

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE MEETING
Wednesday – January 15, 2020 – 12:00 PM
City Council Chamber - City Hall

AGENDA

CALL TO ORDER

ANNOUNCEMENT OF OPEN MEETING RECORDINGS

Any person may make a video or audio recording of an open session of a meeting, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. Any person intending to make such recording shall notify the Chair forthwith. All Documents and exhibits used or referenced at the meeting must be submitted in duplicate to the City Clerk, as they become part of the Meeting Minutes.

- 1-1 Review and Approval of the December 11, 2019 Regular Meeting Minutes.

- 2-1 #10229, An Order Appropriating \$400,000.00 from Free Cash to Greenwood Pool Demolition Account *(In City Council and Referred to Finance, 1/6/2020).*

- 2-2 #10230, An Order Appropriating \$95,500.00 from Sewer Surplus to Sewer Capital Project Pump Station Upgrades Expense *(In City Council and Referred to Finance, 1/6/2020).*

- 3-1 A Measure Confirming the Mayor’s Appointment of Priya Gandbhir to the position of Assistant City Solicitor for term expiring 1/3/2021.

- 3-2 A Measure Confirming the Mayor’s Appointment of Dr. Michele Parker to the position of Member, Board of Health, for term expiring 12/31/2022.

- 3-3 A Measure Confirming the Mayor’s Appointment of Robert O’Keefe to the position of Information Technology Director for term expiring 1/7/2023.

- 3-4 A Measure Confirming the Mayor’s Appointment of Stephen Hirons to the position of Sealer of Weights and Measures for term expiring 1/8/2021.

- 3-5 A Measure Confirming the Mayor’s Appointment of Lindsay Butler to the position of Conservation Agent for term expiring 1/8/2023.

- 4-1 #10226, Correspondence from the Mayor Relative to the Title and Compensation of the Executive Secretary *(Introduced under New Business and referred to Finance, 12/16/2019; More time granted, 1/6/2020).*

- 4-2 An Ordinance Amending the Code of the City of Gardner, Chapter 171 Thereof, Entitled “Personnel” to change Article IX. Vacations for City Officers and Employees, Section 171-36, Other full-time officers and employees; and, by adding new Section 171-37 (a) Conservation/ Planning Agent, providing for additional vacation leave.

- 4-3 An Ordinance Amending the Code of the City of Gardner, Chapter 171 Thereof, Entitled "Personnel" to change Article XIII. Department Head Benefit Time and Longevity Pay, Section 171-53, Vacation, providing for additional vacation leave.
- 5-1 #10231, A Measure Authorizing the City to Enter in Contracts not-to-exceed 5 Years for School Transportation Services *(In City Council and Referred to Finance, 1/6/2020)*.
- 5-2 An Order Relative to the March 3, 2020 Presidential Primary.
- 5-3 A Measure Authorizing the FY2020 Community Development Block Grant Mini-Entitlement Plan.
- 6-1 A Measure Authorizing an Eighth Amendment to the April 9, 1968 Lease Between the City and Henry Heywood Memorial Hospital *(Ref: Council Calendar No. 10119)*.
- 6-2 A Measure Authorizing an Easement Relocation Agreement Between the City of Gardner and Massachusetts Electric Company *(Ref: Finance Committee Agenda Item No. 6-1)*.

ADJOURNMENT

Items listed on the Agenda are those reasonably anticipated by the Chair to be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF DECEMBER 11, 2019

The Finance Committee meeting was called to order by Council President Scott Joseph Graves at 12:00 p.m. in the City Council Chamber, Room 219, City Hall. Finance Committee Members Councillors Ronald Cormier and James Walsh were also present.

Others participating were Mayor Mark Hawke; City Auditor John Richard; Denise Merriam; and, City Clerk Alan Agnelli.

President Graves asked if anyone present planned to record the meeting, in accordance with the requirements of the Open Meeting Law, as follows:

Any person may make a video or audio recording of the open session of this meeting so long as it does not interfere with the conduct of the meeting. All documents and exhibits used or referenced at this meeting shall be submitted in duplicate to the City Clerk, as they become part of the minutes of the meeting. Is there anyone present who will be recording this meeting?

No one responded.

1-1 Reading and Approval of Minutes of Prior Meeting.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, it was voted to approve the Minutes of the November 27, 2019 Regular Meeting, as printed.

2-1 An Order Appropriating \$100,000.00 from Free Cash to Special Purpose Stabilization Fund for Vehicles.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted to recommend to the City Council that the following Order ought to pass:

AN ORDER APPROPRIATING FROM FREE CASH TO SPECIAL PURPOSE
STABILIZATION FUND FOR VEHICLES.

ORDER: That there be and is hereby appropriated the sum of One Hundred Thousand Dollars and No Cents (\$100,000.00) from Free Cash to the Special Purpose Stabilization Fund for Vehicles.

2-2 An Order Appropriating \$41,000.00 from Free Cash to Elections & Registrations, Salary & Wages.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, it was voted two (2) in favor, Councillors Cormier and Walsh, one (1) abstention, President Graves, to recommend to the City Council that the following Order ought to pass:

AN ORDER APPROPRIATING FROM FREE CASH TO ELECTIONS AND
REGISTRATIONS.

ORDER: That there be and is hereby appropriated the sum of Forty-one Thousand and No Cents (\$41,000.00) from Free Cash to Elections and Registration.

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF DECEMBER 11, 2019

3-1 A Measure Confirming the Mayor's Appointment of Denise Merriam to Member, Cemetery Commission, for term expiring 12/5/2021.

Councillor James Walsh noted that Ms. Merriam would be replacing Ludger Robichard, who recently passed away.

Mayor Hawke informed the Committee that Ms. Merriam's retirement isn't imminent, but she would serve the Commission well since she has worked with the Cemetery Commission and Municipal Grounds Commission for many years.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, it was voted to recommend to the City Council to confirm the Mayor's Appointment of Denise Merriam to Member, Cemetery Commission, for term expiring 12/5/2021.

3-2 A Measure Confirming the Mayor's Appointment of Denise Merriam to Member, Municipal Grounds Commission, for term expiring 12/5/2022.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted to recommend to the City Council to confirm the Mayor's Appointment of Denise Merriam to Member, Municipal Grounds Commission, for term expiring 12/5/2022.

6-1 A Measure Authorizing an Eighth Amendment to the April 9, 1968 Lease Between the City and Henry Heywood Memorial Hospital (Ref: Council Calendar No. 10119).

The Committee postponed further action on the Lease until Attorney Phillips completes additional research.

6-2 A Measure Authorizing an Easement Relocation Agreement Between the City of Gardner and Massachusetts Electric Company (Ref: Finance Committee Agenda No. 6-1).

The Committee postponed further action on the Easement until Attorney Phillips completes additional legal research.

6-3 A Measure Accepting a Deed in Lieu of Foreclosure from the Greater Gardner Community Development Corporation for two abutting parcels of land off Temple Street, being identified as Parcel ID R22-20-15A & R22-20-15B.

The Mayor informed the Committee that the Greater Gardner Community Development Corporation "is all but dissolved" and that NewVue Communities has taken over the CDC's role.

President Graves noted that the correspondence seeking the City Council's action originated from the Law Department and not from the Mayor.

Councillor Walsh stated that as a policy matter, the Law Department has no role.

President Graves said that he is getting the feeling that the Law Department would be taking over the Mayor's role during the transition.

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF DECEMBER 11, 2019

Councillor Walsh stated that, on the merits of the measure, that unpaid taxes on the parcels amount to about \$12,000 and that the assessed values of the parcels equal \$3,200. He asked if the parcels are “buildable.”

Mayor Hawke responded, saying that each parcel is approximately one-third of an acre and if connected with an adjoining parcel that recently was sold for \$1,000 through the City’s Tax Title auction, then the entire lot “would be buildable.”

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted to recommend to the City Council that it adopt the following:

DEED IN LIEU OF FORECLOSURE

Greater Gardner Community Development Corporation, a Massachusetts Corporation, having an address at 470 Main Street, Fitchburg, Massachusetts (“Grantor”), for consideration paid and in full consideration of ONE (\$1.00) DOLLAR, grants to the City of Gardner, having an address of 95 Pleasant Street, Gardner, Massachusetts (“Grantee”), with QUITCLAIM COVENANTS, the property described on Schedule A attached hereto (the “Property”).

This Deed in Lieu Foreclosure (The “Deed”) is delivered in satisfaction of any taxes owed to the Grantee in connection with the Property, and Grantee acknowledges that Grantor shall have no further obligations with respect to any taxes owed to the Grantee on the Property.

This conveyance is made subject to, and with the benefit of, all easements, covenants and restrictions of record, to the extent in force and applicable.

This conveyance does not constitute a sale of all or substantially all of the assets of the Grantor in the Commonwealth of Massachusetts.

For Grantor’s title see deed(s) recorded with the Worcester Registry of Deeds in Book 47019, Page 329.

EXHIBIT A

The Land in Gardner, Worcester County, located on Temple Place and being Lots B & C on a Plan entitled “Revised Plan of Lots for Brian & Kathleen F. McCarthy” recorded with the Worcester South District Registry of Deeds, Plan Book 764 Plan 15, which Plan may be referred to for a more definite description together with all other rights incidental thereto.

Meaning and intending to include the same property conveyed to Grantor in deed from Lowell Cooperative Bank dated January 20, 2011 and recorded in Book 47019, Page 329.

ADJOURNMENT

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, it was voted to adjourn at 12:30 p.m.

AN ORDER APPROPRIATING FROM FREE CASH TO GREENWOOD
POOL DEMOLITION ACCOUNT.

ORDERED:

That there be and is hereby appropriated the sum of Four Hundred Thousand Dollars and No Cents (\$400,000.00) from Free Cash to the Greenwood Pool Demolition Account.

City of Gardner, *Executive Department*

Mark Hawke, Mayor

RECEIVED

2019 DEC 18 PM 1:58

CITY CLERK'S OFFICE
GARDNER, MA



December 18, 2019

Attorney Scott J. Graves, President
And City Councilors
95 Pleasant Street
Gardner, MA 01440

RE: Free Cash to Community Development Greenwood Pool Demo

Dear President Graves and Councilors,

In March of 2010 the City received a final Building Assessment Report concerning the Greenwood Memorial Bathhouse. At that time the probable cost to upgrade/renovate the pool was \$3,095,000 and the demolition cost was estimated to cost \$160,000.

In January of 2018 the City, in conjunction with the Friends of the Pool, received another report estimating a rehabilitation cost between \$4,500,000 to \$5,600,000. This study also included an estimated income and expense report for operation of the newly rehabilitated Pool which showed at best, an annual loss of \$250,000.

The longer we kick this can down the road, the more expensive of a problem we will create. Attached is an email from Community Development Director Trevor Beauregard showing a rough estimate to demolish based on an expert's opinion.

Once this project is complete, there is enough Free Cash reserved to construct a pavilion on the space which could incorporate bricks and/or signage from the old building.

The building is beyond critical failure and should be dealt with immediately.

Respectfully,

Mark Hawke
Mayor, City of Gardner

Mayor

From: Trevor Beauregard
Sent: Tuesday, December 17, 2019 9:24 AM
To: Mayor
Subject: Fwd: Greenwood Memorial Pool

Mayor,
Please see below. I think we should be good at \$400,000 based on Marc's numbers.
Trevor

Sent from my iPhone

Begin forwarded message:

From: "Marc J. Richards" <MJRichards@tigheBond.com>
Date: December 16, 2019 at 4:53:50 PM EST
To: "'Trevor M. Beauregard (tbcauregard@gardner-ma.gov)'" <tbeauregard@gardner-ma.gov>
Cc: "Marc J. Richards" <MJRichards@tigheBond.com>
Subject: RE: Greenwood Memorial Pool

Based on the recent walkthrough, I have revised the demo costs as follows:

Demo - \$250,000
Design/Permit/Bid/Admin - \$50,000
20% contingency - \$60,000
Total: \$360,000

Thanks Trevor,

Marc

From: Marc J. Richards <MJRichards@tigheBond.com>
Sent: Thursday, November 21, 2019 12:43 PM
To: 'Trevor M. Beauregard (tbcauregard@gardner-ma.gov)' <tbeauregard@gardner-ma.gov>
Cc: Marc J. Richards <MJRichards@tigheBond.com>
Subject: Greenwood Memorial Pool

Found the report. It was from 2010!

Just with cost escalation from what was in the report in 2010, you could see the following:

Demo - \$200,000
Design/Bid/Admin - \$45,000
20% contingency - \$49,000
Total: \$294,000 (this seems high to me)

After we look at the site in early December, we can refine this further.

Ref: 10229



CITY of GARDNER
Office of the City Auditor

John Richard, City Auditor
95 Pleasant Street, Room 126
Gardner, MA 01440
Phone: 978-632-1900 ext. 8020 • Fax: 978-630-3778
Email: jrichard@gardner-ma.gov

To: City Council

Re: Money Orders for consideration on January 06, 2020

Listed below are balances in various ledger accounts that pertain to Money Order transfers for your consideration.

These balances are as of January 2, 2020:

		<u>Money Order</u>	<u>Balance</u>
Free Cash	10000-35400		\$1,543,995.00
to Comm Dev Capital Project for Greenwood Pool Demo	38182-55627	400,000.00	\$1,143,995.00
			\$1,143,995.00

The Snow & Ice account currently has available \$111,349.53
14421-52210

Sincerely

John Richard
City Auditor

copies: Mayor
City Clerk

AN ORDER APPROPRIATING FROM SEWER SURPLUS TO SEWER CAPITAL PROJECT PUMP STATION UPGRADES EXPENSE.

ORDERED:

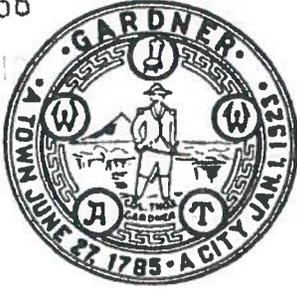
That there be and is hereby appropriated the sum of Ninety Five Thousand Five Hundred Dollars and No Cents (\$95,500.00) from Sewer Surplus to Sewer Capital Project Pump Station Upgrades Expense.

RECEIVED
CITY OF GARDNER
Department of Public Works

2019 DEC 18 PM 1:58

Highway
Water
Sewer
Forestry
Parks/Playgrounds
Cemeteries

CITY CLERK'S OFFICE
GARDNER, MA



Dane E. Arnold, Director
416 West Broadway
Gardner, MA 01440-2687
Telephone (978) 632-7661
Fax (978) 630-4029
darnold@gardner-ma.gov

Mayor Mark P. Hawke
City Hall
95 Pleasant Street
Gardner, MA 01440

RE: Dyer and Coleman Street Pump Station Evaluation
Design and Construction Management

December 17, 2019

Dear Mayor Hawke:

I am requesting **\$95,500** from available **Sewer Surplus** for the **Evaluation, Design, and Construction Services** for the Improvements at the Dyer Street and Coleman Street Sewer Pump Stations.

Dyer Street Pump Station was built in 1992 and Coleman Street Pump Station is even older as it was built in 1989. Both are in need of some major improvements and upgrades. Our plan is to use Tata and Howard's engineering services to evaluate each pump station and have the proper design complete to go out for competitive bids in the summer of 2020. Our hope is to start construction in late summer/early fall 2020.

You may recall back in the spring of 2019, the Sewer Department asked to borrow \$1,750,000 for Sewer Main Installations on City Hall Avenue and Pump Station Improvements at the Willis Road Pump Station. Since this loan request, we have gone out to bid and fortunately the construction costs came in less than what we anticipated in both projects.

That being said, we are seeking permission to use the remaining balance of the loan to pay for the majority of the upgrades at Dyer and Coleman Street Pump Stations. The City Council authorized the borrowing of the \$1,750,000 for "sewer main installation and sewer pump station upgrades". It would appear the language is not limiting the Sewer Department to just Willis Road Pump Station (Enclosed is a copy of the vote).

Original Loan:	\$1,750,000
Willis Pump Station Bid	\$ 889,000
City Hall Avenue Bid	\$ 204,500
Remaining	\$ 656,500

The costs above are actual bid pricing, however they do not include costs for the ledge we encountered on City Hall Avenue, any other unforeseen issues, or change orders. The good

CITY OF GARDNER, MASSACHUSETTS

IN CITY COUNCIL

ORDERED:

That the City of Gardner appropriates the sum of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) to pay costs of sewer main installation and sewer pump station upgrades, and paying all costs incidental or related thereto; to meet said appropriation the Treasurer, with the approval of the Mayor, is authorized to borrow said sum under M.G.L. c. 44, §7 or 8, or any other enabling authority. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. c. 44, §20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

2-2

Rachel Stephano (Mayor's Office)

From: John Richard
Sent: Wednesday, December 18, 2019 9:51 AM
To: Rachel Stephano (Mayor's Office)
Cc: Dane Arnold; Denise Merriam
Subject: Sewer Surplus

Hi Rachel

I confirmed with Dane that the account number and description for where the \$95,500 once approve will go to:

Org	Object	Description
35441	58209	SEWER CAP PROJ PUMP ST UPGRADES EXP

Thank you

John Richard
City Auditor



95 Pleasant Street, Room 114
Gardner, MA 01440
978-632-1900 ext 8020

Ref: 10230



CITY of GARDNER

Office of the City Auditor

John Richard, City Auditor

95 Pleasant Street, Room 126

Gardner, MA 01440

Phone: 978-632-1900 ext. 8020 • Fax: 978-630-3778

Email: jrichard@gardner-ma.gov

To: City Council

Re: Money Orders for consideration on January 6, 2020

Listed below are balances in various ledger accounts that pertain to Money Order transfers for your consideration.

These balances are as of January 2, 2020:

		<u>Money Order</u>	<u>Balance</u>
Sewer Enterprise Fund			
61000-31500			\$ 5,616,063
to Sewer Cap Proj for Upgrades to Pump Stations	35441-58209	\$ 95,500	\$ 5,520,563
			\$ 5,520,563

The Snow & Ice account currently has available \$111,349.53
14421-52210

Sincerely

John Richard
City Auditor

copies: Mayor
City Clerk

RECEIVED

January 3, 2020

2019 DEC 31 AM 11:32 Commonwealth of Massachusetts

CITY CLERK'S OFFICE
Worcester County

City of Gardner

CERTIFICATE OF APPOINTMENT

I appoint Priya Gandbhir to the position of Assistant City Solicitor, and I certify
144 Central Street, Gardner, MA (978-632-7948)
that in my opinion he/she is a person specially fitted by education, training, or experience to perform the
duties of said office, and that I make the appointment solely in the interests of the City.

 Mayor

Mark P. Hawke

Confirmed by City Council _____

City Clerk

Alan L. Agnelli

Expires: January 3, 2021

Worcester, ss., _____

Then personally appeared the above named Prya Gandbhir and made oath that he/she
would faithfully and impartially perform the duties of the office of Assistant City Solicitor
according to law and the best of his/her abilities.

Before me,

City Clerk

Chapter 303 Acts of 1975
and
Chapter 409 Acts of 1983

Received _____

RECEIVED

December 31, 2019

2019 DEC 31 AM 11:32

Commonwealth of Massachusetts

CITY CLERK OFFICE

Worcester County

City of Gardner

CERTIFICATE OF APPOINTMENT

I appoint Michele Parker to the position of Member, Board of Health and I certify 250 Green Street, Gardner, MA that in my opinion he/she is a person specially fitted by education, training, or experience to perform the duties of said office, and that I make the appointment solely in the interests of the City.

[Signature] Mayor

Mark P. Hawke

Confirmed by City Council _____

City Clerk

Alan L. Agnelli

Expires: December 31, 2022 _____

Worcester, ss., _____

Then personally appeared the above named Michele Parker and made oath that he/she would faithfully and impartially perform the duties of the office of Member, Board of Health according to law and the best of his/her abilities.

Before me,

City Clerk

Chapter 303 Acts of 1975
and
Chapter 409 Acts of 1983

Received _____

January 7, 2020

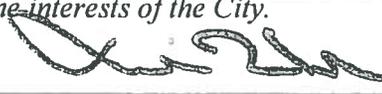
Commonwealth of Massachusetts

Worcester County

City of Gardner

CERTIFICATE OF APPOINTMENT

I appoint **Robert O'Keefe** to the position of **Information Technology Director**, and I certify
122 Pleasant Street, Winchendon, MA
that in my opinion he/she is a person specially fitted by education, training, or experience to perform the
duties of said office, and that I make the appointment solely in the interests of the City.



Mayor

Confirmed by City Council _____

Alan L. Agnelli

RECEIVED
CITY CLERK'S OFFICE
2020 JAN - 7 PM 3:46
CITY OF GARDNER, MA
Clerk

Expires: January 7, 2023

Worcester, ss., _____

Then personally appeared the above named **Robert O'Keefe** and made oath that he/she
would faithfully and impartially perform the duties of the office of **Information Technology**
Director according to law and the best of his/her abilities.

Before me,

City Clerk

Chapter 303 Acts of 1975
and
Chapter 409 Acts of 1983

Received _____

3-4

RECEIVED

January 8, 2020

2020 JAN -8 PM 2:01

Commonwealth of Massachusetts

CITY CLERK'S OFFICE
GARDNER, MA

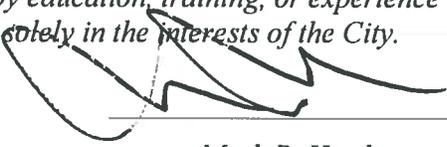
Worcester County

City of Gardner

CERTIFICATE OF APPOINTMENT

I appoint Stephen Hiron to the position of Sealer of Weights and Measures and I certify

that in my opinion he/she is a person specially fitted by education, training, or experience to perform the duties of said office, and that I make the appointment solely in the interests of the City.



Mayor

Mark P. Hawke

Confirmed by City Council _____

City Clerk

Alan L. Agnelli

Expires: January 8, 2021

Worcester, ss., _____

Then personally appeared the above named Stephen Hiron and made oath that he/she would faithfully and impartially perform the duties of the office of Sealer of Weights and Measures according to law and the best of his/her abilities.

Before me,

City Clerk

Chapter 303 Acts of 1975
and
Chapter 409 Acts of 1983

Received _____

RECEIVED

January 8, 2020

2020 JAN -8 PM 2:01

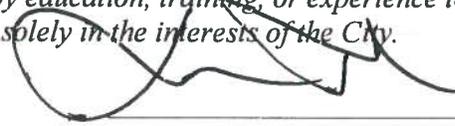
Commonwealth of Massachusetts

Worcester County

City of Gardner

CERTIFICATE OF APPOINTMENT

I appoint Lindsay Butler to the position of Conservation Agent and I certify
24 East Rindge Road, Ashburnham, MA 01430
that in my opinion he/she is a person specially fitted by education, training, or experience to perform the
duties of said office, and that I make the appointment solely in the interests of the City.



Mayor

Mark P. Hawke

Confirmed by City Council _____

City Clerk

Alan L. Agnelli

Expires: January 8, 2023

Worcester, ss., _____

Then personally appeared the above named Lindsay Butler and made oath that he/she
would faithfully and impartially perform the duties of the office of Conservation Agent according
to law and the best of his/her abilities.

Before me,

City Clerk

Chapter 303 Acts of 1975
and
Chapter 409 Acts of 1983

Received _____

4-1-1006

City of Gardner, *Executive Department*



Mark Hawke, Mayor

RECEIVED

2019 DEC 16 PM 12:15

CITY CLERK'S OFFICE
GARDNER, MA

December 16, 2019

Scott Graves, President
City Council
95 Pleasant Street
Gardner, MA 01440

Dear President,

With the current situation in the Mayor's Office, I thought it was an appropriate time to request a salary increase and a title name adjustment in order to properly reflect what my Executive Secretary's duties encompass. The role of the Mayor's Assistant (Secretary) is one that is ever evolving in today's municipalities. This individual plays an integral part in the running of not just the Mayor's office but that of City Hall as a whole. It is antiquated thinking to believe that this job is that of a simple secretary from yesteryear. With the constant advance of technology, this person is required to adapt and revise their abilities to fit today's demands.

The position requires a great deal of self-sufficiency and a broad knowledge base, requiring a high degree of motivation and initiative. Oftentimes, this individual uses independent thinking, judgment and decision making. He or she must possess a thorough knowledge of departmental operations to complete the tasks at hand. On any given day, this individual is required to represent the City of Gardner and its various departments to the general public as well as to other governmental entities. From assisting the Mayor with projects and financial reports, to providing the public with important information as Webmaster for the City's official webpage. The role of a competent Executive Assistant is essential to the smooth operation of the Mayor's Office. In addition, there are other committees or commissions that this individual serves on per the Mayor's request.

This professional provides assistance and works cohesively with the many different Departments within the City. He or she oftentimes acts as liaison between the Departments and the Mayor, and maintains a high level of confidentiality.

Based on my research, this position is currently underpaid, therefore, I would like to respectfully recommend that that the Council consider a pay increase of \$4,000. Furthermore, I would also request the title of the position be changed to Executive Assistant rather than the current Executive Secretary to reflect the actual professional demands of this job. Thank you for your consideration.

Respectfully,

Mark P. Hawke
Mayor

§ 171-34. Police Officer

All police officers of the City of Gardner, not covered by a collective bargaining agreement, regularly employed full time by the City shall be granted an annual vacation without loss of pay as follows:

- A. Regularly employed for one to four years shall be entitled to two weeks (14 calendar days).
- B. Regularly employed from five to nine years shall be entitled to three weeks (21 calendar days).
- C. Regularly employed from 10 to 14 years shall be entitled to four weeks (28 calendar days).
- D. Regularly employed for over 15 years shall be entitled to 31 calendar days.
- E. Employees shall have two consecutive days off with each five days of vacation. Each two-week vacation period shall consist of 10 paid vacation days and four regular days off. One vacation week shall consist of five working days plus two days off.

§ 171-35. Firefighter

All firefighters of the City of Gardner, not covered by a collective bargaining agreement, regularly employed full time by the City shall be granted an annual vacation without loss of pay as follows:

- A. Regularly employed for one to four years shall be entitled to two weeks (14 calendar days).
- B. Regularly employed from five to nine years shall be entitled to three weeks (21 calendar days).
- C. Regularly employed from 10 to 14 years shall be entitled to four weeks (28 calendar days).
- D. Regularly employed for 15 years or more shall be entitled to 31 calendar days.

§ 171-36. Other full-time officers and employees. [Amended 6-1-2009 by Ord. No. 1492]

All other employees or officers, except for the Conservation/Planning Agent, those provided for by law and those covered by a collective bargaining agreement, regularly employed full time by the City shall be granted an annual vacation without loss of pay as follows:

RECEIVED

2020 JAN -8 AM 10:47

CITY CLERK'S OFFICE
GARDNER, MA

§ 171-36

§ 171-40

- A. Regularly employed for one to four years shall be entitled to two weeks or 10 working days.
- B. Regularly employed from five to nine years shall be entitled to three weeks or 15 working days.
- C. Regularly employed from 10 years to 14 years shall be entitled to four weeks or 20 working days.
- D. Regularly employed for 15 years or more shall be entitled to five weeks or 25 working days.

§ 171-37. Other part-time officers and employees. [Amended 6-1-2009 by Ord. No. 1492]

All other employees or officers, except those provided for by law and those covered by a collective bargaining agreement, regularly employed part time by the City shall be granted an annual vacation without loss of pay as follows:

- A. To be eligible a part-time worker must have worked 27 weeks in the aggregate during the 12 months preceding the first day of June in each year and must meet the eligibility requirements of part-time employees as defined in Article XII, § 171-50A.
- B. They shall be entitled to the same vacation increments as full-time employees as defined in § 171-36 based upon an eligible part-time employee's specific work hour schedule. One day will be equivalent to the total number of hours worked per week divided by five days (i.e., one day for 25 hours per week will be equivalent to five hours).

§ 171-37(a). Conservation/Planning Agent.

The Conservation/Planning Agent, shall be granted annual vacation without loss of pay as follows:

- (1) Employed for one to nine years of regular employment shall be entitled to three (3) weeks or fifteen (15) working days.**
- (2) Regularly employed from ten (10) years to fourteen (14) years shall be entitled to four (4) weeks or twenty (20) working days.**
- (3) Regularly employed for fifteen (15) years or more years shall be entitled to five (5) weeks or twenty-five (25) days.**

Newly hired Conservation/Planning Agents shall be granted vacation time according to the following schedule:

4-2

First day of Employment Number of Vacation Days

<u>January 1 to April 30</u>	<u>15</u>
<u>May 1 to August 31</u>	<u>10</u>
<u>September 1 to December 31</u>	<u>5</u>

§ 171-38. Vacations to be granted by department heads.

Such vacations shall be granted by the heads of each department, as such time as in their opinion will cause the least interference with the performance of the regular work of the City.

§ 171-39. Determination of regular employment.

A person shall be deemed to be regularly employed within the meaning of this article if he or she has been actually employed for 27 weeks in the aggregate during the 12 months preceding the first day of June of the year in which the vacation is to be granted.

§ 171-40. New employees.

New full-time employees will earn one day per month up to 10 days per calendar year. This day will be credited the last day of each month. The new employee shall continue to earn vacation in this manner until January 1 of the year following his/her anniversary date of benefited employment. This vacation will only be allowed upon the completion of a probationary period of six months. In no event shall a new employee be eligible for more than 10 days of vacation per calendar year.

§ 171-41. Accumulation of vacation time.

Employees that do not utilize all of their vacation time within the calendar year it was granted will be allowed to carry over into the next calendar year twice their annual vacation accrual. Any employee who has excess of that amount of vacation accumulation on December 31 shall forfeit any excess of the permitted accumulation.

§ 171-42. Minimum increments.

Vacation time may not be taken in less than one-half-day increments.

§ 171-43. Payment for accumulated vacation time.

In the event that an employee terminates employment with the City, any vacation accrued will be paid to the employee. If an employee dies, any accrued vacation days shall be paid to the estate of said deceased employee.

§ 171-53. Vacation.

A. The Police Chief and Fire Chief shall be granted an annual vacation without loss of pay as follows:

- (1) Employed for one to four years shall be entitled to two weeks (14 calendar days).
- (2) Regularly employed five to nine years shall be entitled to three weeks (21 calendar days).
- (3) Regularly employed 10 to 14 years shall be entitled to four weeks (28 calendar days).
- (4) Regularly employed for over 15 years shall be entitled to 31 calendar days.

B. All other department heads as defined in § 171-52 shall be granted an annual vacation without loss of pay as follows:

- (1) Employed for one to ~~nine~~ **four** years of regular employment shall be entitled to three weeks or 15 working days.
- (2) Regularly employed from ~~10~~ **five** years to ~~14~~ **fourteen** years shall be entitled to four weeks or 20 working days.
- (3) Regularly employed ~~15~~ **fifteen** years to ~~nineteen~~ **years or more years** shall be entitled to five weeks or 25 working days.
- (4) **Regularly employment for twenty or more years shall be entitled to 6 weeks or thirty working days.**

C. A department head shall be deemed to be regularly employed within the meaning of this article if he or she has been actually employed for 27 weeks in the aggregate during the 12 months preceding the first day of June of the year in which the vacation is to be granted.

D. Department heads that do not utilize all of their vacation time within the calendar year it was granted will be allowed to carry over into the next calendar year twice their annual vacation accrual. Any department head who exceeds that amount of vacation accumulation on December 31 shall forfeit any excess of the permitted accumulation.

E. Newly hired department heads shall be granted vacation time according to the following schedule:

RECEIVED

2020 JAN -8 AM 10:47

CITY CLERK'S OFFICE
GARDNER, MA

First Day of Employment	Number of Vacation Days	
	Police/Fire	All Other Department Heads
January 1 to April 30	14	15
May 1 to August 31	10	10
September 1 to December 31	5	5

F. In the event that a department head terminates employment with the City, any vacation accrued will be paid to the department head. If a department head dies, any accrued vacation days shall be paid to the estate of said deceased department head.

AUTHORIZING FIVE-YEAR CONTRACT PERIOD
SCHOOL TRANSPORTATION SERVICES

VOTE: To authorize the City to enter into contracts not to exceed five (5) years for School Transportation Services, pursuant to the provisions of Massachusetts General Law, Chapter 30B, section 12 and under the terms outlined in the Purchasing Agent's December 13, 2019 Memorandum.

5-1

CITY OF GARDNER
PURCHASING DEPARTMENT

Room 217 - City Hall
95 Pleasant Street
Gardner, MA 01440-2687



Joshua Cormier, Director
jcornier@gardner-ma.gov
Telephone (978) 632-0426

TO: Gardner City Council
Mayor Mark Hawke

FROM: Joshua Cormier, Purchasing Agent

DATE: December 13th, 2019

SUBJECT: Request for 5-year contracts

According to MGL c 30B, any contract that exceeds three years must be approved by majority vote by the City Council.

I respectfully request permission from the Gardner City Council to seek up to a five year contract (including renewals) for the below listed project. The project listed below is in the fifth year of its existing contract. This contract will be placed out to bid and will continue only if the contracted vendor is in good standing.

- School Transportation Services

My intention to seek a longer term contract is to attract more competitive rates from vendors and to conduct more effective contract management.

If you have any questions or concerns, please feel free to contact me for additional details.

Alan Agnelli

From: Joshua Cormier
Sent: Friday, December 13, 2019 1:19 PM
To: Alan Agnelli; Mayor
Subject: 5-Year Contract Request
Attachments: FY20 - 5 year contract request_School Transportation Services.pdf

Gentlemen

Please find attached a request to seek a five-year contract for the School Transportation Services. Per MGL c. 30B, any contract that exceeds three years must be approved by majority vote of the City Council prior to execution.

If there are any questions or concerns, please do not hesitate to contact me.

Thank you.

Joshua L. Cormier
Purchasing Director
City Hall
95 Pleasant Street, Room 217
Gardner, MA 01440
Phone: 978-632-1900, ext. 8054

CITY OF GARDNER, MASSACHUSETTS
PRESIDENTIAL PRIMARY ORDER
TUESDAY, MARCH 3, 2020

VOTE: It is ordered that meetings of the citizens of this City qualified to vote in the Presidential Primaries shall be held on TUESDAY, MARCH 3, 2020 for the purpose of casting their votes in the Presidential Primaries for the candidates of political parties for the following offices:

PRESIDENTIAL PREFERENCE.....FOR THIS COMMONWEALTH
STATE COMMITTEE MAN.....WORCESTER & MIDDLESEX DISTRICT
STATE COMMITTEE WOMAN.....WORCESTER & MIDDLESEX DISTRICT
WARD COMMITTEECITY OF GARDNER

It is further ordered that the polls shall open at 7:00 o'clock in the morning and close at 8:00 o'clock in the evening and that the following polling places are designated by this Council:

- WARD 1, PRECINCT A – Elk’s Home, 31 Park Street
- WARD 1, PRECINCT B – Elk’s Home, 31 Park Street
- WARD 2, PRECINCT A – Levi Heywood Memorial Library, 55 West Lynde Street
- WARD 2, PRECINCT B – Levi Heywood Memorial Library, 55 West Lynde Street
- WARD 3, PRECINCT A – Acadien Social Club, 193 Parker Street
- WARD 3, PRECINCT B – High Rise Community Room, 104 Church Street
- WARD 4, PRECINCT A – Gardner Police Headquarters, 200 Main Street
- WARD 4, PRECINCT B – Gardner Police Headquarters, 200 Main Street
- WARD 5, PRECINCT A – Knights of Columbus, 110 South Main Street
- WARD 5, PRECINCT B – Knights of Columbus, 110 South Main Street



PART I ADMINISTRATION OF THE GOVERNMENT
TITLE VIII ELECTIONS
CHAPTER 54 ELECTIONS
Section 63 Calling city and town elections; notice

Section 63. Elections of state officers and city officers shall be called by the aldermen, and the city clerk shall, under their direction, cause notice of such elections to be conspicuously posted in the office of the city clerk or on the principal official bulletin board of such city and any other public building they deem necessary. Before every city election, the clerk shall make available a list of all candidates. He shall also print with said list the form of any question to be submitted to the voters. Such lists shall be public records and one copy shall be sent to every newspaper in said city listed in the Directory of New England Newspapers and Periodicals, to be used at the discretion of said newspapers. Such notices shall be in lieu of the notices or warrants for election required in any city by special statutes. Elections of state officers and town officers shall be called in towns as provided in section ten of chapter thirty-nine. The biennial state and the annual or biennial city and town elections shall be called at least seven days before the day prescribed for the holding thereof.

Alan Agnelli

From: Jeffrey Legros
Sent: Friday, January 10, 2020 10:17 AM
To: Alan Agnelli
Cc: Katie Medina; Joshua Cormier; Trevor Beauregard
Subject: FY2020 CDBG Mini-Entitlement Plan Resolution
Attachments: Resolution for CDBG (Council).doc; Proposed Projects BG20 - CDBGSC Recomendded.pdf; 2020_CDBG.pdf; FY2018-FY2021 CDS - UPDATE2 - 1-10-2019.pdf; Council Submission CDBG FY20.pdf

Alan,

Can you please include this information on the Agenda for the upcoming Finance Committee meeting? It is for their consideration and recommendation to City Council relative to the City's upcoming Community Development Block Grant (CDBG) Mini-Entitlement Program FY20 application. I have included the information as individual documents and as a combined packet for your convenience. Let me know if there anything else you need or if you need me to reformat anything.

Thank you,
Jeff

Jeffrey D. Legros, Assistant Director
Department of Community Development & Planning
City of Gardner
115 Pleasant Street, Gardner, MA 01440
978-630-4011, Ext. 1

RESOLUTION

**FY 2020 COMMUNITY DEVELOPMENT BLOCK GRANT
Mini-Entitlement Plan**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARDNER AS FOLLOWS:

WHEREAS, the City council has reviewed the proposals prepared by the Department of Community Development and Planning for inclusion within the FY 2020 Community Development Block Grant (CDBG) Mini-Entitlement Plan; and

WHEREAS, the CDBG proposals seek funding for support of public social services, demolition, infrastructure repair and upgrade, economic development, rehabilitation, planning and design, and associated administrative costs; and

WHEREAS, the activities proposed within the FY 2020 CDBG Mini-Entitlement Plan meet the priorities identified within the City's 2018-2021 Community Development Strategy, and the 2004 Community Development Plan; and

WHEREAS, the City does not possess the bonding capacity or have the availability of funds to appropriate from its general budget to undertake such projects and reliance upon grant funds is required; and

WHEREAS, the City Council supports each of the activities as being consistent with the City's goal of promoting quality programs for its citizens;

NOW THEREFORE, the City Council hereby extends its support of each proposed activity and endorses the City's FY 2020 CDBG Mini-Entitlement Plan to be submitted to the Commonwealth of Massachusetts, Department of Housing and Community Development.

	<u>Group</u>	<u>Project</u>	<u>CDBG \$'s</u>	<u>Non-CDBG \$'s</u>	<u>Total</u>
6B	Community Development & Planning	Downtown Phase 2. Connors & Parker Street block. Construction of crosswalk, sidewalk, and lighting repair and upgrade.	\$613,150.00	\$0.00	\$613,150.00
6K	Community Development & Planning	Downtown Phase 3. Monument Park. Design of crosswalk, sidewalk, and lighting repair and upgrade.	\$40,500.00	\$0.00	\$40,500.00
6K	Community Development & Planning	Park Street Park. 53 Park Street. Design of park and parking area for access to recreation activities.	\$18,000.00	\$0.00	\$18,000.00
8B	VOT	Domestic Violence Prevention. Provide services for 30 LMI Gardner residents affected by domestic violence.	\$8,000.00	\$0.00	\$8,000.00
8B	GAAMHA	Family Support Services. Family Support Services to 24 LMI Gardner residents	\$6,600.00	\$6,600.00	\$13,200.00
8B	GPSA	Gardner Public Schools Athletics. Provide financial assistance to LMI student athletes at Gardner High School and Gardner Middle School.	\$15,000.00	\$0.00	\$15,000.00
		Administrative & Delivery costs.	\$123,750.00	\$0.00	\$123,750.00
		Sub-total	\$825,000.00	\$6,600.00	\$831,600.00

FY2018 – FY2021 COMMUNITY DEVELOPMENT STRATEGY

The City of Gardner’s Community Development Strategy summarizes the City’s various efforts to engage in community-based planning and priority setting, staying consistent with the Commonwealth’s Sustainable Development Principals, and to outline a plan of action intended to accomplish specific community development goals. The current Community Development Strategy (CDS) will be used to direct resources from all sources toward projects that address that needs identified by the community as high priorities. Acting through its Department of Community Development and Planning, using specifically CDBG funds, projects will lie within the boundaries of the Downtown Urban Renewal Area (D-URA) and the Mill Street Corridor Urban Renewal Area (MSC-URA).

Housing: Expansion and Retention. This category is consistent with Concentrate Development and Mix Uses and Expand Housing Opportunities.

The City of Gardner is committed to expanding housing opportunities in appropriate locations to meet the needs of Gardner’s population. Gardner has partnered with local and regional non-profit organizations to enhance and rehabilitate properties creating safe and affordable housing and repairing dilapidated buildings. Many of the properties in the D-URA are mixed use properties with retail or commercial endeavors on the first floor and apartments on the upper floors, which due to a variety of reasons, remain mostly vacant. In order to facilitate the redevelopment of these vacant properties, and others throughout the City, the City must increase the quantity and availability of parking, expedite the process for taking control of tax title properties, assess current zoning and promote smart growth districts, address storm water management practices, and partner with local agencies and developers to invest in the existing infrastructure. The City must also continue to support residents by partnering with local banks and non-profit agencies to identify properties that are in pre-foreclosure, distribute information regarding the availability of foreclosure counseling, assist with post-foreclosure issues. Education to first time homebuyers is also crucial in foreclosure prevention.

Economic Development. This category is consistent with Concentrate Development and Mix Uses, Advance Equity, Increase Job and Business Opportunities and Plan Regionally.

There are two distinct economic development goals in the City of Gardner – to diversify the local economy and increase job opportunities by encouraging and facilitating retention and expansion of Gardner based businesses as well as attracting new businesses to Gardner while promoting reinvestment in older industrial and commercial properties. To that end, the City will continue to coordinate economic development efforts by maintaining funding for the Economic Development Coordinator (EDC) position. Within the role, the EDC will continue to implement the approved urban renewal plans; identify and develop a new industrial business park; assist and expand training opportunities for the local workforce; provide support to new and existing businesses throughout Gardner by organizing company tours with potential partners; act as a conduit between the City and the Chamber of Commerce, Square Two, NewVue Communities and other organizations for marketing and technical support such as sign and façade improvements, marketing, business expansion efforts and networking with other business owners; and partner with local non-profit agencies to assist in challenges facing the local workforce such as job training, job-related transportation issues, job-related childcare, education and financial literacy and self-sufficiency programs.

Open Space and Recreation. The Sustainable Development principles relevant to this section are to Protect Land and Ecosystems and Use Natural Resources Wisely.

The City of Gardner has a fully updated Open Space and Recreation Plan (OSRP) that was accepted by the State in 2015. The overall purpose of the OSRP is to provide Gardner's residents with a diverse system of interconnected open space areas and quality recreational opportunities that protect natural resources, promote public health, and enhance the quality of life. Enhancing the quality of life in a community must maintain a careful balance between equity, environment and economy. To meet the overall goal of the OSRP, it is important that the City focus on acquiring additional open space parcels, or more effectively utilize existing land; improve management and maintenance of existing municipally owned open space, including land and bodies of water; increase opportunities for recreation along the Otter River and other waterways; complete the North Central Pathway in partnership with the Town of Winchendon; add new equipment and increase maintenance of existing equipment at the existing recreation facilities; look for opportunities to acquire land, or repurpose existing land, for additional recreational facilities and/or fields; construct, replace, and maintain a sidewalk network throughout the City to ensure a safe walkable community; adopt a reduced salt policy; and promote the benefits of donating open space.

Transportation. The Sustainable Development Principle of Provide Transportation Choice is most relevant to this section.

The City's goals include increasing access to transportation options and ensuring safe, accessible options for all travel modes – walking, biking, transit and vehicles – for people of all ages and abilities, including those with disabilities, allowing safe and convenient travel throughout the City. To that end, the City continues to advocate for increased bus service to allow working parents and the underemployed better access to childcare facilities and employment opportunities; upgrading State Route 2 and improvements to the Community Rail System serving Northern Worcester County; promote walking and biking opportunities within the City and advocate for bicycle racks on buses to allow travel between communities for recreational purposes; apply appropriate Smart Parking standards and strategies in the target areas and increase the availability of parking the target areas; continue to upgrade the sidewalks to ADA/MAAB standards and repair deteriorated infrastructure which will include preparing and implementing a pavement management plan; provide better traffic control features such as line painting and cross walks; and increase the enforcement of traffic laws and ordinances.

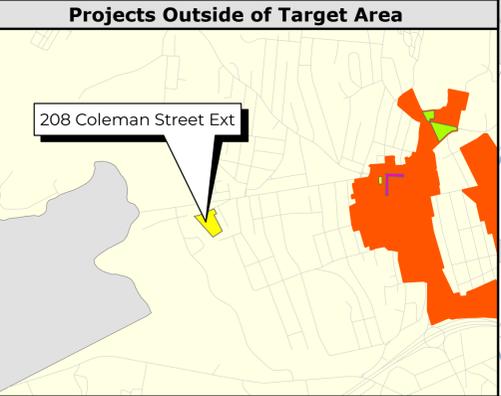
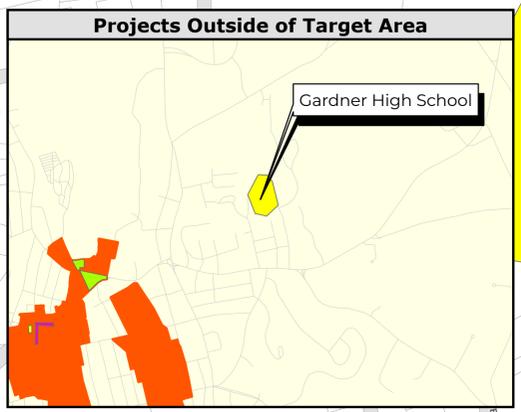
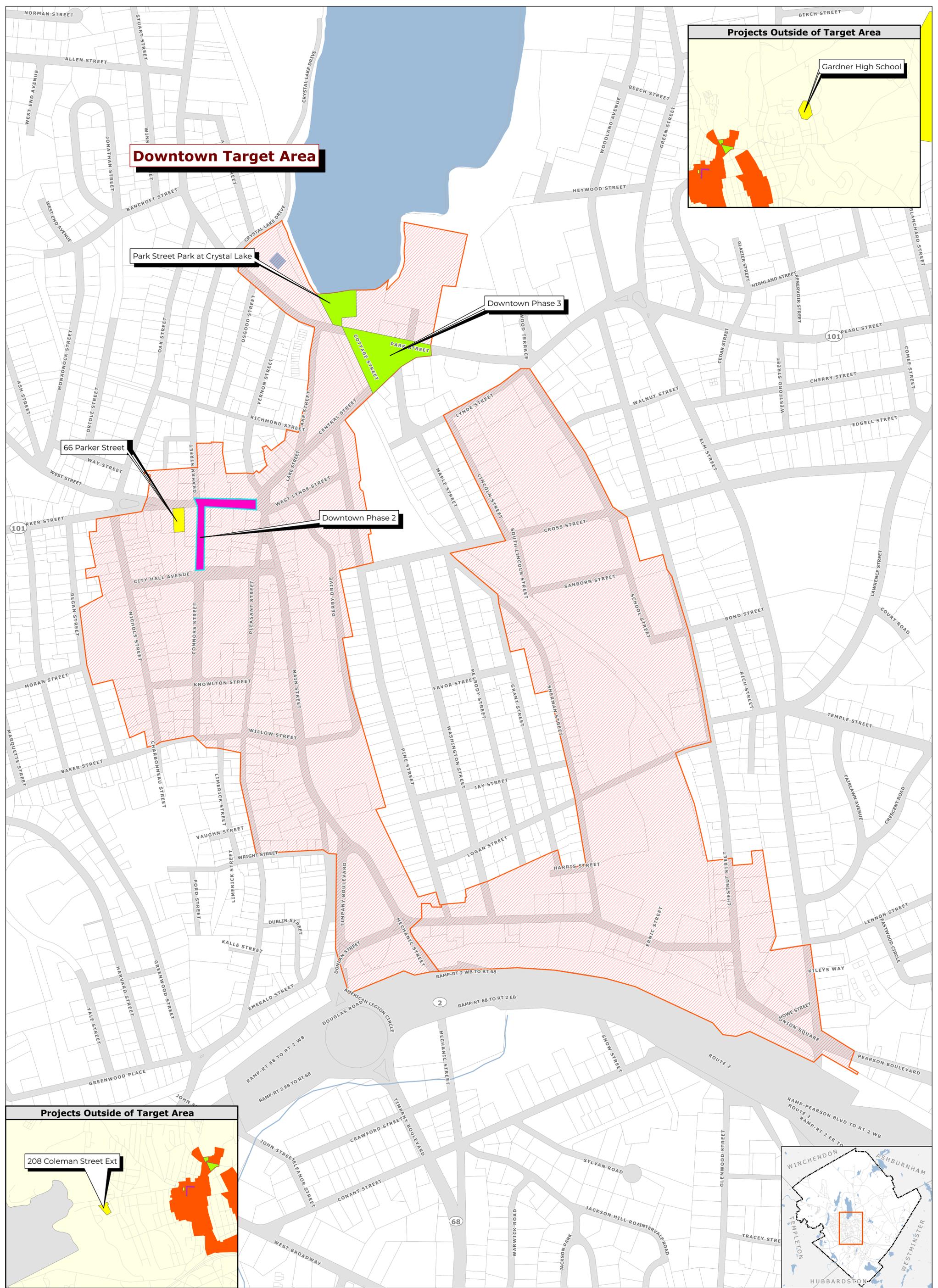
The City has entered into a Community Compact with the Commonwealth of Massachusetts and has created a Complete Streets Policy outlining its commitment in obtaining its transportation goals.

Special Needs. This category does not tie in to the Commonwealth's Sustainable Development Principles but is an important component to the Community Development Strategy of the City of Gardner.

It is important the residents of Gardner have equal access to municipal and regional services, activities and programs. To the that end, the City will continue to evaluate its ADA Transition Plan and make recommendations where necessary; provide auxiliary aids and services that allow municipal communication improvement; increase the support available to persons having special needs, including, but not limited to, the elderly, the homeless, victims of domestic violence, low and moderate income persons and the disabled; expand partnerships with local and regional health, social and human service providers; support efforts of private developers to create affordable and market rate senior housing; expand existing City efforts to rehabilitate substandard housing, particularly inaccessible, multi-family buildings; continue to upgrade the existing infrastructure with ADA compliant curbs and ramps to make travel more accessible; and provide support to address public health priorities including those dealing with addiction, mental health and physical disabilities.

**FY2018 – FY2021 COMMUNITY DEVELOPMENT STRATEGY
PRIORITY LIST**

1. Reconstruct or alter streets, sidewalks, and public buildings to allow for handicap accessibility and to encourage pedestrian travel. – Year 1-3. Additional funding potential through the Complete Streets program as well as local City funding.
2. Upgrade existing infrastructure, particularly in the Downtown Urban Renewal Area and Mill Street Corridor Urban Renewal Area. Year 1-3.
3. Apply Complete Streets Standards to Target Areas, Timpany Boulevard Corridor, and safe route to school areas to accommodate all modes of travel and help facilitate economic growth. Year 1-3. See above.
4. Apply appropriate “Smart Parking” standards and strategies and increase availability of parking in the Downtown Urban Renewal Area. Year 1-3.
5. Implement the approved Downtown and Mill Street Corridor Urban Renewal Plans. Years 1-3.
6. Restore, enhance, build and support diverse recreational facilities and/or activities. Year 2/3. Additional funds through Trails Grant and other recreational sources.
7. Implement the Open Space and Recreation Plan including, but not limited to, acquiring, protecting, and maintaining open space and environmentally sensitive lands. Years 1-3. See #6.
8. Support and expand economic security and self-sufficiency programs. Year 1-3
9. Work cooperatively with all area for-profit, non-profit and service agencies to implement the CDS. Years 1-3.
10. Selectively demolish buildings that are beyond reuse in the Target Area. Year 2
11. Rehabilitate dilapidated buildings within the Target Area (Downtown Urban Renewal Area and Mill Street Corridor Urban Renewal Area). Year 1-3
12. Attract and assist businesses opening in, relocating to, or already existing in, Gardner. Years 1-3.
13. Redevelop vacant or underutilized land and buildings, particularly in the Urban Renewal Areas. Year 3.
14. Rehabilitate non-code compliant, and/or construction of, affordable single and multi-family homes.



Legend

Downtown Target Area	2020 Project Types
Surface Water	Design Project
Streams	Construction
Town Boundary	Public Social Services

2020 CDBG APPLICATION TARGET AREA AND PROJECTS

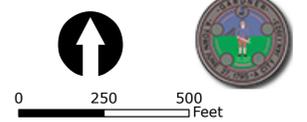
CITY OF GARDNER

95 Pleasant Street
Gardner, MA 01440

*Information displayed must not be used for authoritative boundary determinations or for authoritatively locating physical objects; the authoritative determination of boundary or other physical locations remains the purview of the professional land surveyor and, in the case of property boundaries, the professional title attorney.

Note that legal parcel boundaries may or may not be coincident with visible features, and that some features (e.g. the coastline, river banks, and pond/lake edges) can move over time. Therefore, assumptions about coincidence with visible features must be carefully reviewed, case-by-case.

Data Sources
City of Gardner Engineering &
Office of Geographic and Environmental Information (MassGIS),
Commonwealth of Massachusetts, EOEa



AMENDMENT TO LEASE BETWEEN CITY OF GARDNER
AND HENRY HEYWOOD MEMORIAL HOSPITAL

VOTE: That the City of Gardner, acting through its Mayor and its Director of Public Works, amend its lease with Henry Heywood Memorial Hospital dated April 9, 1968, and recorded in Worcester District Registry of Deeds, Book 4869, Page 185, to correct and confirm the land description subject to the Lease, the same being shown on a plan titled "Easement Plan of Land in Gardner, Massachusetts" which is attached hereto and recorded herewith; and

To further authorize the Mayor and the Director of Public Works, as successor to the rights, privileges, duties and liabilities of its former Public Works Board to further to sign, seal and deliver an agreement or amendment to said lease and to do any other thing deemed necessary or advisable to give full effect to this vote, his signature on such instrument to be conclusive that its execution is within the authority conferred by this vote.

RECEIVED

EIGHTH AMENDMENT TO LEASE

2019 NOV -8 AM 11:38

THIS EIGHTH AMENDMENT TO LEASE made this ____ day of _____, 2019, by and between the CITY OF GARDNER, a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, acting by and through its Mayor and by and through its Director of Public Works, successor to the rights, privileges, duties and liabilities of its former Public Works Board (the "City" or "Lessor") and HENRY HEYWOOD MEMORIAL HOSPITAL, a charitable corporation organized under the laws of the Commonwealth of Massachusetts and having a principal office at 242 Green Street, Gardner, Massachusetts 01440 (the "Hospital" or "Lessee").

Recitals

WHEREAS the City is the Lessor and the Hospital is the Lessee of a certain parcel of land situated on the westerly side of Green Street in Gardner, as further described in a Lease Agreement dated April 9, 1968, and recorded in Worcester District Registry of Deeds, Book 4869, Page 185, (the "Lease"), as amended by: 1) an agreement dated October 21, 1980 recorded in said Registry in Book 7135, Page 310 (First Amendment to Lease), 2) an amendment dated December 2, 1980 recorded in said Registry in Book 7135, Page 314, (Second Amendment to Lease), 3) by an agreement dated January, 1986, also called an amendment and certified by the city clerk as being signed January 21, 1986 (Third Amendment to Lease, unrecorded), 4) by an amendment entitled "Amendment to Lease Agreement," endorsed by the Mayor on January 26, 1998 (Fourth Amendment to Lease, unrecorded; see Deed also signed by the Mayor on January 26, 1998, recorded in said Registry in Book 19750, Page 159), 5) by amendment entitled "Second Amendment" dated May 11, 2000 (Fifth Amendment to Lease) recorded in said Registry in Book 22705 Page 320, 6) by amendment entitled "Third Amendment to Lease" dated July 25, 2016, recorded in said Registry in Book 55817 Page 392 (Sixth Amendment to Lease), and by 7) amendment entitled "Fourth Amendment to Lease" dated September 14, 2017 and recorded in said Registry in Book 57862 Page 98 (Seventh Amendment to Lease);

WHEREAS, in 1997, the City and the Hospital negotiated the sale of certain land by the City to the Hospital, including Parcel Two leased to the Hospital under the Lease agreement, and the release of a portion of the Hospital's leasehold in Parcel One;

WHEREAS, on October 14, 1997 the Hospital's Board of Trustees resolved to pay the City Twenty-Four Thousand Five Hundred (\$24,500) Dollars for the purchase of said property and to release the Hospital's leasehold in approximately 5.86 acres of said Parcel One;

WHEREAS, the Amendment to Lease Agreement endorsed on January 26, 1998 (Fourth Amendment to Lease) specifically reduced the area being leased by the Hospital to a parcel containing 2.16 acres, more or less;

WHEREAS, the City did convey said property to the Hospital by a Deed signed by the Mayor on January 26, 1998 (the same day the Fourth Amendment was endorsed) and recorded in said Registry in Book 19750, Page 159;

WHEREAS, in 2007 the City's Planning Board granted the Hospital a Special Permit dated October 9, 2007 to expand the Hospital's parking facilities, said permit being recorded in said Registry in Book 42418, Page 1;

WHEREAS, the Hospital did thereafter expand its parking facilities to an area that exceeds the 2.16 acres leased by the City to the Hospital as part of the 1997 negotiations, as commemorated in the Deed and the Fourth Amendment; and

WHEREAS the Parties now desire to resolve this pretermission;

NOW THEREFORE, in exchange for the mutual promises contained herein, and other good and valuable consideration, the sufficiency of which the Parties affirm, the City and Hospital agree as follows:

Article 1 of the Lease Agreement dated April 9, 1968 be amended to read as follows:

1. The Lessor leases to the Lessee the premises in the City of Gardner, County of Worcester, Commonwealth of Massachusetts, described as follows:

A certain parcel of land situated in the City of Gardner, County of Worcester, Commonwealth of Massachusetts bounded and described as follows:

BEGINNING at a point on the westerly sideline of Green Street at the northeasterly corner of land now or formerly of Henry Heywood Memorial Hospital;

THENCE S69°06' 14" W by land of said Henry Heywood Memorial Hospital one hundred eighty and 09/100 (180.09') feet to a point;

THENCE Northerly over land of the City of Gardner along a curve concave to the east having a radius of eight hundred twelve and 5011 00 (812.50') feet, an arc length of three hundred sixteen and 37/100 (316.37') feet to a point;

THENCE N03°01 '05" E over land of the City of Gardner two hundred twenty- six and 86/100 (226.86') feet to a point;

THENCE northerly over land of the City of Gardner along a curve concave to the west having a radius of one thousand seven hundred eighty-seven and 50/100 (1,787.50') feet, an arc length of two hundred thirty-eight and 84/100 (238.84') feet to a point;

THENCE N85°21 '4S" E over land of the City of Gardner one hundred eighty and 00/100 (180.00') feet to a Worcester County highway bound on the westerly sideline of Green Street;

THENCE Southerly by the westerly sideline of Green Street along a curve concave to the west having a radius of one thousand nine hundred sixty-seven and 50/100 (1,967.50')

feet, an arc length of two hundred sixty-two and 89/100 (262.89') feet to a Worcester County highway bound;

THENCE S03°01 '05" W by the westerly sideline of Green Street two hundred twenty-six and 86/100 (226.86') feet to a point;

THENCE southeasterly by the westerly sideline of Green Street along a curve concave to the east having a radius of six hundred thirty-two and 50/100 (632.50') feet, an arc length of two hundred forty-one and 24/100 (241.24 ') feet to the point of beginning.

CONTAINING 3.13 Acres.

The remaining land in PARCEL ONE, as previously described in Article 1 of the April 9, 1968 Agreement, is released by the Lessee to the full ownership and control of the City of Gardner (Lessor).

This description of the leased area set forth herein shall be binding on the parties notwithstanding any prior revisions, agreements, or amendments to the Lease.

All other terms of the original Lease agreement, as amended from time to time, shall remain in full force and effect until the end of the original lease term, which remains April 8, 2067.

EXECUTED in Gardner, Massachusetts as a sealed instrument the date first above written.

CITY OF GARDNER

By: Mark P. Hawke, Manager

HENRY HEYWOOD MEMORIAL
HOSPITAL

By: Winfield S. Brown, CEO/President

Robert Crosby, CFO

As auth. (See Book 58824, Page 305)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

_____, 2019

Then personally appeared the above named, Mark P. Hawke, Mayor, duly authorized and declared that he executed the foregoing instrument as the free act and deed of the City of Gardner, before me,

Notary Public

My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss _____, 2019

Then personally appeared the above named, Winfield S. Brown, President of Henry Haywood Memorial Hospital, duly authorized and declared that he executed the foregoing instrument as the free act and deed of the City of Gardner, before me,

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss _____, 2019

Then personally appeared the above named, Robert Crosby, CFO, duly authorized and declared that he executed the foregoing instrument as the free act and deed of the City of Gardner, before me,

Notary Public
My Commission Expires:

NICKLESS, PHILLIPS AND O'CONNOR

ATTORNEYS AT LAW

625 MAIN STREET

FITCHBURG, MASSACHUSETTS 01420

RECEIVED

2019 NOV -8 AM 11:38

DAVID M. NICKLESS

C. DEBORAH PHILLIPS

JAMES L. O'CONNOR, JR.

PATRICK J. OSBORNE

Telephone: (978) 342-4590

Facsimile: (978) 343-6383

September 17, 2019

Mark P. Hawke, Mayor
City of Gardner
95 Pleasant Street
Gardner, MA 01440

Re: City of Gardner and Heywood Memorial Hospital

Dear Mayor Hawke:

I am writing to report on my review of the various leases and related documents between the City of Gardner and Henry Heywood Memorial Hospital (the "hospital") over the past 50 years. You have provided me with a letter from the hospital, including the hospital's proposed Amendment Eight, the original 1968 Lease giving rise to the current situation, seven documents labeled Amendment One through Amendment Seven, a 2007 Special Permit granted by the City's Planning Board, a 1998 deed whereby the City conveyed certain land to the hospital, and various easements relating to portions of the same land involving Mass Electric (succeeded by National Grid). In addition to a comprehensive history of the lease arrangements with the hospital over the years since the 1968 Lease was authorized, you would like to know: 1) if the hospital is occupying city-owned land not covered by the current iteration of the lease and if so, 2) how it may be remedied.

In my opinion, the hospital is currently occupying land that is not included in the current version of the lease arrangement. The 2007 Special Permit granted by the Planning Board has no effect on the hospital's leasehold with the City. The occupation of city-owned land not governed by the lease may be remedied on terms as agreed to by and between the parties. Given that there is a third party (National Grid) holding one or more easements over the same land previously or currently leased to the hospital, any amendments to the leasehold may require the involvement of that third party. In light of my review and conclusion, I cannot recommend that the hospital's proposed Eighth Amendment be endorsed by the City. However, I offer an alternative as set forth in the enclosed draft entitled "Eighth Amendment to the Lease." For your reference, all the documents mentioned in this letter are organized in chronological order in the enclosed Appendix, labelled and tabbed 1-10.

In 1968, the hospital leased two parcels of land from the City. See Appendix, at 1. According to that lease, Parcel One consisted of 8.02 acres and is located on the north side of the

hospital. This is the parcel that has become problematic over time. Parcel Two consisted of 1.40 acres and is located on the south side of the hospital.¹

Thereafter, beginning in 1980, a series of amendments to the 1968 lease were negotiated and agreed to by and between the parties. However, there is no signed copy of one of these amendments, and not all of them were recorded. For purposes of this letter, I refer to every amendment in chronological order, regardless of whether it was signed or recorded.

Amendment 1: signed in October 1980 and recorded in the registry in December 1980, permits the hospital to erect a building on the south side of the hospital. This amendment relates to Parcel Two as described in the 1968 Lease. (Book 7135, Page 310). Appendix, at 2.

Amendment 2: signed in December 1980 and recorded in the registry on the same day as Amendment 1, provides that the hospital shall pay an additional \$600 per year in rent to the City. (Book 7135, Page 314). Appendix at 3.

Amendment 3: dated January 1986, is an Agreement between the City and the hospital whereby the City permitted the hospital to mortgage and assign its interests in land described as Parcel Two in the 1968 Lease. While I have not been able to locate a signed version of this agreement, the City clerk certified the unanimous vote of the city council on January 23, 1986, to so amend the lease. Regardless, it has no import with respect to the other amendments and is recited here to provide a complete picture of the interactions between the City and the hospital concerning the leased premises. (Not recorded in registry). Appendix at 4.

Amendment 4: entitled "Amendment to Lease Agreement (Dated April 9, 1968) Between the City of Gardner and Henry Heywood Memorial Hospital," was prepared in connection with the sale of three (3) parcels of city-owned land to the hospital. It sets forth the terms of the resulting lease arrangement after the sale. The parcels being sold include all of Parcel Two as referenced in the 1968 Lease (the 1.40 acres) and other land as depicted on a plan recorded with the deed (see below). This Amendment amends the 1968 Lease so that the hospital may continue to lease a portion of Parcel One consisting of 2.16 acres following the conveyance. In conjunction with this Amendment the hospital released back to the City its interest in the remaining portion of Parcel One (5.86 acres) effective upon execution of the contract granting title of the three city-owned

¹ In 1969, the City granted Mass Electric an easement along Parcel Two recorded in Book 4955, Page 101, and shown on a plan recorded in Plan Book 328, Page 1; the hospital also granted Mass Electric an easement on its property along the southern and eastern boundary of Parcel Two, as recorded in Book 4955, Page 97. See 1969 Plan Book 327 Page 125 for location of this easement.

In 1973, the City granted another easement to Mass Electric, recorded in Book 5396, Page 226, commencing at the westerly side of the easement conveyed in 1969 and extending generally on the west and north side of Parcel One as shown on a plan recorded in Plan Book 389, Page 38; the hospital consented to this further easement, see Book 5396, Page 228.

In 1980, Mass Electric released its rights in the 1969 Easement to the hospital. That release is recorded in Book 6976, Page 118. However, this release does not include a release of the 1973 easement from the city to Mass Electric. See Appendix 11-15.

parcels to the hospital.² This Amendment was signed January 26, 1998, but not recorded. Appendix at 5.

On March 26, 1998, a deed conveying three parcels (A, B, and C) to the hospital was recorded in the registry at Book 19750, Page 159. This Deed was also signed on January 26, 1998. It refers to a plan prepared for the City by Szoc Surveyors, recorded in Book 726, Plan 2. Parcel B is the same as Parcel Two in the 1968 Lease. Appendix at 6.

Amendment 5: signed in May of 2000 and recorded in June of 2000, is entitled “Second Amendment,” and refers to the “first amendment” which is Amendment 2 (found in Appendix at 3) herein. (Book 22705, Page 320). Appendix at 7.

Amendment 5 does not recognize Amendment 4, or the hospital’s acquisition of three parcels from the City. It refers to Parcel One as containing 8.02 acres. However, this Amendment was much like Amendment 3. It was prepared to permit the hospital to grant a mortgage for purposes of borrowing money. It was the lender’s responsibility to determine if the document prepared and recorded at that time was sufficient for its purposes. It cannot be considered conclusive between the City and the hospital as to the size of the area the hospital was then leasing from the City.

Amendment 6: signed in July of 2016 and recorded in August of 2016. It is entitled “Third Amendment.” We now know that this amendment is the sixth time that the 1968 Lease was “amended.” In this Amendment 6, the City grants the hospital a right to construct and maintain a solar carport system on a portion of “Parcel 1,” presumably referring to Parcel One in the 1968 Lease. There is no acreage or legal description in this amendment. The carport system is to be located on the “existing parking lot,” and the system is to be built on all or a portion of Parcel 1. (Book 55817, Page 392). Appendix at 8.

Amendment 7: signed in September of 2017 and recorded in October of 2017. It is entitled “Fourth Amendment,” but as we have learned from the above recited history, it is the seventh time the 1968 Lease between the City and the hospital was amended. It specifically permits a charitable project prohibited by the original Lease. It refers to Parcel One as consisting of 2.16 acres and includes a legal description consistent with the legal description in the 1998 amendment (Amendment 4 herein). In my opinion this is instructive, if not conclusive, as it indicates that the parties recently recognized the 1998 transactions. (Book 57862, Page 98). Appendix at 9.

The hospital’s letter of May 2019 asserts that a 2007 Special Permit (Appendix at 10) granted by the Planning Board may inform us as to what the hospital and the City actually agreed to in 1998. The letter explains that in 2007 the hospital applied for and was granted a Special

² Notwithstanding the view expressed in the hospital’s letter to the City Council of May 20, 2019, I do not agree that the description of the leased land in the 1998 Amendment whereby the acreage of the hospital’s leasehold was reduced to 2.16 acres was an error. Indeed, the hospital’s own Resolution, set forth in its Clerk’s Certificate of vote specifies that, “[i]n consideration of a grant by the City...of title to certain land... the Hospital ... shall release to the City the Hospital’s leasehold interest in approximately 5.86 acres of land...” Parcel One in the 1968 Lease contained 8.02 acres. Amendment 4 specifies that the reduced size of Parcel One (the portion that will continue to be leased by the hospital) will thereafter contain 2.16 acres. $5.86 + 2.16 = 8.02$; the original size of Parcel One.

Permit to expand the northern parking lot, resulting in its present configuration. According to the hospital, the expansion includes land that was included in the 1968 Lease, “with the exception of the slope from the ridgeline down the wooded hillside,” and the hospital states that it includes a portion of land omitted from the 1998 amendment of approximately 3.13 acres. The hospital further states, “[i]t appears that the City’s grant of the Special Permit in 2007 relied on the leased land description from the original 1968 lease, less the wooded hillside.”

The Planning Board relied in this case, as it does in all cases, on the information provided by the applicant, or its representative, when the application is submitted. The applicant is responsible for supplying the Board with ownership information or otherwise demonstrating its right to use land for which it seeks the Special Permit. The Planning Board is not responsible for examining the nature or quality of the title asserted by an applicant. This Board has no authority and does not purport to authorize a use on property in which an applicant has no legal interest. Unless or until an applicant’s right to use property is questioned through the public hearing process, the Board proceeds on the material and information submitted by the applicant. Typically, if a question is raised, the Board will require the applicant to produce further evidence of its right to seek the permit. I reviewed the minutes of the public meetings at which the Planning Board conducted its public hearing on this application. It is fair to conclude that no one questioned whether the size of the area designated for the expansion of the parking lot exceeded the area the hospital was entitled to use at that time. The Planning Board granted the Special Permit as requested. The hospital’s subsequent reliance on the Special Permit to construct parking on 3.13 acres of Parcel One does not shed light on whether the City and/or the hospital made an error in 1998. Nor does it otherwise authorize the hospital’s use of nearly an acre of the City’s land that was not included in the lease that was in effect in 2007.

To date, no documentation has been presented or located suggesting that the City and/or the hospital made a mistake, mutual or otherwise, in 1998. In fact, the documents support the opposite conclusion. The hospital board’s resolution voted on October 14, 1997, specifically states that the consideration for its acquisition of title to certain city-owned land is \$24,500 and the release of its interest in 5.86 acres of Parcel One. See Resolution attached to Amendment 4. The 5.86 acres released by the hospital, added to the 2.16 acres specifically described in Amendment 4, and more recently in Amendment 7, total 8.02 acres, the same as Parcel One in the 1968 Lease. I cannot reconcile the hospital’s view that the City intended to allow it to retain a leasehold in 3.13 acres, or that the hospital did not realize it was retaining only 2.16 acres with these documents. Therefore, I cannot recommend the language in the hospital’s proposed eight amendment.

I understand that the City and the hospital are amenable to rectifying the situation at this time so that the hospital may move forward with its current plans. It must be noted that National Grid (successor in interest to Mass Electric) continues to have an easement over the City’s land that was previously leased by the hospital. See Note 1. Any successful arrangement providing the hospital with the rights necessary for it to move forward with its plans must include National Grid’s

cooperation and agreement. With that in mind, I propose the enclosed Eighth Amendment to the Lease.

I recommend that the city's engineering department review the plan submitted by the hospital with its proposed eighth amendment to ensure that the location of the 3.13 acres is clearly and accurately delineated to the city's satisfaction.

If you have any further questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,


C. Deborah Phillips

CDP/st

Enclosures

RECEIVED

2019 NOV -8 AM 11:39

EASEMENT RELOCATION AGREEMENT

THIS EASEMENT RELOCATION AGREEMENT (this "Agreement") is made as of the day of _____, 2019 by and between MASSACHUSETTS ELECTRIC COMPANY, a Massachusetts corporation, having an office at 40 Sylvan Road, Waltham, MA 02451 (hereinafter "MEC"), and the CITY OF GARDNER, a municipal corporation with an address c/o City Hall, 95 Pleasant Street, Gardner, MA 01440 (the "City").

RECITALS:

WHEREAS, MEC is the owner of certain perpetual rights and easements for transmission line purposes over, across and upon certain lands in the City of Gardner, Worcester County, Massachusetts, being more particularly described in that certain easement from the City of Gardner dated October 2, 1973 and recorded with the Worcester District Registry of Deeds (the "Registry") in Book 5396, Page 226, and shown on that plan recorded with the Registry in Plan Book 389 as Plan 38 (hereinafter the "Existing MEC Easement");

WHEREAS, the City is the owner of a certain parcel of land in the City of Gardner, Worcester County, Massachusetts, more particularly described in that certain deed from Heywood Farm, Inc., to the City dated July 29, 1937 and recorded with the Registry in Book 2701, Page 9 (hereinafter the "Property"), which is subject, in part, to the Existing MEC Easement;

WHEREAS, the City leases a certain portion of the Property to Henry Heywood Hospital (HHH);

WHEREAS, HHH constructed a solar carport on the Property (the "Project"), portions of which Project are located within and materially interfere with the Existing MEC Easement;

WHEREAS, to resolve the interference with the Existing MEC Easement caused by the Project, MEC has agreed to relocate a portion of the Existing MEC Easement to another location on the Property, which relocation shall include the following (hereinafter collectively the "Easement Relocation"): (a) the grant by the City of a permanent 30' wide easement on the Property, free and clear of all encumbrances having priority over the easement, in the form attached hereto as Exhibit A and made a part hereof (hereinafter the "New Easement") for those locations shown as "PROPOSED 30' WIDE MASSACHUSETTS ELECTRIC COMPANY EASEMENT AREA "B" = 11,881 S.F." and "AREA "A" = 5,932 S.F." on that plan (the "Easement Relocation Plan") entitled: "EASEMENT PLAN OF LAND IN GARDNER, MASSACHUSETTS; SCALE 1" = 40'; DATE: MAR. 15, 2019," prepared by Hannigan Engineering, Inc. of Leominster, MA, a reduced copy of which Easement Relocation Plan is attached hereto as Exhibit B and made a part hereof, and which Easement Relocation Plan shall be recorded with the Registry on or before the recording of the New Easement; (b) delivery to MEC of any Subordination Documents and Authority Documents (both as hereinafter defined) in connection with said New Easement; and (c) upon the recording of the New Easement, Easement Relocation Plan and any Subordination Documents and Authority Documents (collectively, the "Easement Relocation Documents"), MEC shall deliver a partial release of the Existing MEC Easement whereby MEC will release a portion of its right, title and interest in and to the Existing MEC Easement from that location shown

shaded on the Easement Relocation Plan and labeled as “ APPROXIMATE LOCATION OF 30’ WIDE MASSACHUSETTS ELECTRIC COMPANY EASEMENT BK. 5396-226 PL. BK. 389-38 SEE ALSO BK. 5396-228 (TO BE EXTINGUISHED)” (the “Partial Release”);

WHEREAS, in consideration for MEC’s agreement to the Easement Relocation, the City of Gardner has agreed to pay to MEC the costs associated therewith, including without limitation, any and all costs associated with the development of Easement Relocation Plan and any and all recording fees; and

WHEREAS, the parties have reached an agreement as to the terms and conditions under which MEC is willing to undertake the Easement Relocation, and they desire to hereby document their agreement as to such.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged under seal, the parties hereto agree as follows:

SECTION I - RELOCATION AGREEMENT

1.1 Subject to the term and conditions set forth in this Agreement, the City hereby agrees to execute and deliver the Easement Relocation Documents to MEC within thirty (30) days following the execution of this Easement Relocation Agreement. Upon receipt and recordation of the Easement Relocation Documents and payment of the Estimate, MEC shall record the Partial Release in the form attached hereto as Exhibit C and made a part hereof.

SECTION 2 - COSTS AND EXPENSES; PAYMENT

2.1 The City shall be solely responsible for, and hereby agrees to pay the entire cost of, the Easement Relocation including, without limitation, general and administrative costs; the costs to prepare the Easement Relocation Plan; recording fees; and legal fees and expenses as set forth in this Agreement.

2.2 MEC estimates that the total cost of the work done by MEC hereunder is equal to One Thousand Six Hundred and Fifty Dollars (\$1,650.00) (the “Estimate”), and the City hereby acknowledges receipt of this Estimate. The City hereby acknowledges that (a) the Estimate is only a good faith estimate of the total costs that MEC will incur in connection with the Easement Relocation as of the date of the Estimate; (b) that the Estimate may not include all categories of expenses associated with the Easement Relocation; and (c) that the City is responsible for all categories of expenses associated with the Easement Relocation, regardless of whether such categories of expenses are included in the Estimate. Notwithstanding the foregoing, at this time, MEC does not anticipate the total costs to substantially exceed the Estimate.

2.3 Immediately upon the City’s execution and delivery of these presents to MEC, the City shall deliver to MEC the following: (a) a certified check in an amount equal to the Estimate (the “Estimate Payment”). Upon the recording of all of the Easement Relocation Documents and the Partial Release, the City shall pay, on demand, any and all direct and indirect costs and

expenses incurred by MEC in connection with the Easement Relocation to the extent said costs and expenses exceed the Estimate Payment.

SECTION 3 - CONDITIONS TO MEC'S OBLIGATIONS

3.1 MEC's obligations under this Agreement to deliver the Partial Release to the City are expressly contingent upon (a) the prompt payment to MEC by the City of any and all amounts required to be paid hereunder; (b) the execution, delivery, and recording of the New Easement and the Easement Relocation Plan; (c) MEC shall have received from the City, at the City's sole cost and expense, good, clear, record and marketable title to the New Easement, free and clear of all liens and encumbrances having priority over the New Easement; (d) receipt by MEC of releases, consents, and/or subordinations of any sublessees, assignees, mortgagees or any other party whose interest in the Property has priority over MEC's interest in the New Easement (collectively, the "Subordination Documents") generally in the form attached hereto as Exhibit D and made a part hereof, which Subordination Documents shall be obtained by the City at its sole cost and expense and shall be satisfactory to MEC in its sole but reasonable discretion; (e) receipt by MEC of all votes and authority documents ("Authority Documents") evidencing the City's and, with respect to the Subordination Documents, other such entities authority to enter into, and be bound by, all of the agreements referenced or described herein, which Authority Documents shall be obtained at the City's sole cost and expense and shall be satisfactory to MEC in its sole but reasonable discretion; and (f) the City's compliance with all of the other terms and conditions of this Agreement.

SECTION 4 - PARTIAL RELEASE OF EASEMENT RIGHTS

4.1 Until such time as a Partial Release has been executed by MEC and recorded with the Registry, nothing in this Agreement shall be deemed or construed as an abandonment or release of any of the rights and easements of MEC, and MEC specifically reserves said rights and easements, including without limitation the rights to clear and keep cleared the Existing MEC Easement of all vegetation and structures that may interfere with its easement, to pass and repass with vehicles and equipment, to reconstruct, maintain, operate, repair, renew, replace, add to and otherwise change any power lines, structures, guys, anchors or other facilities to meet the needs of its business, to construct towers, poles and lines of higher voltage thereon, and to relocate existing and/or future transmission structures, towers, poles and lines, at MEC's cost and expense.

4.2 MEC shall have no obligation to execute and deliver a Partial Release of Easement for portions of the Existing MEC Easement until the conditions set forth in Section 3 hereof have been satisfied.

SECTION 5 - DEFAULT

5.1 In the event the City shall at any time fail to make any payment due hereunder to MEC or fail to observe or perform any of the other covenants and agreements required to be performed and observed by the City and such default shall continue for a period of thirty (30) days for monetary obligations (for which no notice shall be necessary) or for a period of thirty (30) days after written notice to the City (or if such default is incapable of being cured in a reasonable manner within thirty (30) days, the City has not commenced to cure the same within said thirty (30) day

period and diligently prosecuted the same to completion) and the City shall not cure such default, then subject to the provisions of this Section 5, MEC shall be entitled, at its election, to bring suit for the collection of such payments or other amounts for which the City may be in default, for the performance of any other City covenant or agreement hereunder, including specific performance, and for any damages incurred by MEC, all without terminating this Agreement. MEC shall also be entitled, at its election, to terminate this Agreement. In the event MEC terminates this Agreement, all obligations of MEC shall cease and terminate (except those that expressly survive the termination of this Agreement), except that MEC may sue for and collect all direct and related indirect costs of the Easement Relocation not previously paid by the City and other amounts due as a result of the City's default and all damages to MEC by reason of any such breach.

5.2 In the event that MEC fails to record the Partial Release within thirty (30) days following the recordation of the Easement Relocation Documents, the City shall be entitled to bring suit for specific performance of the recordation of the Partial Release.

SECTION 6-MISCELLANEOUS

6.1 This Agreement shall not be assignable, in whole or in part, by the City to any other person or entity, and any such assignment in violation of this provision shall be null and void.

6.2 This Agreement and any amendment hereof may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original and all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

6.3 The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors and/or assigns of the parties hereto.

6.4 All Exhibits referred to herein are intended to be and hereby are specifically made a part of this Agreement.

6.5 This Agreement, including the Exhibits, easements, documents, agreements, certificates and instruments referred to herein, embody the entire agreement and understanding of the parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. This Agreement supersedes all prior agreements and understandings between the parties with respect to the subject of this Agreement.

6.6 The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties hereto and shall not in any way affect the meaning or interpretation of this Agreement.

6.7 Subject to the terms and conditions of this Agreement, each of the parties hereto will use all reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws, rules and regulations to complete and make effective the Easement Relocation pursuant to this Agreement. From time to

time after the date hereof, without further consideration but subject to the terms and conditions of this Agreement, the City will, at its own expense, execute and deliver such documents to MEC as MEC may reasonably request in order more effectively to complete the Easement Relocation. From time to time after the date hereof, without further consideration but subject to the terms and conditions of this Agreement, MEC will, at the City's sole cost and expense, execute and deliver such documents to the City as the City may reasonably request in order more effectively to complete the Project.

6.8 Each of the parties hereto hereby represents and warrants to the other party hereto that (a) such party has the power and authority to execute, deliver and perform its respective obligations under this Agreement, and (b) the person(s) executing and delivering this Agreement on behalf of such party are duly authorized to so execute and deliver this Agreement. The City hereby represents and warrants to MEC that the City is the record owner of the Property.

6.9 the City hereby acknowledges that MEC would not undertake the Easement Relocation but for the following, as set forth in this Agreement: (a) the City's agreement to pay for all of the direct and related indirect costs incurred by MEC in connection with the Easement Relocation; and (b) the City's agreement to obtain the Easement Relocation Documents.

6.10 This Agreement shall automatically terminate, be of no further force and effect and without recourse to either party except for those provisions contained herein that expressly survive the termination of this Agreement upon the earlier of (a) completion of the Easement Relocation; or (b) December 31, 2019. The City understands and agrees that, regardless of whether this Agreement is terminated for any reason, including without limitation the City's default hereunder, the City shall be solely responsible and liable for and hereby agrees to pay the entire cost of the Easement Relocation.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives, under seal, on the day and year first written above.

MASSACHUSETTS ELECTRIC COMPANY

By: _____
Title:
Name:

CITY OF GARDNER

By: _____
Name:
Title:

Mayor RECEIVED

From: 2019 NOV -8 AM 11:38 Chris Coughlin
Sent: Thursday, November 7, 2019 1:43 PM
To: CITY CLERK'S OFFICE Debbie Phillips
Cc: GARDNER, MA Mayor
Subject: RE: Hospital Easement

Debbie,

Easement "A", Easement "B" & "3.13 Acre Land Lease Area" all looked fine. The plan matched all their respective descriptions accurately.

If you need anything else just let me know.

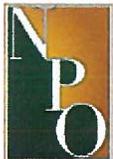
Thanks,

-Chris

From: Debbie Phillips <dphillips@NPOlegal.com>
Sent: Wednesday, October 30, 2019 12:22 PM
To: Chris Coughlin <ccoughlin@gardner-ma.gov>
Subject: Hospital Easement

Chris,

The plan showing the hospital's proposed correction of the easement is attached as the last page to this PDF (also Hannigan). The legal description starts on the 5th page of this PDF-its page 2 of their proposed amendment. If you can check those for accuracy, it would be great as well. Thanks again. Debbie



**NICKLESS,
PHILLIPS
and O'CONNOR**

C. DEBORAH PHILLIPS, ESQ.
NICKLESS, PHILLIPS AND O'CONNOR | ATTORNEYS AT LAW
625 MAIN STREET | FITCHBURG, MA 01420
PHONE: (978) 342-4590 | FAX: (978) 343-6383
www.NPOLEGAL.com