose of old electronic devices. The junk dealer license was first issued in 2012 to permit the installation of the kiosk at the mall. A representative appeared to speak in behalf of ecoATM prior to the issuance of the first junk dealer license. Because there were no problems associated with the siting of the kiosk the first year and in subsequent years, the applicant has been allowed to submit a letter detailing the activity of the device for the previous year. Additionally, an ecoATM employee has annually submitted a CORI to the Police Chief. Other than the first year, their application for a junk dealer license has been approved without an employee being present at the committee meeting, pending receipt of the required CORI and activity report.

Motion made by Councilor Doucette, seconded by the Chair, to approve the license renewal pending receipt of the necessary documents and materials from ecoATM, LLC. The motion carried 3-0.

Motion made and seconded to adjourn. The motion carried 3-0. Meeting adjourned at 7:31 PM.

ORDERED: That the Transfer Request in the amount of \$699,088.00 which moves funds from Economic Development to MEDC Funding to fund the FY20 operations, **APPROVED**; adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Mayor						FISCAL YEAR:	2019	
		FROM ACCOUNT:						TO ACCOUNT:		
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$1,661,109.48	\$699,088.00	27000099	42440	Economic Development	\$699,088.00	11740006	53950	MEDC Funding		\$0.00
	Reason:	To allow the MEDC to continue it's work in promoting the economic development of the City for FY20								
	\$699,088.00	Total			\$699,088.00	Total				

Councilor Oram Opposed.

ORDERED: THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH HEREBY ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING THE ZONING MAP, SECTION 650-8, AS FOLLOWS:

That, upon the petition of Stephen Vigeant, Trustee of the 22 Englewood Trust, the Zoning Map established under Chapter 650, the City of Marlborough's Zoning Ordinance, in Article III, entitled "Establishment of Districts" is hereby amended in subsection 8 thereof, entitled "Boundaries Established; Zoning Map," by rezoning, from the Industrial (I) zoning district to the Commercial Automotive (CA) zoning district, the parcels shown on the Marlborough Assessors Map as Map 104, Parcel 29 and Map 104, Parcel 29A.

APPROVED; adopted.

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

At the request of Councilor Ossing, President Clancy called a recess at 8:41 PM and returned to open meeting at 8:46 PM.

ORDERED: That the Proposed Zoning Amendment, to add to Chapter 650 a new section §36, which will create an Executive Residential Overlay District (EROD) in the Simarano Drive and Cedar Hill Road Area as amended by the Urban Affairs Committee, refer to the **CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FORM FOR THE MAY 20, 2019 CITY COUNCIL MEETING**; adopted.

ORDERED: That the Proposed Zoning Ordinance Amendment, Chapter 650, §5, §17, & §18 – Home Office & Contractor Yards, as amended by the Urban Affairs Committee and reported out with a favorable recommendation, Order No. 18/19-1007500C, **TABLED**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Acceptance of Deed Conveying 10.09 Acres of land located on Berlin Road identified as Map 41, Parcel 37B, Order No. 19-1007584C, **FILE**; adopted.

ORDERED: That Order No. 19-1007584C the Acceptance of Deed Conveying 10.09 Acres of land located on Berlin Road identified as Map 41, Parcel 37B, **REMOVED FROM THE TABLE**; adopted.

ORDERED: That the City of Marlborough, acting by and through its City Council, does hereby accept from Ernest A. Houde, Jr., the deed of the fee interest in a parcel of land containing 10.09 acres and situated on the easterly side of Berlin Road, described as Map 41, Parcel 37B of the Marlborough Assessors Maps, and more particularly described as Lot 37-2B on a plan entitled “Plan of Land in Marlborough, Massachusetts; Owner: Ernest A. Houde, Jr., 399 Berlin Road, Marlborough, MA; Prepared by: Connorstone Consulting Civil Engineers and Land Surveyors, 276 West Main Street, Northborough, MA 01532; Scale: 1" = 50'; Dated: April 21, 2000, revised: May 1, 2000,” and recorded at Middlesex South District Registry of Deeds as Book 31403, Page 364, Plan Book 2000, Plan 513, said plan attached hereto along with said deed.

The above-described parcel is conveyed to the City under the provisions of Mass. Gen. Laws c. 40, § 8C and is to be managed and controlled by the Marlborough Conservation Commission for the purposes of the promotion and development of natural resources, watershed protection, passive recreation, and conservation of open space.

APPROVED; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:53 PM; adopted.