



# IN CITY COUNCIL

DECEMBER 16, 2013

Marlborough, Mass.,

**ORDERED:**

## DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

### NOTICE OF DECISION GRANT OF SPECIAL PERMIT

Application of:  
Jump in with Us, Inc.  
85 Commons Dr., Unit 42  
Shrewsbury, MA 01545  
Order No. 13-1005482D

Locus:  
19 Brigham St., Unit 6  
Map 104, Parcel 2A

### DECISION

The City Council of the City of Marlborough hereby GRANTS the application of Jump in with Us, Inc., as provided in the DECISION and subject to Procedural Findings and Findings of Facts and Conditions.

Decision date: **December 16, 2013**

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the **24<sup>th</sup>** day of **December, 2014.**

This is to certify that twenty (20) days have passed since the filing of the within decision and no appeal has been filed with this office.

Given at Marlborough this **14<sup>th</sup>** day of **January, 2014**

Given under Chapter 40A Section 11 of the Massachusetts General Laws

A TRUE COPY  
ATTEST

  
City Clerk



# IN CITY COUNCIL

DECEMBER 16, 2013  
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ORDERED:

## DECISION ON A SPECIAL PERMIT CITY COUNCIL ORDER NO. 13-1005482D

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Jump In With Us, Inc. (hereinafter "Applicant Tenant"), as provided in this Decision and subject to the following Findings of Facts and Conditions:

### FINDINGS OF FACTS AND CONDITIONS

1. The landlord is Foothills Corporation, a duly organized and existing Massachusetts corporation with its principal place of business located at 929 Boston Post Road East, Marlborough, MA 01752. Applicant Tenant is a duly organized and existing Massachusetts Corporation with its principal place of business at 85 Commons Drive, Unit 402, Shrewsbury, MA 01545 and has duly filed its Articles of Incorporation with the City Clerk of the City of Marlborough to operate his business at the subject location.

2. The landlord is the title owner of the property located at 19 Brigham Street (the "Site"). The landlord and Applicant Tenant have executed or will execute a lease regarding Unit 6 at the Site, and its use pursuant to the terms of this special permit regarding Unit 6 at the Site.

3. The Applicant Tenant seeks permission to utilize Unit 6 at the Site as a commercial indoor recreation establishment and place of amusement.

4. The Applicant Tenant, on June 27, 2013, filed with the City Clerk of the City of Marlborough, an Application for a Special Permit under the provisions of § 650-17 and pursuant to the procedures specified in § 650-59 of the Marlborough Zoning Ordinance (the "Application").

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



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## ORDERED:

6. The Applicant Tenant seeks a special permit allowing the establishment of an indoor recreation area that will include various children's entertainment features for birthday parties and other special occasions, and for children who, accompanied by an adult, can take advantage of these same play features.

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

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

9. The Marlborough City Council pursuant to M.G.L. c. 40A held a public hearing on October 21, 2013, concerning the Application. The hearing was opened and closed at that meeting.

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

11. At the public hearing, Thomaz DeMoura, representing Luiza DeMoura who will be managing the operation of the business and is the Applicant Tenant, described the proposed business as being one that would provide an indoor venue for children's birthday parties and for children who, accompanied by an adult, can take advantage of the proposed indoor play facilities. He indicated that the business would not include a child care component, and that all children using the facility would need to be accompanied by an adult to provide supervision. In response to questions from city councilors, he indicated that:

- a) the parties would be scheduled for weekdays and weekends;
- b) no food would be prepared on the premises;
  - c) the facility would be open to the general public to provide indoor play space for children on a daily basis; and
- d) all recreation would occur indoors.



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## ORDERED:

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

13. Following the public hearing, the Urban Affairs Committee held a meeting on November 13, 2013 during which this Application was discussed. At that meeting, the parties discussed various issues and proposed permit conditions to deal with them.

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

A. The City Council finds that the Applicant Tenant has complied with all Rules and Regulations promulgated by the Marlborough City Council for an application as they pertain to the Special Permit.

B. The use of Unit 6 for an indoor recreation establishment and place of amusement is an appropriate use of the Unit 6-portion of the Site and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough, subject to appropriate terms and conditions provided for herein. The use sought and its impacts and characteristics are not in conflict with the public health, safety, convenience and welfare, provided the safeguards and limitations imposed herein are met.

C. The City Council, pursuant to its authority under M.G.L. c. 40A, § 9 and Chapter 650 of the Marlborough City Code, GRANTS the Applicant Tenant, its successors and assigns, a Special Permit to operate an indoor recreation establishment and place of amusement as per plans filed with the City Council and the City Clerk, SUBJECT TO THE FOLLOWING CONDITIONS, which shall be applicable to Applicant Tenant's successors and assigns, and a violation of which shall be a violation of this Special Permit:

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



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## ORDERED:

2. Compliance with Local, State and Federal Laws: The Applicant Tenant agrees to comply with all rules, regulations and ordinances from the City of Marlborough, the Commonwealth of Massachusetts, and Federal Government as they may apply to the construction, maintenance of equipment and operation of the facility and public peace and good order in the event that the Chief of Police determines that either the business or the applicant tenant are acting contrary to public peace and good order. The Chief shall notify the applicant in writing and deem corrective measures be put into effect in seven days. Upon the failure or inability of the applicant tenant to correct such measures, the Police Chief may require the applicant tenant to employ one or more police detail officers during such hours or days that he Police Chief in exercise of the sole discretion deemed to be necessary for the purpose of correcting the conditions.

3. Public Peace and Good Order: Applicant Tenant shall obtain appropriate CORI information regarding all employees of Applicant Tenant, and shall keep said information available for inspection by local police upon request.

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

5. Hours of Operation: The hours of operation of the facility shall not be earlier than 8:00 AM or later than 8:00 PM on any day. If the Ward Councilor, Chief of Police or other Councilor has not heard of any complaints in a year's time, then the hours of operation can remain the same.

6. Limits of Use: The proposed use of the premises is to provide a place for birthday parties and other parties for children, and to otherwise provide an indoor play facility for children who are accompanied and supervised by an adult. No other kinds of public amusement shall be allowed on the premises except those ancillary to this use, including but not limited to the use of inflatable devices.

7. Food Preparation: No food shall be prepared, handled, or consumed by the public at or in Unit 6 unless and until the Applicant Tenant obtains a permit and any other approvals from the Director of the Marlborough Board of Health and pays the accompanying fees.

8. Certificate of Occupancy Required: No use of the premises will be made pursuant to this special permit unless and until a Certificate of Occupancy has been obtained from the Building Inspector regarding the change of use of the premises.



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## ORDERED:

9. No Expansion of Use Area or Change in Area Configuration: Only the area of Unit 6, containing approximately 6,000 sq. ft., which has been specified in the Plans attached hereto, will be used for the proposed use. To the extent that a substantial increase in, or a change in the configuration of, the area used for this use is desired, the Building Inspector shall determine whether such increase or change constitutes a substantial change of the permitted use, and if so, no such area increase or configuration change shall be permitted unless and until this special permit has been modified by the City Council.

10. Subsequent Users: Before any successor tenant uses Unit 6 for the uses allowed in this special permit, the Director of the Marlborough Health Department shall determine in writing that any permit required of Applicant Tenant, and any other permit determined by the Director to be necessary, has been obtained.

11. Required Approval Regarding Sanitary Conditions: Prior to the beginning of operation of the business, the Director of the Marlborough Health Department shall determine in writing what, if any, special sanitary requirements are necessary in order to assure that the facility does not cause unusual health risks to those using the facility or to the public. The Director may later, in writing, amend and/or add to said requirements as he deems necessary. Such determination, and any such amendments and/or additions, shall be provided by the Director to the City Council. Any failure to comply with said sanitary requirements shall be a violation of this permit.

12. Recordation: In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant Tenant shall, at its expense, record this Special Permit with the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal hearing being filed. The Applicant Tenant shall provide a copy of the recorded Special Permit to the City Clerk, the City Solicitor, and the Building Inspector.

**Yea: 11 – Nay: 0**

**Yea: Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Robey & Oram**

Signed by City Council President  
Patricia A. Pope

ADOPTED  
In City Council  
Order No. 13-1005482D