



**CITY OF MARLBOROUGH  
OFFICE OF CITY CLERK  
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**AUGUST 26, 2019**

Regular meeting of the City Council held on Monday, August 26, 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 9:02 PM.

ORDERED: That the Minutes of the City Council meeting, JULY 22, 2019 **FILE**; adopted.

ORDERED: That the PUBLIC HEARING On the Petition from Massachusetts Electric and Verizon New England, to install a new Pole 8-5 at 150 Hayes Memorial Drive to service a new customer, Order No. 19-1007739, **CONTINUED UNTIL SEPTEMBER 9, 2019 AT 8:00 PM**; adopted.

**Councilors Present: Delano, Doucette, Dumais, Tunnera, Irish, Clancy, Landers, Juaire, Oram, Ossing & Robey.**

ORDERED: That the PUBLIC HEARING On the Proposed Zoning Amendment as revised to Chapter 650 §12, Nonconforming Uses, Order No. 19-1007673B, all were heard who wish to be heard, hearing closed at 8:05 PM; adopted.

**Councilors Present: Delano, Doucette, Dumais, Tunnera, Irish, Clancy, Landers, Juaire, Oram, Ossing & Robey.**

President Clancy called a recess at 8:05 PM and returned to open meeting at 8:07 PM.

ORDERED: That the PUBLIC HEARING On the Proposed Zoning Map Amendment from Attorney Michael Norris on behalf of Renato Fontes, re: Rezoning of land off 269 Mechanic Street identified as Map 56, Parcel 125, Order No. 19-1007738, all were heard who wish to be heard, hearing closed at 8:30 PM; adopted.

**Councilors Present: Delano, Doucette, Dumais, Tunnera, Irish, Clancy, Landers, Juaire, Oram, Ossing & Robey.**

ORDERED: That no more than eight hundred thousand dollars (\$800,000.00) shall be expended from the Parks and Recreation Revolving Fund during fiscal year 2020, unless otherwise authorized by City Council and Mayor. This increases the limit from three hundred and fifty thousand dollars (\$350,000.00) as approved by the City Council on June 17, 2019, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the Transfer Request in the amount of \$30,000.00 from PEG Funds to Marlboro Cable Trust, to fund capital equipment purchases for WMCT, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Mayor					FISCAL YEAR:	2020		
		FROM ACCOUNT:					TO ACCOUNT:			
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$206,164.96	\$30,000.00	27000099	47750	Receipts Reserved-PEG Funds	\$30,000.00	89000	25581	Marlboro Cable Trust		\$0.00
	Reason:	To fund WMCT's capital request for FY20 with PEG fees								
	\$30,000.00	Total			\$30,000.00	Total				

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Gift Acceptance in the amount of \$1,000.00 from DuPont Electronics & Imaging (formerly Dow Chemical Company) for the Conservation Maintenance Fund to support the annual Project Clean Sweep and other beautification efforts within the city; adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$898.00 from FM Global Foundation awarded to the Fire Department to fund the purchase of two digital cameras for the Fire Investigation Unit; adopted.

ORDERED: That the Communication from the Mayor, re: Appointment of Nathan Boudreau to the position of Executive Aide to the Mayor, effective August 12, 2019, **FILE**; adopted.

ORDERED: That the Appointment of Jason (Jay) Piques to the position of Assistant City Solicitor for a term of three years effective on date of confirmation, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Communication from City Solicitor, Jason Grossfield, re: Proposed Grant of Easement to MA Electric for service to Marlborough High School, 431 Bolton Street, in proper legal form, **MOVED TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That the Communication from City Solicitor, Jason Grossfield, re: Proposed License for Outdoor Seating requested by David Richardson of Flying Dreams Brewing Co., 277 Main Street, in proper legal form, **MOVED TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That the Communication from City Solicitor, Jason Grossfield on behalf of Councilor Delano, re: Proposed Zoning Amendment relative to the definition of Home Office/Home Occupation, refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE A PUBLIC HEARING FOR MONDAY, SEPTEMBER 23, 2019**; adopted.

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING SUBMITTED FOR ITS OWN CONSIDERATION CHANGES IN THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, TO FURTHER AMEND CHAPTER 650, NOW ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED AS FOLLOWS:

1. Section 650-5(B), entitled “Definitions; word usage,” is hereby amended, as follows (new text shown as underlined, deleted text shown as ~~striketrough~~):

#### HOME OFFICE / HOME OCCUPATION

An occupation customarily conducted in the place of residence of the operator or of a professional person, or in a building accessory thereto, such as dressmaking, millinery, home cooking, handcraft, specialized cultivation and propagation of houseplants, insects, fish, birds and animals, limited to one litter at a time, or the offices of a physician, surgeon, dentist, real estate agent, teacher, clergyman, artist, lawyer, architect, musician, landscape architect, land surveyor, City planner, broker, engineer, beautician or member of any other recognized profession including an office for an off-premises business, provided that not more than three persons are engaged in the activity on the premises at any one time.

#### HOME OCCUPATION

See definition of “home office / home occupation.”

ORDERED: That the Communication from Police Chief, David Giorgi, re: Detail officers pursuant to Special Permit condition for Garden Remedies, 416 Boston Post Road East, **FILE**; adopted.

ORDERED: That by Order No. 18-1007366, the City Council of the City of Marlborough authorized the City to acquire 49 West Main Street, Marlborough, MA in the total amount of \$381,504.00 as provided in a Purchase and Sale Agreement ("Agreement") for the purchase of said property and appropriated from Account No. 19300006-58595 (City Hall Equipment) the then-balance due on said purchase in the amount of \$362,504.00, the Mayor, upon negotiation of a First Amendment to the Agreement modifying certain terms of the Agreement, the City Council hereby:

- 1) Authorizes the City to acquire 49 West Main Street in the total amount of \$461,000.00 as provided in the First Amendment to the Purchase and Sale Agreement, to be funded from the above-referenced account; and
- 2) Affirms its authorization for the Mayor to accept a deed pursuant to MGL c. 40, § 3 for said property located at 49 West Main Street.

Refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, SEPTEMBER 23, 2019** as **DATE FOR PUBLIC HEARING** On the Application for Special Permit from Nicholas Masso of Indo Laboratories, to operate an independent Marijuana Testing Laboratory at 257 Simarano Drive, refer to **URBAN AFFAIRS COMMITTEE & ADVERTISE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, OCTOBER 7, 2019** as **DATE FOR PUBLIC HEARING** On the Application for Fuel Storage License, Ambri, Inc., 53 Brigham Street, refer to **PUBLIC SERVICES COMMITTEE & ADVERTISE**; adopted.

ORDERED: That the Application for a Livery License from Snold Benjamin d/b/a Ben Transportation, to operate at 98 Bolton Street, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Communication from Central MA Mosquito Control Project re: Personnel being in the area responding to residents' concerns about mosquitos on various dates in September & October 2019, **FILE**; adopted.

ORDERED: That the Communication from Attorney Geoffrey Smith on behalf of Heritage Farm, LLC re: Notice pursuant to MGL, c 61A, §14 of intent to sell land and convert use, 339 Boston Post Road East, identified as Parcels 72-35, 73-26A, 73-28, 73-24 & 73-26, **TABLED TO THE SEPTEMBER 9, 2019 MEETING**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, OCTOBER 7, 2019** as **DATE FOR PUBLIC HEARING** On the Application for Special Permit from Post Road Realty, LLC to construct a multi-family residential project known as The Green District in the Executive Residential Overlay District (EROD) which will consist of 475 units in two buildings at 107 Simarano Drive, Map 116, Parcels 5, 11 & 12, refer to **URBAN AFFAIRS COMMITTEE & ADVERTISE**; adopted.

ORDERED: That the Application for Site Plan Approval from Post Road Realty, LLC for The Green District project to be built in the Executive Residential Overlay District (EROD), at 107 Simarano Drive, refer to **URBAN AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Communication from Pam Allinson, re: Dog Park in the City of Marlborough, refer to **MAYOR & DPW COMMISSIONER**; adopted.

ORDERED: That the Minutes, Board of Health, April 8, 2019 & June 26, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Conservation Commission, June 20, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Historical Commission, June 6, 2019 & July 25, 2019, **FILE**; adopted.

ORDERED: That the Minutes, License Board, May 22, 2019, June 20, 2019 & June 26, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, June 17, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, May 29, 2019 & June 26, 2019, **FILE**; adopted.

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

- a) Audrey Allen, 41 Village Drive, pothole or other road defect.
- b) Donald Avey, 103 Bolton Street, other property damage and/or personal injury.
- c) Richard Girardi, 59 Francis Street, pothole or other road defect.

#### Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

City Council Finance Committee  
Monday July 29, 2019  
*In Council Chambers*

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

**Finance Committee Members Absent: Oram**

**Other Councilors in Attendance: Councilor Landers.**

**The meeting convened at 7:17 PM.**

1. Order No. 19-1007730 – Transfer \$220,000.00 from the PEG Fund to Information Technology: The Finance Committee reviewed the Mayor's letter dated July 18, 2019 requesting the transfer of \$220,000.00 from the Cable TV public, Education and Government (PEG) Fund to Information technologies to fund projects including the replacement of two thirds of the City's computers, replacement of audio visual equipment in the cafeteria of three elementary schools and replacement of wireless antennas around the district.

**The Finance Committee voted 4 – 0 to approve the transfer request.**

## Reports of Committee Continued:

2. Order No. 19-1007732 – Transfer \$200,000.00 from the Economic Development Fund for the City Shuttle Services: The Finance Committee reviewed the Mayor's letter dated July 18, 2019 requesting the transfer of \$200,000.00 from the Economic Development Fund to fund a City Shuttle Service for a one-year period through the Marlboro Economic Development Corporation (MEDC).

**The Finance Committee voted 4 – 0 to approve the transfer.**

The Finance Committee agreed to support suspending the rules at the August 26, 2019 City Council meeting to approve the transfer for the City Shuttle Services.

The Finance Committee adjourned at 8:05 PM.

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

City Council Legislative and Legal Affairs Committee  
Monday, July 29, 2019 6:30 PM– In Council Chambers  
Minutes and Report

Present: Chairman Katie Robey, Councilor Landers, and Councilor Delano.  
Others in attendance: Councilor Ossing; Mayor Vigeant; DPW Commissioner John Ghiloni; City Solicitor Jason Grossfield; David Richardson, Owner/Petitioner of Flying Dreams Brewing Company; and License Board Chairman Walter Bonin.

**Order No. 19-1007735 (X 99-8201)-Communication from Mayor regarding request for revocation of License to Encroach, 26 Monument Avenue.** The Mayor's letter of July 10, 2019 was read into record. Additional information provided to councilors included a letter from Code Officer Wilderman to the City Council and letter from Code Officer Wilderman to Oscar Barrera, 26 Monument Avenue. The City Council approved the License to Encroach on June 14, 1999, but issues with the property owner went unresolved warranting the Mayor's request to revoke the license.

**Councilor Delano moved to approve the Order to Revoke the License to Encroach dated June 14, 1999, and any and all permission to use the real property pursuant to said license, effective immediately; the motion was seconded and carried 3-0.**

**Order No. 19-1007736-Communication from Solicitor Grossfield regarding Proposed Grant of Easement to Massachusetts Electric Company for service to Marlborough High School, 431 Bolton Street.** Solicitor Grossfield's letter of July 17, 2019, read into the record by the chair, advises approval of both the City Council and the School Committee is required and being sought simultaneously. Due to timing of the next School Committee meeting on August 27, 2019, the City Council may approve the easement pending the approval of the School Committee. The work is necessary to provide an electrical connection at the new turf field on Poirier Drive.

Reports of Committee Continued:

**Councilor Delano moved to approve the Grant of Easement to Massachusetts Electric Company to provide service to Marlborough High School pending the approval of the School Committee. The motion was seconded and approved 3-0.**

**There will be a request to Suspend the Rules for action by the City Council on August 26, 2019.**

**Order No. 19-1007737-Communication from David Richardson of Flying Dreams Brewery Co., 277 Main Street, to add outdoor seating for their establishment on the sidewalk along Rawlins Avenue.** The July 5, 2019 letter from Mr. Richardson was read into the record. The packet included a draft License to Encroach on Public Sidewalk and Indemnification from the City Solicitor as well as drawings of the original Taproom plan and a proposed sidewalk patio plan, Exhibit A, of the proposed License to Encroach. Chairman Robey provided photos she had taken of the area with concern about a hose crossing the sidewalk. The Chair's email to Code Enforcement resulted in a communication from Building Commissioner Cooke that the proposed sidewalk plan for tables with 4 chairs would not meet state code as it would provide only 30" of sidewalk clearance where 36" is required. [521 CMR section 22.2 Width: Width of walkways shall be not less than 48 inches, excluding curb stones. An unobstructed path of travel shall be provided which is at least 36 inches clear, excluding curb stone]. As this matter is also on the agenda for July 31 meeting of the License Board to amend their alcohol license to include patio seating, it was agreed that the committee could recommend approval of the License to Encroach pending receipt of an amended Exhibit A. There was discussion and agreement to remove the May 1 to September 30 patio seating timeframe and to clarify that patrons may bring their own food or have food delivered for consumption on the sidewalk area while drinking products purchased from the Flying Dreams Brewery. It was agreed the City Solicitor will amend the License to Encroach in #2 to extend the license year-round conditioned by snow/weather limitations and to amend #5 & #6 to clarify that patrons may bring their own food or have food delivered for consumption on the sidewalk area while drinking products purchased from the Flying Dreams Brewery. Amending similar patio licenses to be considered if Council agrees.

**Councilor Delano moved to approve the License to Encroach on the Public Sidewalk and Indemnification for use of a portion of the sidewalk on Rawlins Avenue, on the side of the Flying Dreams Brewery, pending receipt of an amended Exhibit A and with amendments to #2, #5 & #6 drawn in proper legal form by the City Solicitor for action by the City Council, under a Suspension of Rules, on August 26, 2019. The motion was seconded and approved 3-0.**

It was moved and seconded to adjourn; motion carried 3-0. The meeting adjourned at 7:15 PM.

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

ORDERED: That the Transfer Request in the amount of \$200,000.00 from Economic Development to MEDC Funding for a City Shuttle Service for a one-year period, **APPROVED**; adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Mayor					FISCAL YEAR:	2020		
		FROM ACCOUNT:					TO ACCOUNT:			
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$962,021.48	\$200,000.00	27000099	42440	Economic Development	\$200,000.00	11740006	53950	MEDC Funding		\$0.00
	Reason:	To fund a City shuttle service								
	\$200,000.00	Total			\$200,000.00	Total				

ORDERED: That the Communication from City Solicitor, Jason Grossfield, re: Proposed Grant of Easement to MA Electric for service to Marlborough High School, 431 Bolton Street, in proper legal form, **FILE**; adopted.

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

ORDERED: That pursuant to Mass. Gen. Laws c. 40, § 3, the City of Marlborough grants a permanent utility easement, to be executed by the Mayor on behalf of the City, to the Massachusetts Electric Company (a/k/a “National Grid”) as enclosed, constituting a Grant of Easement to Massachusetts Electric Company for electrical service to Marlborough High School at 431 Bolton Street, subject to said grant of easement being approved by vote of the Marlborough School Committee, **APPROVED**; adopted.

**Yea: 11 – Nay: 0**

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

ORDERED: That the Communication from City Solicitor, Jason Grossfield, re: Proposed License for Outdoor Seating requested by David Richardson of Flying Dreams Brewing Co., 277 Main Street in proper legal form, **FILE**; adopted.

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

ORDERED:

**License to Encroach on Public Sidewalk and Indemnification**

WHEREAS, Flying Dreams Brewing Co., LLC d/b/a Flying Dreams Brewing Co. (the “Licensee”), duly incorporated in the Commonwealth of Massachusetts with a principle place of business at 455B Park Ave., Worcester, MA 01610, operating a brewery including retail sales for serving the beer brewed on-site known as Flying Dreams Brewing Co. located at 277 Main Street, Marlborough, MA (being a portion of Assessors Map 69 Parcel 382) desires to use a portion of the sidewalk fronting said 277 Main Street, Marlborough, MA (on the Rawlins Avenue side) for table service of food and/or beverages (hereinafter, “License Area”); and

WHEREAS the City of Marlborough (hereinafter, the “City”) wishes to allow the Flying Dreams Brewing Co. to use the License Area for table service of food and/or beverages;

WHEREAS the License Area is owned by and/or within the public way of the City;

NOW, THEREFORE, the City of Marlborough, by and through its City Council (hereinafter, “the City”), grants to the Licensee permission to use the License Area for the limited purpose of outdoor dining on food and/or beverages associated with the Licensee and to place tables and chairs thereon for said purpose, and for no other purpose, under the terms and conditions stated below (hereinafter, “the license” or “this license”):

1. The License Area is identified in its approximate location on the plan attached hereto as Exhibit “A,” which exhibit is made a part hereof.
2. The license shall be effective from the date of approval by the City for a one (1) year term. Thereafter, subject to the terms and conditions of this license, this license shall run from year to year. Licensee shall be responsible for snow and/or ice removal, if Licensee places tables and/or chairs on the License Area when snow or ice is present.
3. Licensee shall not allow any use of the tables and chairs in the License Area after 10:00 PM.
4. Licensee acknowledges that this license is not a grant of interest in the License Area or in any other portion of City property.
5. Licensee acknowledge that this license is exclusive to Licensee and that no other person(s) or entity(ies) has the permission of the City to utilize the License Area for any purpose other than for dining on products purchased at the Flying Dreams Brewing Co. This License (including paragraphs 5 and 6) shall not prohibit dining on food from sources other than the Licensee so long as it is in conjunction with dining on beverages purchased at the Flying Dreams Brewing Co.

6. Licensee agrees that it shall not allow loitering or other use of the License Area which is not related to dining on products purchased at the Flying Dreams Brewing Co.
7. Licensee agrees to indemnify and hold harmless the City, their officers, employees and agents from and against all suits, actions or claims, civil or criminal, of any character brought because of any injury or damage received or sustained by any person, persons or property arising out of, or resulting from the existence of any obstruction or defect in the public way abutting the License Area or in the License Area, or arising out of, or resulting from any asserted negligent or intentional act, error or omission of Licensee or its agents, servants or employees, occurring in the performance of the Licensee to place tables and chairs upon License Area and to allow the utilization by third parties of said License Area. The indemnification required hereunder shall not be limited by reason of the specifications of any particular insurance coverage of the Licensee.
8. The City's Building Commissioner or his agents may revoke the license for violation of the terms and conditions of this license.
9. Service of alcoholic beverages out-of-doors in the License Area shall require a separate license from the Licensing Board and any appropriate State approvals.
10. Said tables and chairs shall not interfere with accessible path of travel for handicapped individuals, per the Americans with Disabilities Act and all other applicable laws and regulations.
11. Signs shall not be permitted except in accordance with City's Sign Ordinance.
12. All applicable federal, state, and City policies, regulations and ordinances, as amended, shall remain in full force and effect, and Licensee shall comply with same.
13. Licensee agrees to abide by its terms and conditions and acknowledges that said license may be revoked by the City of Marlborough for breach of any condition contained therein.

*This is a legally binding document. By signing, Licensee acknowledges that it has had an opportunity to review with its Attorney.*

IN WITNESS WHEREOF, Licensee has set its hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2019.

LICENSEE  
Flying Dreams Brewing Co., LLC d/b/a Flying  
Dreams Brewing Co.  
By its Manager, duly authorized

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DAVID RICHARDSON

