

CITY OF MARLBOROUGH MEETING POSTING

Meeting Name: City Council Legislative and Legal Affairs Committee

Date: March 12, 2018

Time: 6:00 PM

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

Agenda Items to be addressed:

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2018 MAR -6 A 10: 28

Continued Review:

11-27-2017 – **Order No. 17/18-1007097-1B & -2B:** Communication from Mayor Vigeant regarding Proposed Lodging House Ordinances to comprehensively regulate lodging houses.

-Refer to Legislative and Legal Affairs Committee and Planning Board

-Public Hearing: January 8, 2018

New Business:

12-04-2017 – **Order No. 17/18-1007113A:** Special Act to increase by two the number of retail all alcohol package store licenses available in the City of Marlborough as requested by the Mayor.

-Refer to Legislative and Legal Affairs Committee

02-26-2018 – **Order No. 16/17/18-1006443D-1:** Communication from Assistant City Solicitor, Cynthia Panagore Griffin, regarding Apex Center Open Covenant and Restriction pursuant to the Development Agreement.

-Refer to Legislative and Legal Affairs Committee and Conservation Commission

THE LISTING OF TOPICS THAT THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING IS NOT INTENDED AS A GUARANTEE OF THE TOPICS THAT WILL HAVE BEEN DISCUSSED. NOT ALL TOPICS LISTED MAY IN FACT BE DISCUSSED, AND OTHER TOPICS NOT LISTED MAY ALSO BE BROUGHT UP FOR DISCUSSION TO THE EXTENT PERMITTED BY LAW.

The public should take due notice that the Marlborough City Council may have a quorum in attendance due to Standing Committees of the City Council consisting of both voting and non-voting members. However, members attending this duly posted meeting are participating and deliberating only in conjunction with the business of the Standing Committee.

Electronic devices, including laptops, cell phones, pagers, and PDAs must be turned off or put in silent mode upon entering the City Council Chamber, and any person violating this rule shall be asked to leave the chamber. Express authorization to utilize such devices may be granted by the President for recordkeeping purposes.



IN CITY COUNCIL

DECEMBER 18, 2017

Marlborough, Mass., _____

ORDERED:

Suspension of the Rules requested - granted

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY INSERTING A NEW CHAPTER 421 AS FOLLOWS:

35) Lodging Houses and Boardinghouses \$100 Building Commissioner and his designee
(Chapter 421)

AND BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY INSERTING A NEW CHAPTER 421, AS FOLLOWS:

CHAPTER 421: Lodging Houses and Boarding Houses

§ 421-1 Authority and Scope

The following ordinance concerning lodging houses and boardinghouses has been adopted by the City Council pursuant to the provisions of Massachusetts General Laws ("M.G.L.") Chapter 140, as amended. Any and all licenses issued by the Licensing Board shall be governed by, and subject to the Licensee's compliance with all applicable federal, state and local laws, regulations and by-laws, including but not limited to the M.G.L., regulations of the Licensing Board, the ordinances of the City of Marlborough, all applicable building, fire prevention, zoning, health and sanitary codes, and any conditions the Licensing Board imposes on specific licenses. Where there is conflict between these ordinances and a condition on the license, the condition shall govern unless it is inconsistent with the law.

§ 421-2 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Boarder, lodger, boardinghouse, lodging house, boarding unit, lodging unit shall have the same definitions as provided in § 650-5 of the City Code; consistent therewith, where the words lodging house are used, they shall also mean boardinghouse.

Licensee shall mean that person(s) or entity listed on the lodging house license and the owners of the land and building where the lodging house is operated.



IN CITY COUNCIL

DECEMBER 18, 2017

Marlborough, Mass., _____ PAGE 2

ORDERED:

§ 421-3 Application for a New or Renewed License

Prior to a new or renewed license being issued, Licensees and first-time applicants for a lodging house license shall request advisory reports from the Police Department, Fire Department, Collector, Board of Health, and Building Department, which advisory reports Licensees or first-time applicants shall furnish to the Licensing Board. The Licensing Board may deny an application for renewal of a license where there is cause for doing so. The Licensee's, or first-time applicant's, failure to comply with any federal, state or local law, regulation, or ordinance may be cause for denial of the application. This includes, but is not limited to, the ordinances of the City of Marlborough, state and local health regulations, the state Building Code, and the state Fire Code.

§ 421-4 New or Newly Renovated Facilities and Existing Licensed Facilities:

- A. New and renovated lodging houses must comply with all applicable State and Local Codes, Rules and Regulations in effect at time of construction.
- B. Consistent with and as may be permitted by Building Code, Fire Code, and Health Code, respective City officials may establish more flexible standards than certain provisions of this ordinance, applicable to existing facilities previously licensed as lodging houses, so long as they conform with applicable code requirements in effect at the time of construction or rehabilitation.

§ 421-5 Responsibilities of Licensee:

The Licensee shall be responsible for the proper supervision, operation, and maintenance of the lodging house in accordance with the requirements of this ordinance and all other pertinent laws, regulations and ordinances. The appointment of an agent shall in no way relieve the Licensee from responsibility for full compliance with the law.

§ 421-6 Agent(s)

- A. If the Licensee, because of health, other employment, non-residence on the premises of the lodging house, frequent or extended absences from the lodging house or other reason, is unable to exercise proper supervision of the lodging house, he/she shall designate one or more agent(s) to carry out all or part of his/her responsibilities.
- B. If, for any reason, an agent ceases to exercise his/her responsibilities, the Licensee shall at once notify the Licensing Board, Board of Health, Building Department, Fire Department and Police Department and take immediate steps to provide proper interim supervision and obtain a suitable replacement.
- C. The agent(s) shall be available on a 24-hour basis and must post his/her telephone numbers (including cell phone number) and beeper number, as applicable, in a location accessible to lodgers.



IN CITY COUNCIL

DECEMBER 18, 2017

Marlborough, Mass., _____ PAGE 3

ORDERED:

§ 421-7 City Inspections

- A. City inspections of licensed lodging houses shall be made on an annual basis by authorized inspectional departments to determine compliance with applicable state and local laws, regulations and codes, and upon request pursuant to §25 of M.G.L. c. 140, as amended.
- B. Annual inspections shall be made on week-days during normal City business hours. In addition, inspections may be made at other times (including but not limited to evenings and weekends) to investigate complaints or non-compliance issues. Inspections may include all areas occupied, used or controlled by the Licensee and within the structure containing the licensed premises, including rented and unrented units and other occupied and non-occupied space.
- C. Inspections shall be conducted in conformity with applicable federal, state and local law. Facilities requiring re-inspection are subject to applicable re-inspection fees.
- D. City officials shall, pursuant to an inspection under this ordinance or any other regulation or law, refer all violations of this ordinance and any other ordinance, regulation or law, whether federal, state, or local, which said officials are authorized to enforce, to the Licensing Board. All referrals to the Licensing Board shall also be mailed by first class mail to the Licensee and to the Licensee's agent, if any.

§ 421-8 Minimum Standards

- A. These regulations are minimum standards intended for the maintenance and enforcement required for the protection of health, safety and welfare of all persons concerned. If there is any conflict with state or local law, the stricter provision shall apply.
- B. All lodging houses shall comply with the requirements of Article II of the State Sanitary Code, Minimum Standards of Fitness for Human Habitation, which is incorporated herein by reference, and with the requirements of these regulations, whenever they are in addition to or more stringent than the requirements of Article II of said code.
- C. Licensees must have inspections performed by a licensed pest control operator (PCO) every 6 months (unless ordered to do so more frequently by the Health Department). PCO inspection reports must be kept on file for review. Inspections must include, but not be limited to, bed bugs, insects, and rodents. The licensee must take appropriate action to address any findings by the PCO. Licensees that can demonstrate long-term occupancy by a majority of the residents (greater than one year continued occupancy) may request a waiver of this inspection requirement. Waivers will be applied for and approved by the Director of Public Health.



IN CITY COUNCIL

DECEMBER 18, 2017

Marlborough, Mass., _____ PAGE 4

ORDERED:

D. The Licensee and his/her agent(s) shall comply with Chapter 406, Littering, of the City Code, and all other state or local regulations and laws pertaining to the proper storage, collection and disposal of waste. Responsibilities of the Licensee and agent(s) include, but are not limited to, the following:

- (1) Storing garbage and trash in watertight, rodent-proof receptacles with tight-fitting covers;
- (2) Providing to lodgers as many receptacles as are sufficient to contain accumulation of all garbage and trash before collection for disposal;
- (3) Locating garbage and trash containers in an area where objectionable odors will not enter any boarding or lodging unit;
- (4) Removal of dumpster waste as frequently as necessary to prevent overflow, windblown trash and garbage, rodent infestation, and odors.

§ 421-9 Supervision

Licensees and their agent(s) shall:

- (1) Exercise due care in the selection of lodgers;
- (2) Inspect all common areas at least daily and all occupied rooms at least monthly and at every change of lodger to ensure that all such areas are in a clean and orderly condition and in compliance with Licensee's electrical use policy and regulations pertaining to obstruction of egress, cooking in rooms, and other health and safety hazards;
- (3) Post a schedule of inspections, for the purposes of notifying lodgers, at least forty-eight hours prior to said inspections. Posting of the schedule for inspections shall not apply in the case of an emergency;
- (4) Ensure that lodgers dispose of trash and garbage properly, and that lodgers store food items in a sanitary manner;
- (5) Ensure cleanliness of rooming units and common areas, if any;
- (6) Ensure an unobstructed path of egress from entry door to fire escape, particularly in exit rooms, stairs and hallways;
- (7) Ensure compliance by lodgers with Licensee's electrical use policy, and prohibit the use of candles and other items that requires burning to be used (incense, odor oils, etc.);
- (8) Prohibit the use of portable heaters;
- (9) Take whatever steps are necessary to prevent lodger(s) from repeatedly violating Licensee's rules or the requirements of this ordinance, or any other law or regulation, up to and including eviction; and
- (10) Comply with any other provisions or requirements as may be required by any department or board of the City of Marlborough.



IN CITY COUNCIL

DECEMBER 18, 2017

Marlborough, Mass., _____ PAGE 5

ORDERED:

§ 421-10 Automatic Fire Alarm System, Sprinkler Systems, Carbon Monoxide Protection

- A. All lodging houses shall be equipped with automatic smoke or heat detectors, an automatic sprinkler system, carbon monoxide alarms, carbon monoxide detectors and combination smoke/carbon detectors. The design, installation, and performance of said systems, alarms and detectors shall be in accordance with the state Building Code, the state Fire Code, NFPA and all applicable laws and regulations.
- B. The Licensee shall be responsible for the care and maintenance of all fire protection systems, including equipment and devices, to insure the safety and welfare of the lodgers. Installation of, or modification to, any automatic fire protection system shall require a permit from the Fire Department.
- C. Fire protection systems shall not be disconnected or otherwise rendered unserviceable, for purposes including but not limited to repair and maintenance, without first notifying the Fire Department.
- D. As part of the annual Fire Department inspection, all lodging houses must submit to Fire Department annual Fire Alarm and Sprinkler System tests.

§ 421-11 Penalty

- A. Refusal, neglect or failure to comply with any section of this ordinance shall be cause for a fine imposed pursuant to and in conformity with Chapter 315 of the City Code, and/or to the penalties imposed by M.G.L. c. 140 § 22, *et seq.*, as amended, where applicable, and/or such other provisions of law including but not limited to the state Sanitary Code, Fire Code, and Building Code, ordinances of the City of Marlborough and other regulations and fines applicable to the particular violation.
- B. The Licensee's refusal, neglect or failure to comply with any federal, state or local law, regulation, or ordinance including, but not limited to, this ordinance and any other ordinance of the City of Marlborough, the state Sanitary Code, Fire Code, and Building Code, and any other local codes and regulations may be cause for denial, suspension or revocation of a license by the Licensing Board, and/or a fine as above.

Be and is herewith **IN URBAN AFFAIRS COMMITTEE CARRIED OVER TO THE 2018/2019 LEGISLATIVE SESSION.**

ADOPTED

ORDER NO. 17-1007097-1A



IN CITY COUNCIL

DECEMBER 18, 2017

Marlborough, Mass., _____

ORDERED:

Suspension of the Rules requested - granted

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT ARTICLE IV, SECTION 328-4 OF THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED AS FOLLOWS:

Delete from Article IV, §328-4 of the Code of the City of Marlborough, entitled Fee Schedule for Other City Departments, the fee amount of "\$50.00" respecting Lodging Houses (M.G.L. c. 140, § 34) and insert in place thereof the fee amount of "\$500 for first 20 lodging units" and "\$50 per additional lodging unit over 20".

Be and is herewith **IN URBAN AFFAIRS COMMITTEE & CARRIED OVER TO THE 2018/2019 LEGISLATIVE SESSION.**

ADOPTED

ORDER NO. 17-1007097-2A



City of Marlborough
Office of the Mayor

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610
www.marlborough-ma.gov

Arthur G. Vigeant
MAYOR

Nicholas J. Milano
EXECUTIVE AIDE

Patricia Bernard
EXECUTIVE SECRETARY

November 21, 2017

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Lodging House Ordinance

Honorable President Clancy and Councilors:

Please find enclosed for your review and approval two proposed ordinances to more comprehensively regulate lodging houses in the City of Marlborough. These proposals are based on ordinances in communities such as Salem and Brookline and they will increase the yearly licensing fee as well as the standards and safety of rooming houses that operate in Marlborough.

As you are well aware, a fire, which has been deemed arson, closed the McDonald House. After firefighters and inspectors had the opportunity to inspect the building, code violations were identified for repair.

Our rooming houses must be held to a higher standard in order to provide safe living quarters to their guests. The enclosed ordinance proposes to do this by clearly identifying a set of minimum standards that they must meet to receive their license to operate. These standards will be inspected on a regular basis by City inspectors in Inspectional Services, the Fire Department, the Board of Health, and other departments as necessary.

Thank you for your consideration and I look forward to discussing with you further. In the meantime, please do not hesitate to contact me with any questions.

Sincerely,

Arthur G. Vigeant
Mayor

Enclosure

ORDERED:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY INSERTING INTO CHAPTER 315 THE FOLLOWING:

35) Lodging Houses and Boardinghouses \$100 Building Commissioner and his designee (Chapter 421)

AND BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY INSERTING A NEW CHAPTER 421, AS FOLLOWS:

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§ 421-2 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Boarder, lodger, boardinghouse, lodging house, boarding unit, lodging unit shall have the same definitions as provided in § 650-5 of the City Code; consistent therewith, where the words lodging house are used, they shall also mean boardinghouse.

Licensee shall mean that person(s) or entity listed on the lodging house license and the owners of the land and building where the lodging house is operated.

§ 421-3 Application for a New or Renewed License

Prior to a new or renewed license being issued, Licensees and first-time applicants for a lodging house license shall request advisory reports from the Police Department, Fire Department, Collector, Board of Health, and Building Department, which advisory reports Licensees or first-

time applicants shall furnish to the Licensing Board. The Licensing Board may deny an application for renewal of a license where there is cause for doing so. The Licensee's, or first-time applicant's, failure to comply with any federal, state or local law, regulation, or ordinance may be cause for denial of the application. This includes, but is not limited to, the ordinances of the City of Marlborough, state and local health regulations, the state Building Code, and the state Fire Code.

§ 421-4 New or Newly Renovated Facilities and Existing Licensed Facilities:

- A. New and renovated lodging houses must comply with all applicable State and Local Codes, Rules and Regulations in effect at time of construction.
- B. Consistent with and as may be permitted by Building Code, Fire Code, and Health Code, respective City officials may establish more flexible standards than certain provisions of this ordinance, applicable to existing facilities previously licensed as lodging houses, so long as they conform with applicable code requirements in effect at the time of construction or rehabilitation.

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The Licensee shall be responsible for the proper supervision, operation, and maintenance of the lodging house in accordance with the requirements of this ordinance and all other pertinent laws, regulations and ordinances. The appointment of an agent shall in no way relieve the Licensee from responsibility for full compliance with the law.

§ 421-6 Agent(s)

- A. If the Licensee, because of health, other employment, non-residence on the premises of the lodging house, frequent or extended absences from the lodging house or other reason, is unable to exercise proper supervision of the lodging house, he/she shall designate one or more agent(s) to carry out all or part of his/her responsibilities.
- B. If, for any reason, an agent ceases to exercise his/her responsibilities, the Licensee shall at once notify the Licensing Board, Board of Health, Building Department, Fire Department and Police Department and take immediate steps to provide proper interim supervision and obtain a suitable replacement.
- C. The agent(s) shall be available on a 24-hour basis and must post his/her telephone numbers (including cell phone number) and beeper number, as applicable, in a location accessible to lodgers.

§ 421-7 City Inspections

- A. City inspections of licensed lodging houses shall be made on an annual basis by authorized inspectional departments to determine compliance with applicable state and local laws, regulations and codes, and upon request pursuant to §25 of M.G.L. c. 140, as amended.

- B. Annual inspections shall be made on week-days during normal City business hours. In addition, inspections may be made at other times (including but not limited to evenings and weekends) to investigate complaints or non-compliance issues. Inspections may include all areas occupied, used or controlled by the Licensee and within the structure containing the licensed premises, including rented and unrented units and other occupied and non-occupied space.
- C. Inspections shall be conducted in conformity with applicable federal, state and local law. Facilities requiring re-inspection are subject to applicable re-inspection fees.
- D. City officials shall, pursuant to an inspection under this ordinance or any other regulation or law, refer all violations of this ordinance and any other ordinance, regulation or law, whether federal, state, or local, which said officials are authorized to enforce, to the Licensing Board. All referrals to the Licensing Board shall also be mailed by first class mail to the Licensee and to the Licensee's agent, if any.

§ 421-8 Minimum Standards

- A. These regulations are minimum standards intended for the maintenance and enforcement required for the protection of health, safety and welfare of all persons concerned. If there is any conflict with state or local law, the stricter provision shall apply.
- B. All lodging houses shall comply with the requirements of Article II of the State Sanitary Code, Minimum Standards of Fitness for Human Habitation, which is incorporated herein by reference, and with the requirements of these regulations, whenever they are in addition to or more stringent than the requirements of Article II of said code.
- C. Licensees must have inspections performed by a licensed pest control operator (PCO) every 6 months (unless ordered to do so more frequently by the Health Department). PCO inspection reports must be kept on file for review. Inspections must include, but not be limited to, bed bugs, insects, and rodents. The licensee must take appropriate action to address any findings by the PCO. Licensees that can demonstrate long-term occupancy by a majority of the residents (greater than one year continued occupancy) may request a waiver of this inspection requirement. Waivers will be applied for and approved by the Director of Public Health.
- D. The Licensee and his/her agent(s) shall comply with Chapter 406, Littering, of the City Code, and all other state or local regulations and laws pertaining to the proper storage, collection and disposal of waste. Responsibilities of the Licensee and agent(s) include, but are not limited to, the following:
 - (1) Storing garbage and trash in watertight, rodent-proof receptacles with tight-fitting covers;
 - (2) Providing to lodgers as many receptacles as are sufficient to contain accumulation of all garbage and trash before collection for disposal;

- (3) Locating garbage and trash containers in an area where objectionable odors will not enter any boarding or lodging unit;
- (4) Removal of dumpster waste as frequently as necessary to prevent overflow, windblown trash and garbage, rodent infestation, and odors.

§ 421-9 Supervision

Licensees and their agent(s) shall:

- (1) Exercise due care in the selection of lodgers;
- (2) Inspect all common areas at least daily and all occupied rooms at least monthly and at every change of lodger to ensure that all such areas are in a clean and orderly condition and in compliance with Licensee's electrical use policy and regulations pertaining to obstruction of egress, cooking in rooms, and other health and safety hazards;
- (3) Post a schedule of inspections, for the purposes of notifying lodgers, at least forty-eight hours prior to said inspections. Posting of the schedule for inspections shall not apply in the case of an emergency;
- (4) Ensure that lodgers dispose of trash and garbage properly, and that lodgers store food items in a sanitary manner;
- (5) Ensure cleanliness of rooming units and common areas, if any;
- (6) Ensure an unobstructed path of egress from entry door to fire escape, particularly in exit rooms, stairs and hallways;
- (7) Ensure compliance by lodgers with Licensee's electrical use policy, and prohibit the use of candles and other items that requires burning to be used (incense, odor oils, etc.);
- (8) Prohibit the use of portable heaters;
- (9) Take whatever steps are necessary to prevent lodger(s) from repeatedly violating Licensee's rules or the requirements of this ordinance, or any other law or regulation, up to and including eviction; and
- (10) Comply with any other provisions or requirements as may be required by any department or board of the City of Marlborough.

§ 421-10 Automatic Fire Alarm System, Sprinkler Systems, Carbon Monoxide Protection

- A. All lodging houses shall be equipped with automatic smoke or heat detectors, an automatic sprinkler system, carbon monoxide alarms, carbon monoxide detectors and combination smoke/carbon detectors. The design, installation, and performance of said systems, alarms and detectors shall be in accordance with the state Building Code, the state Fire Code, NFPA and all applicable laws and regulations.
- B. The Licensee shall be responsible for the care and maintenance of all fire protection systems, including equipment and devices, to insure the safety and welfare of the lodgers. Installation of, or modification to, any automatic fire protection system shall require a permit from the Fire Department.

- C. Fire protection systems shall not be disconnected or otherwise rendered unserviceable, for purposes including but not limited to repair and maintenance, without first notifying the Fire Department.
- D. As part of the annual Fire Department inspection, all lodging houses must submit to Fire Department annual Fire Alarm and Sprinkler System tests.

§ 421-11 Penalty

- A. Refusal, neglect or failure to comply with any section of this ordinance shall be cause for a fine imposed pursuant to and in conformity with Chapter 315 of the City Code, and/or to the penalties imposed by M.G.L. c. 140 § 22, *et seq.*, as amended, where applicable, and/or such other provisions of law including but not limited to the state Sanitary Code, Fire Code, and Building Code, ordinances of the City of Marlborough and other regulations and fines applicable to the particular violation.
- B. The Licensee's refusal, neglect or failure to comply with any federal, state or local law, regulation, or ordinance including, but not limited to, this ordinance and nay other ordinance of the City of Marlborough, the state Sanitary Code, Fire Code, and Building Code, and any other local codes and regulations may be cause for denial, suspension or revocation of a license by the Licensing Board, and/or a fine as above.

ADOPTED
In City Council
Order No 17-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

ORDERED:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT ARTICLE IV, SECTION 328-4 OF THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED AS FOLLOWS:

Delete from Article IV, §328-4 of the Code of the City of Marlborough, entitled Fee Schedule for Other City Departments, the fee amount of “\$50.00” respecting Lodging Houses (M.G.L. c. 140, § 34) and insert in place thereof the fee amount of “\$500 for first 20 lodging units” and “\$50 per additional lodging unit over 20”.

ADOPTED
In City Council
Order No 17-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:



IN CITY COUNCIL

Marlborough, Mass., ~~DECEMBER 18, 2017~~

PAGE 2

ORDERED:

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

Suspension of the Rules requested - granted

That a petition to the General Court, accompanied by a bill for a special law relating to the city of Marlborough to be filed with an attested copy of this order, be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

An act authorizing the city of Marlborough to grant additional licenses for the sale of alcoholic beverages not to be drunk on the premises.

SECTION 1. (a) Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the city of Marlborough may grant 2 additional licenses for the sale of all alcoholic beverages not to be drunk on the premises pursuant to section 15 of said chapter 138. A license granted pursuant to this act shall be subject to the conditions set by the said licensing authority and shall be subject to all of said chapter 138 except said section 17.

(b) The licensing authority of the said city shall not approve the transfer of a license granted pursuant to this act to any other person, partnership, corporation, limited liability company, organization or other entity or to any other location.

(c) If a license granted pursuant to this act is cancelled, revoked, or no longer in use at the location of original issuance, the license shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority of the said city and the said licensing authority may then grant the license to a new applicant at the same location under the same conditions as authorized in this act if the applicant files with the said licensing authority a letter from the department of revenue and a letter from the department of unemployment assistance indicating that the license is in good standing with those departments and that all applicable taxes, fees and contributions have been paid.

SECTION 2. This act shall take effect upon its passage.

Be and is herewith **CARRY OVER TO THE 2018-2019 LEGISLATIVE SESSION.**

ADOPTED

ORDER NO. 17-1007113A



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

City of Marlborough

Office of the Mayor

2017 NOV 30 A 11:25

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610
www.marlborough-ma.gov

Arthur G. Vigeant
MAYOR

Nicholas J. Milano
EXECUTIVE AIDE

Patricia Bernard
EXECUTIVE SECRETARY

November 30, 2017

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Home Rule Petition for Off Premises Liquor Licenses

Honorable President Clancy and Councilors:

Please find enclosed for your review and approval a home rule petition to increase by two the number of licenses for the sale of all alcoholic beverages not to be drunk on the premises available in the City of Marlborough.

As you may know, the City is about to hit its quota for liquor stores allowed in the City. The antiquated quota system is based on population and is a relic of state laws that were enacted in the aftermath of Prohibition.

Due to the interest of two longtime Marlborough businesses, I believe it is now necessary to increase our quota. One beer and wine only license remains, but it is sought after by two local business owners who want to expand their specialty offerings.

These are not run of the mill package stores on a street corner, but are two businesses that have roots in Marlborough and provide specialty services and selections.

This proposed home rule petition will enable the Licensing Board to grant licenses to both business, while leaving the Board with one remaining license for a future opportunity.

Please note that the attached home rule petition is based on several different pieces of legislation filed by other communities that were subsequently approved by the Legislature both this year and last year.

If approved by the Legislature and Governor, the licenses governed by this legislation will be permitted to be used at only one location for their entire period of use.

If a license is cancelled or no longer in use, it must be returned to the Licensing Board which can then grant it to a new applicant, but it may not be at a location other than the location first approved by the Board.

These are safeguards the Legislature has chosen to place on additional licenses they grant to communities so that the licenses may not be sold or transferred by private entities for profit.

Please do not hesitate to contact me with any questions or concerns. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur G. Vigeant". The signature is fluid and cursive, with a large initial "A" and "V".

Arthur G. Vigeant
Mayor

Enclosures

ORDERED:

That a petition to the General Court, accompanied by a bill for a special law relating to the city of Marlborough to be filed with an attested copy of this order, be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

An act authorizing the city of Marlborough to grant additional licenses for the sale of alcoholic beverages not to be drunk on the premises.

SECTION 1. (a) Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the city of Marlborough may grant 2 additional licenses for the sale of all alcoholic beverages not to be drunk on the premises pursuant to section 15 of said chapter 138. A license granted pursuant to this act shall be subject to the conditions set by the said licensing authority and shall be subject to all of said chapter 138 except said section 17.

(b) The licensing authority of the said city shall not approve the transfer of a license granted pursuant to this act to any other person, partnership, corporation, limited liability company, organization or other entity or to any other location.

(c) If a license granted pursuant to this act is cancelled, revoked, or no longer in use at the location of original issuance, the license shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority of the said city and the said licensing authority may then grant the license to a new applicant at the same location under the same conditions as authorized in this act if the applicant files with the said licensing authority a letter from the department of revenue and a letter from the department of unemployment assistance indicating that the license is in good standing with those departments and that all applicable taxes, fees and contributions have been paid.

SECTION 2. This act shall take effect upon its passage.

ADOPTED

In City Council
Order No. 17-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY

ATTEST:

Acts (2016)**Chapter 57****AN ACT AUTHORIZING THE TOWN OF CANTON TO GRANT ADDITIONAL LICENSES FOR THE SALE OF ALCOHOLIC BEVERAGES NOT TO BE DRUNK ON THE PREMISES.**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. (a) Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the town of Canton may grant 2 additional licenses for the sale of all alcoholic beverages not to be drunk on the premises pursuant to section 15 of said chapter 138. A license granted pursuant to this act shall be subject to the conditions set by the licensing authority and shall be subject to all of said chapter 138 except said section 17.

(b) The licensing authority shall not approve the transfer of a license granted pursuant to this act to any other person, partnership, corporation, limited liability company, organization or other entity or to any other location.

(c) If a license granted pursuant to this act is cancelled, revoked or no longer in use, the license shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority and the licensing authority may then grant the license to a new applicant at the same location under the same conditions as authorized in this act if the applicant files with the licensing authority a letter from the department of revenue and a letter from the department of unemployment assistance indicating that the license is in good standing with those departments and that all applicable taxes, fees and contributions have been paid.

SECTION 2. This act shall take effect upon its passage.

Approved, March 16, 2016.



IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 26, 2018.

ORDERED:

That the Communication from Assistant City Solicitor, Cynthia Panagore Griffin, re: Apex Center Open Covenant and Restriction pursuant to the Development Agreement, be and is herewith refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE & CONSERVATION COMMISSION.**

ADOPTED

ORDER NO. 16/17/18-1006443D-1



IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 26, 2018
PAGE 1

ORDERED:

OPEN SPACE COVENANT AND RESTRICTION

This OPEN SPACE COVENANT AND RESTRICTION (hereinafter, the "Covenant") is entered into this ___ day of _____ 2018 by Walker Realty LLC, a Massachusetts limited liability corporation with a usual address of 4 Lan Drive, Westford, MA 01886 and Marlboro Hospitality, LLC, a Massachusetts limited liability company with a usual address of 4 Lan Drive, Westford, MA 01886, their respective successors as fee owners of the hereinafter described Restricted Land (hereinafter, collectively, the "Covenanting Party") with the City of Marlborough, a municipal corporation with an address of 140 Main Street, Marlborough, MA 01752 (hereinafter, the "Benefitted Party"). Reference is made to the following facts which set forth the background to this Covenant:

- A. The Covenanting Party is the fee owner of certain property located off Boston Post Road West, Marlborough, Massachusetts known as Lots 11, 12, and 13A as shown on a plan entitled "Subdivision Plan of Land in Marlborough, Massachusetts" prepared by VHB Inc., dated May 4, 2017, revised through June 14, 2017 and recorded at Middlesex County South Registry of Deeds at Plan Book 2017, Plan 574, (the "Property"), said Restricted Land being a portion thereof.
- B. Pursuant to Section 650-35 of the City of Marlborough Zoning Ordinance, the Property is located within the Hospitality and Mixed Use Overlay District (hereinafter, the "HRMUOD").
- C. Pursuant to the provisions of Section 650-35 of the City of Marlborough Zoning Ordinance, the Marlborough City Council approved a Development Agreement, which is recorded at Middlesex South Registry of Deeds in Book 68164, Page 152, for the development of the Property as permitted in the HRMUOD.
- D. Pursuant to paragraph 20 of said Development Agreement, the Covenanting Party is required as a condition of site plan approval to grant to the Benefitted Party a perpetual easement for an additional non-disturbance area to be left as undevelopable Open Space (hereinafter, the "Restricted Land") at the Property (hereinafter, the "Covenant Requirement").
- E. In connection with site plan approval, pursuant to the Development Agreement the Covenanting Party desires to restrict _____ square feet or ___ acres of land, more or less, more particularly described as OSE # ___ on Exhibit A attached hereto and incorporated herein as the Restricted Land consisting of open space left substantially in its natural state as undevelopable open space in accordance with the terms of this Covenant and in fulfillment of the Covenant Requirement.



IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 26, 2018

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ORDERED:

NOW THEREFORE for good and valuable consideration, which is acknowledged, the undersigned hereby COVENANTS with the City of Marlborough, acting by and through its Mayor, duly authorized by the Marlborough City Council, as follows:

I. COVENANTING PARTY:

Walker Realty LLC, a Massachusetts limited liability corporation, and Marlborough Hospitality LLC, are the fee owners of the Restricted Land.

II. PURPOSES:

The purposes of this Open Space Covenant and Restriction (hereinafter, this "Covenant") are for the perpetual conservation and preservation of open space, passive recreation, to assure that the Restricted Land will be retained, in perpetuity, in its natural, scenic, wetlands and wooded condition.

III. PROHIBITED AND PERMITTED ACTS AND USES:

A. Prohibited Acts and Uses: Subject to the exceptions set forth hereinafter, the Covenanting Party will not perform or permit the following acts and uses which are expressly prohibited on, above, and below the Restricted Land:

1. Constructing or placing any buildings, constructing or placing parking, roadways or walkways or other structures or pads from asphalt, stone, synthetic or concrete or other materials, fences, signs, billboards or other advertising displays, antennas, utility poles, towers, cabinets, telecommunications equipment of any kind, conduits, lines or other temporary or permanent structures, facilities or accessory uses whatsoever, including portions thereof, on, below, or above the Restricted Land;
2. Mining, excavating, dredging or removing from the Restricted Land soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;
3. Placing, filling, storing or dumping on the Restricted Land of soil, refuse, trash, vehicle bodies or parts, rubbish, chemicals, debris, junk, waste or other objects, substances or materials whatsoever or the installation of underground storage tanks;



IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 26, 2018

PAGE 3

ORDERED:

4. Cutting, removing or otherwise destroying trees, grasses or other vegetation;
 5. The stockpiling and composting or stumps, trees, shrubs, grasses, and brush limbs or similar materials;
 6. Any uses or acts which would impair or be detrimental to the public walking trail easements, recorded at Middlesex County South Registry of Deeds in Book _____, Page _____, and to the sewer easement, recorded at Middlesex County South Registry of Deeds in Book _____, Page _____;
 7. Activities detrimental to drainage, flood control, water conservation, wildlife habitat, erosion control or soil conservation;
 8. Hunting, trapping and fishing;
 9. Any other use of the Restricted Land or activity adverse to conservation or which would materially impair the character of the land as open space left substantially in its natural state, unless necessary for protection of the land as such land left substantially in its natural state; and
 10. Use of motorized vehicles including but not limited to trucks, cars, all-terrain vehicles, dirt bikes, motorcycles, campers, trailers and snowmobiles.
- B. Exceptions to Otherwise Prohibited Acts and Uses: Notwithstanding anything to the contrary contained in Paragraph A. above, the following acts and uses are permitted:
1. The maintenance and modification of vegetation, excavation, dredging, removal of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposits on the Restricted Land for conservation, habitat management or scientific purposes;
 2. Construction, reconstruction, modification, inspection, maintenance, repair and use of easements of record, drainage facilities, wastewater facilities and other utilities and rights of way, if any, to service the Property, of which the Restricted Land is a part, and/or to service any other land outside of the Property which is Benefitted by these appurtenances, together with any and all rights and easements of record necessary and desirable to effectuate the foregoing;
 3. Drainage from adjoining land;



IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 26, 2018

PAGE 4

ORDERED:

4. The erection and maintenance of signs identifying ownership of the Restricted Land, its status as land subject to an Open Space Covenant and Restriction, the restrictions on the use of the Restricted Land, the identity of areas of interest, natural features or other characteristics of the Restricted Land, and the public walking trail easements recorded with the Middlesex County South Registry of Deeds at Book __, Page __;
5. With the prior approval of the Tree Warden of the City of Marlborough, the removal of hazardous, downed, dead or dying trees or tree limbs, although some deadfall may remain as den trees and to otherwise support wildlife; the de minimus cutting and removal of shrubs and other vegetation, the planting of native trees, shrubs and other vegetation, and the removal of debris or trash for normal maintenance of the Restricted Land in a natural condition and to prevent threat of injury or damage to persons or property;
6. Measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare and or endangered species including selective planting of native trees, shrubs and plant species, and removal of non-native and invasive plant species;
7. The placing of fences and benches that do not interfere with the purposes of this Covenant;
8. Trapping to control nuisance wildlife species pursuant to M.G.L. c. 131, § 80A;
9. The maintenance, removal or replacement of utilities, underground structures, good drainage, soil conservation or to other permissible uses of the Restricted Land;
10. On the aforementioned public walking trails only, the use of the Restricted Land by the public for passive recreational activities such as walking, snowshoeing, biking, cross-country skiing, nature study, bird watching, and the like;
11. The repair, maintenance, and reconstruction of the walking trails and the sewer easement, and appurtenances thereto, in conformance with the recorded walking trail easements and sewer easement, recorded at the Middlesex County South Registry of Deeds as provided herein, and as reasonably necessary, such fences, bridges, gates, and stonewalls, if any, as may be located on the Restricted Land; and



IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 26, 2018

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ORDERED:

12. Motorized vehicles necessary for public safety (e.g., fire, police, ambulance and other government officials) in carrying out their lawful duties or as necessary in furtherance of any use permitted under this Section III (B).

IV. MAINTENANCE AND STEWARDSHIP OF THE RESTRICTED LAND

- A. The Benefitted Party, its agents and assigns, may enter upon the Restricted Land at reasonable times and with reasonable advanced written notice to monitor the Covenanting Party's compliance with this Covenant and to otherwise enforce the terms thereof, provided, however, that the Benefitted Party shall provide reasonable notice of entry to the Covenanting Party.

V. MISCELLANEOUS

- A. The burdens of this Covenant shall run with the Restricted Land in perpetuity and shall be enforceable against the Covenanting Party and the successors and assigns of the Covenanting Party holding any interest in the Restricted Land, provided however, Covenanting Party and each successive owner of the Restricted Land (or portion(s) thereof) shall be liable only for those matters arising during the respective party's ownership of the Restricted Land (or portion(s) thereof) and only to the extent of its ownership of the Restricted Land (or portion(s) thereof). Nothing contained in this Covenant shall be construed to entitle the Benefitted Party to bring any action against the Covenanting Party for any injury or change in the Restricted Land resulting from causes beyond the Covenanting Party's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Covenanting Party under emergencies, conditions to abate, prevent or mitigate significant injury to the Restricted Land from such causes.
- B. The rights hereby granted shall include the right to enforce this Covenant by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations. The Covenanting Party covenants and agrees to reimburse the Benefitted Party all reasonable costs and expenses (including reasonable attorney's fees) incurred in enforcing this Covenant or in taking reasonable measures to remedy, correct, or abate any violation thereof, provided that a violation of this Covenant is acknowledge by the Covenanting Party to have occurred or determined by a court of competent jurisdiction to have occurred.
- C. Any election by the Benefitted Party as to the manner and timing of its right to enforce this covenant and restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be waiver of such rights.



IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 26, 2018

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ORDERED:

- D. This Covenant may be amended to permit additional uses permitted within open space land in the City of Marlborough by the recording of an instrument executed by the Covenanting Party and the Benefitted Party, with approval of the Marlborough City Council and the Mayor of the City of Marlborough.
- E. This Covenanting Party and the Benefitted Party, on their own behalf and on behalf of their successors and assigns, agree and represent as follows: (i) pursuant to M.G.L. c. 184, § 23, the foregoing Covenant is a gift for the public purpose of preservation of land in its natural state with rights of public access thereto as provided in the above-referenced walking trail easements; and (ii) pursuant to M.G.L. c. 184, § 26, the foregoing Covenant is a restriction held by a governmental body, which shall be duly recorded and indexed in the grantor index on the registry of deeds or registered in the registry of deeds in the registry district of the land court for the county or district wherein the land lies so as to affect its title, and which describes the land by metes and bounds or by reference to a recorded or registered plan showing its boundaries. Accordingly, the foregoing Covenant shall remain in effect in perpetuity, and shall not be subject to the limitation on the period of a covenant of unlimited duration set forth in M.G.L. c. 184, § 23 on the periods of its enforceability set forth in M.G.L. c. 184, § 27.
- F. The Benefitted Party is authorized to record or file notices or instruments, if any, appropriate to assuring the perpetual enforceability of this Covenant. Without limiting any of the foregoing, the Covenanting Party its successors and assigns agree to execute any such reasonable instruments within a commercially reasonable period of time after written request of the Benefitted Party.
- G. The foregoing is not intended to constitute a conservation restriction under M.G.L. c. 184, §§ 31 and 32.
- H. The foregoing Covenant is not intended to be a disposition of land or easement and is not intended to be subject to the provisions of Article 97 of the Constitution of the Commonwealth. Further, by acceptance hereof, the Benefitted Party hereby specifically contractually agrees with the Covenanting Party, in consideration for the grant of this Covenant, to retain the right to release or modify the terms of this Covenant without being subject to the provisions of Article 97 of the Constitution of the Commonwealth.



IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 26, 2018

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ORDERED:

- I. By Order of the Marlborough City Council, attached hereto as Exhibit B, this Covenant has been approved, and the gift thereof accepted, by the Marlborough City Council in accordance with paragraph 20 of the Development Agreement, which paragraph concerns the recording of a perpetual easement for an additional non-disturbance area at the Property to be left as undevelopable Open Space.
- J. This Covenant shall be and is binding upon the grantee's or successors in title to the Covenanting Party, which agrees to incorporate by reference the terms of this Open Space Covenant and Restriction in any deed or other legal instrument by which it divests itself of any interest in all or any portion of the Restricted Land, it being the express intention and understanding and agreement that this covenant shall constitute a covenant running with the land. Without limitation, the Covenanting Party, on its own behalf and on behalf of its successors and assigns, waives and relinquishes any right to assert that the Covenant does not constitute a gift to a governmental body for a public purpose.

The Marlborough City Council shall be the Benefitted Party under this Covenant until the City Council transfers, if at all, said status as Benefitted Party to the Conservation Commission of the City of Marlborough, after which the Conservation Commission shall be the Benefitted Party under this Covenant until the City Council transfers said status as Benefitted Party under this Covenant, if at all, to itself or to another department, board or commission of the City of Marlborough.

- K. If any provision of this Covenant shall to any extent be held invalid, the remainder shall not be affected.
- L. The Covenanting Party and the Benefitted Party intend that the covenants and restrictions arising hereunder take effect on the day and year this Restriction is recorded in the official records of the Middlesex County South Registry of Deeds, after all signatures have been affixed hereto. This document and any exhibits thereto shall be recorded in a timely manner by the Benefitting Party, at its sole expense, upon execution by all parties.

Witness our hands and seals this ____ day of _____, 2018.



IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 26, 2018

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ORDERED:

FOR THE COVENANTING PARTY:

FOR THE BENEFITTED PARTY:

WALKER REALTY LLC

THE CITY OF MARLBOROUGH

By and through its duly authorized Mayor:

Robert Walker, Manager

Arthur G. Vigeant, Mayor

In his official capacity

MARLBOROUGH HOSPITALITY LLC

Robert Walker, Manager

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared Robert A. Walker, Manager, proved to me through satisfactory evidence of identification, which was Personal Knowledge to be the person whose name is signed on the preceding/attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared Arthur G. Vigeant, proved to me through satisfactory evidence of identification, which was _____ (source of identification) to be the person whose name is signed on the preceding/attached document in his official capacity as the Mayor of the City of Marlborough, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My Commission Expires



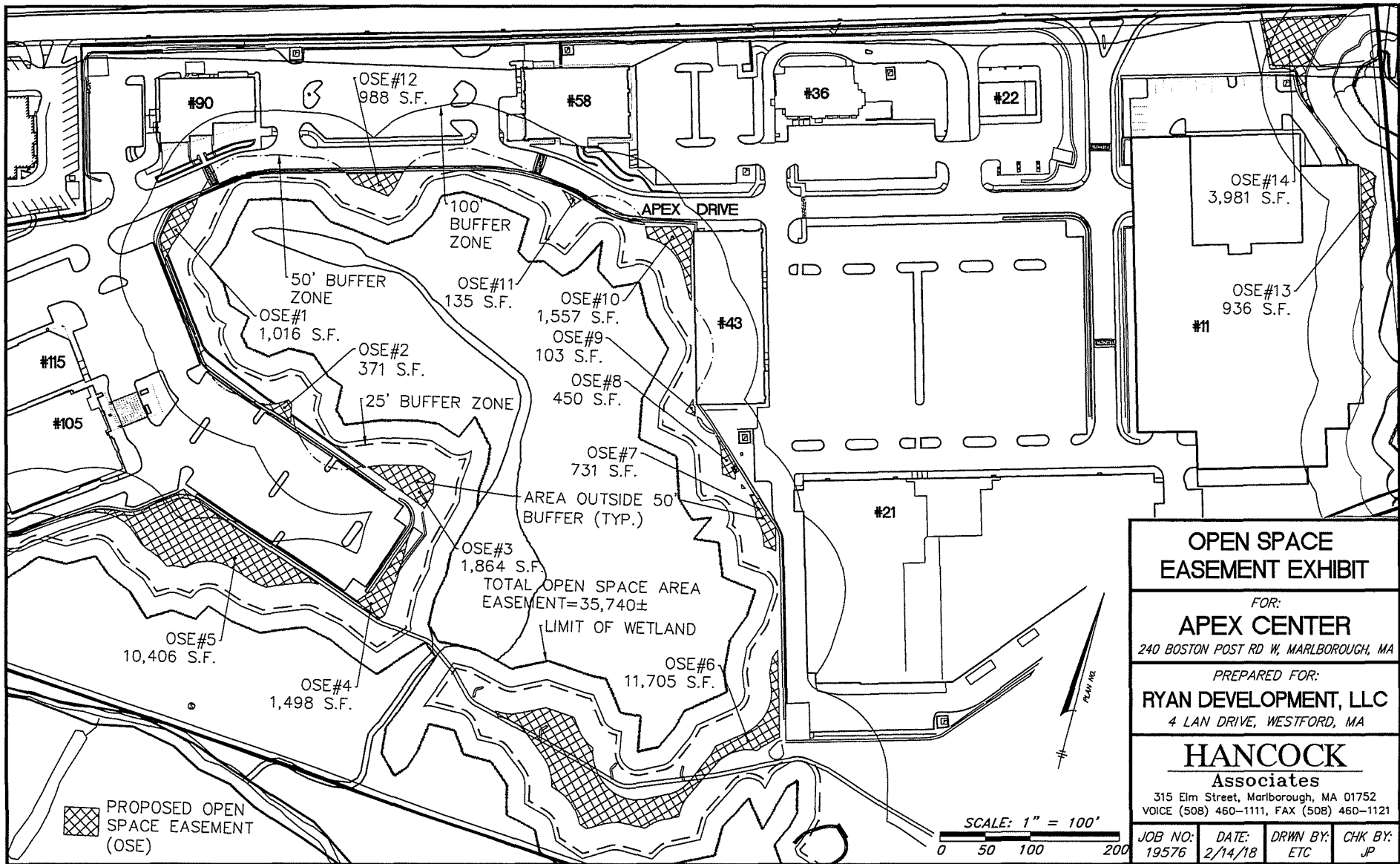
IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 26, 2018
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ORDERED:

EXHIBIT A

(Open Space Easement Map)



**OPEN SPACE
EASEMENT EXHIBIT**

FOR:
APEX CENTER
240 BOSTON POST RD W, MARLBOROUGH, MA

PREPARED FOR:
RYAN DEVELOPMENT, LLC
4 LAN DRIVE, WESTFORD, MA

HANCOCK
Associates
315 Elm Street, Marlborough, MA 01752
VOICE (508) 460-1111, FAX (508) 460-1121

JOB NO: 19576	DATE: 2/14/18	DRWN BY: ETC	CHK BY: JP
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PATH: C:\Gis 3D Project\19576



IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 26, 2018

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ORDERED:

EXHIBIT B

(Copy of Order executed by the Mayor)