City of Gardner, Massachusetts
Office of the City Council

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CALENDAR FOR THE MEETING
of
MONDAY, MARCH 16, 2020
COUNCIL CHAMBER
7:30 P.M.

ORDER OF BUSINESS

I. CALL TO ORDER

II. CALL OF THE ROLL OF COUNCILLORS

III. OPENING PRAYER

IV. PLEDGE OF ALLEGIANCE

V. 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.

VI. READING OF MINUTES OF PRIOR MEETING(S)

Reading and Approval of the Minutes of the March 2, 2020 Regular Meeting.

VII. PUBLIC HEARINGS

VIII. COMMUNICATIONS FROM THE ACTING MAYOR

ORDER

10253 – An Order Appropriating $24,929.00 from Free Cash to Airport Professional Services *(Finance Committee).*

IX. PETITIONS, APPLICATIONS, COMMUNICATIONS, ETC.

10254 – An Ordinance Amending the Code of the City of Gardner, Chapter 600 Thereof, Entitled "Vehicles and Traffic," Section 600-24, Parking Prohibited on Certain Streets, Nutting Street *(Public Safety Committee).*

X. REPORTS OF STANDING COMMITTEES

PUBLIC WELFARE COMMITTEE

10252 – A Petition by Traven Development LLC to renew the designation of two (2) parcels at 525 Parker Street as a Development Overlay District 1 *(In City Council and Referred to the Public Welfare Committee and Planning Board, 3/2/2020).*

FINANCE COMMITTEE

10250 – An Order Appropriating $52,788.00 from Free Cash to FY2019 Firefighters Salary and Wages Account *(In City Council and Referred to Finance, 3/2/2020).*
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X. REPORTS OF STANDING COMMITTEES

FINANCE COMMITTEE

10251 – An Order Appropriating $54,818.67 from Free Cash to the Firefighters Salary and Wages Account *(In City Council and Referred to Finance, 3/2/2020).*

XI. UNFINISHED BUSINESS AND MATTERS FOR RECONSIDERATION

10207 – An Ordinance to Amend the Code of the City of Gardner, Chapter 675 Thereof, Entitled "Zoning," to Amend Section 675-610, General Requirements, Sec. F and Section 675-1050, Fences and Hedgerows *(In City Council and Referred to Public Welfare and Planning Board, 11/18/2019; Public Hearing, 1/21/2020; Planning Board Final Report filed, 2/3/2020; Reported favorably by Public Welfare Committee and Ordered to First Printing, 3/2/2020; First Printing, 3/6/2020).*

10216 – An Ordinance to Amend the Code of the City of Gardner, Chapter 560 Thereof, Entitled "Solid Waste," to Change Solid Waste Program Fees *(In City Council and Referred to Public Safety Committee, 12/2/2019; Reported favorably by Public Safety Committee and Ordered to First Printing, 3/2/2020; First Printing, 3/6/2020).*

10252 – A Petition by Traven Development LLC to renew the designation of two (2) parcels at 525 Parker Street as a Development Overlay District 1*(In City Council and Referred to the Planning Board and Public Welfare Committee, 3/2/2020).*

XII. NEW BUSINESS

XIII. CLOSING PRAYER

XIV. ADJOURNMENT

Items listed on the Council Calendar are those reasonably anticipated by the Council President 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.

NOTICE

As we are all aware, Governor Charles Baker has declared a state of emergency in Massachusetts to support the state's response to Coronavirus. People should use their own judgment if they wish to attend meetings and events where there will be crowds. If you are ill or symptomatic you should not attend. At the present time, City meetings will continue to be held and open to the public as required by law, and the City can make no assurance of safety or assistance in preventing the transmission of illness.

CITY OF GARDNER IN CITY COUNCIL

REGULAR MEETING OF MARCH 2, 2020

Regular Meeting of the City Council was held in the City Council Chamber, Room 219, City Hall, on Monday evening, March 2, 2020.

CALL TO ORDER

Council President James Walsh called the meeting to order at 7:30 o'clock p.m.

CALL OF THE ROLL

City Clerk Alan Agnelli called the Roll of Members. Ten (10) Councillors were present including President James Walsh and Councillors Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Elizabeth Kazinskas, Judy Mack, and George Tyros. Councillor James Boone was absent.

OPENING PRAYER

President Walsh led the Council in reciting the Opening Prayer.

PLEDGE OF ALLEGIANCE

President Walsh led the Council in reciting the "Pledge of Allegiance".

OPEN MEETING RECORDING & PUBLIC RECORDS ANNOUNCEMENT

President Walsh announced to the assembly that the Open Meeting Recording and Public Records Announcement is posted at the entrance to the Chamber, and that any person planning to record the meeting by any means should identify themselves.

READING & ACCEPTANCE OF MINUTES

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted viva voce, ten (10) yeas, President James Walsh and Councillors Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Elizabeth Kazinskas, Judy Mack, and George Tyros, to waive reading and to accept the Minutes of the February 18, 2020 Joint Convention and Regular Meeting, as printed.

COMMUNICATIONS FROM THE ACTING MAYOR

ORDERS

#10250

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted viva voce, ten (10) yeas, President James Walsh and Councillors Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Elizabeth Kazinskas, Judy Mack, and George Tyros, to refer the following Order to the Finance Committee for study and report:

UNACCEPTED/UNCORRECTED PROOF

AN ORDER APPROPRIATING FROM FREE CASH TO FIREFIGHTERS SALARY AND WAGES FY2019 ACCOUNT.

ORDER: That there be and is hereby appropriated the sum of Fifty-Fifty-two Thousand Seven Hundred Eighty-eight and 33/100 ($52,788.33) from Free Cash to the Fiscal 2019 Firefighters Salary and Wages Account.

#10251

On a motion by Councillor Elizabeth Kazinskas and seconded by Councillor Ronald Cormier, it was voted viva voce, ten (10) yeas, President James Walsh and Councillors Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Elizabeth Kazinskas, Judy Mack, and George Tyros, to refer the following Order to the Finance Committee for study and report:

AN ORDER APPROPRIATING FROM FREE CASH TO FIREFIGHTERS SALARY AND WAGES ACCOUNT.

ORDER: That there be and is hereby appropriated the sum of Fifty-four Thousand Eight Hundred Eighteen and 67/100 ($54,818.67) from Free Cash to the Firefighters Salary and Wages Account.

PETITIONS, APPLICATIONS, COMMUNICATIONS, ETC.

#10252

On a motion by Councillor Scott Joseph Graves and seconded by Councillor Judy Mack, it was voted viva voce, ten (10) yeas, President James Walsh and Councillors Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Elizabeth Kazinskas, Judy Mack, and George Tyros, to refer *A Petition by Traven Development LLC to renew the designation of two (2) parcels at 525 Parker Street as a Development Overlay District 1* to the Public Welfare Committee for study and report and to the Planning Board for Report.

REPORTS OF STANDING COMMITTEES

PUBLIC SAFETY COMMITTEE

#10216

Councillor Craig Cormier, Chairman of the Public Safety Committee, reported that the Committee met recently with Public Health Director Saunders and discussed the City's contract with Waste Management. He said that the contract prices were predicated on China's acceptance of the City's recyclables, but since China no longer accepts recyclables, a fee increase is necessary. He said that the Health Director sought an increase of $10 per quarter; however, the Committee suggested an increase of $7.00 per quarter for the first year and an additional dollar per quarter for each year thereafter. He added that the Committee was mindful of trash collection costs, in light of the recent increase in sewer user fees.

UNACCEPTED/UNCORRECTED PROOF

Councillor Craig Cormier moved to order the following revised Ordinance amendment to First Printing:

> AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 560 THEREOF, ENTITLED "SOLID WASTE," TO CHANGE THE FEE FOR SOLID WASTE COLLECTION.
>
> Be it ordained by the City Council of the City of Gardner as follows:
>
> Section 1. Section 560-3 B. of the Code of the City of Gardner, is hereby amended by deleting and repealing the sentence: "The annual fee for the collection and handling of rubbish, garbage, ashes and source-separated materials is set at $200 per apartment unit per building, effective July 1, 2013," and by inserting in place thereof, the following: "For the collection and handling of rubbish, garbage, ashes and source-separated materials, the annual fee for each household and each unit of apartment buildings containing eight or fewer units in the City shall be, as follows:
>
> | | |
> |---|---|
> | Effective July 1, 2020 | $228.00 |
> | Effective July 1, 2021 | $232.00 |
> | Effective July 1, 2022 | $236.00 |
> | Effective July 1, 2023 | $240.00 |
>
> Section 2. Effective date.
> This ordinance shall become effective upon passage and publication as required by law.

Councillor George Tyros seconded the motion.

On the motion, Councillor Scott Graves stated that the spreadsheet proposes variations in increases and projected increases in costs. He said that the spreadsheet shows that for Fiscal Year 2017-18, there was a 10% increase in expenses and the next year, a 6% increase and for the year after that, a 7% increase. Continuing, he said that on the spreadsheet, "we're using 3% increases for the next several years." "So," he said, "what I don't understand is, I don't want to run out of money sooner that we think we're going to run out of money." "10% increases, 6% increases, 7% increases. Why are we using 3% increases for future years?" he added.

In response, Councillor Craig Cormier stated that Ms. Saunders was seeking a single increase of $10.00 per quarter; however, based on her recommendation, the Committee was able to break down implementation to 7 dollars per quarter per year and then one dollar per quarter each year thereafter.

Councillor Graves responded, "I am not talking about the proposed increase to the taxpayers in their bills. I am talking about trying to extrapolate into the future when we are going to run out of money. If we don't do anything, we are going to run out of money in 2022, so we need to do an increase so we don't run out of money." "So," he continued, "the proposals were $30 per year and $40 per year for the taxpayers. But, the spreadsheet is showing that the cost

UNACCEPTED/UNCORRECTED

of solid waste disposal over the years is increasing, not to the taxpayers, but increasing to the City - 10% in 2017, 6% in 2018, and 7% in 2019." "And, he said, "We are anticipating 3% increases. I just don't know why we're anticipating 3% increases in the cost of rubbish, when for the last three years that we know about were 10%, 6%, and 7%. I just think using 3% doesn't sound feasible, unless the Director is telling you that the cost of rubbish is going to go down?"

Councillor Craig Cormier responded, saying that in 2018, China started to reject recyclable materials, so the existing contract did not take into account that recyclable materials would be rejected; therefore, it costs the City more to dispose. "And," he added, "I believe that we are in the process or have finished negotiating the waste management contract and that this will be a far more stable projection."

Responding to Councillor Cormier's remarks, Councillor Graves stated, "I assume that the Law Department didn't look at this because the new language says $230 per each unit of apartment buildings containing eight or fewer units in the City." "That phrase," he said, "is just legally untenable. First of all, we don't know what a unit of apartment buildings means. Because the word apartment is already defined in the Ordinance, all it needs to say is '$230 per household and $230 per apartment'. It's simple as that.'" "So," he said, "I hope this goes to the Law Department between printings before it's going to pass. And, we also need definitions in this Ordinance. Apartment unit isn't defined if you leave it in there - you have to define apartment unit. Unit is not defined, household is not defined, and apartment building is not defined. So, you need those definitions."

Continuing, Councillor Graves said, "So, substantively, I'm in favor of the $10 a quarter increase. Mayor Hawke's letter is actually inaccurate. He [Hawke] says something like … 'would grow retained earnings at a rapid rate,' which is incorrect. If we do the $10 per quarter increase up to $240 a year, we'll run out of money, using the 3% cost increases as opposed to what I think is much higher than that - use the 3%, we would run out of money by 2028." "So," he continued, "that will give us 6 years without screwing around with money. I just think that $10 per quarter – I know it's not good, nobody wants to pay an increase of $10 – but I just think that that is what I would be in favor of. And that takes us to 2028."

Concluding, Councillor Graves stated that under General Laws Chapter 44, section 28C, and Chapter 560-3A of the Code, the Mayor and City Council must approve changes to the rates." "I don't know if that's an issue or not," he said, "I know the Waste Management Contract runs out June 30, so I think you could make the argument or the City could make the argument that as a 'matter not admitting of delay,' I think it's an issue that we can look at or maybe the Law Department did look at it – that it need the Mayor and the City Council to approve it. We can approve anything we want, but the Mayor still has to –but we don't have a Mayor. So again, maybe the Acting Mayor can do it. I don't know."

On the motion, Councillor Elizabeth Kazinskas stated that the issue could be revisited each year and that fees can be changed.

Councillor Aleksander Dernalowicz questioned the dialogue concerning the percentage fee increase in the first year, suggesting that it represents 14%, while discussion noted 3%.

President Walsh stated that the 3% cited represents the projected costs to the City and the proposed fee increase is to the ratepayer for rubbish service.

On the motion, it was voted viva voce, nine (9) yeas, President James Walsh and Councillors Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Karen Hardern, Elizabeth Kazinskas, Judy Mack, and George Tyros; one (1) nay, Councillor Scott Joseph Graves, to Order the following Ordinance to First Printing:

> AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 560 THEREOF, ENTITLED "SOLID WASTE," TO CHANGE THE FEE FOR SOLID WASTE COLLECTION.
>
> Be it ordained by the City Council of the City of Gardner as follows:
>
> Section 1. Section 560-3 B. of the Code of the City of Gardner, is hereby amended by deleting and repealing the sentence: "The annual fee for the collection and handling of rubbish, garbage, ashes and source-separated materials is set at $200 per apartment unit per building, effective July 1, 2013," and by inserting in place thereof, the following: "For the collection and handling of rubbish, garbage, ashes and source-separated materials, the annual fee for each household and each unit of apartment buildings containing eight or fewer units in the City shall be, as follows:
>
> | | |
> |---|---|
> | Effective July 1, 2020 | $228.00 |
> | Effective July 1, 2021 | $232.00 |
> | Effective July 1, 2022 | $236.00 |
> | Effective July 1, 2023 | $240.00 |
>
> Section 2. Effective date.
> This ordinance shall become effective upon passage and publication as required by law.

FIRST PRINTING – MARCH 6, 2020

PUBLIC WELFARE COMMITTEE

#10207

Councillor Scott Graves, Chairman of the Public Welfare Committee, reported that the Committee initially discussed the Ordinance amendment, then followed by the public hearing where Mr. Chris Pera provided good recommendations. The Planning Board then made some of the changes suggested by Mr. Pera. The Committee then met earlier in the evening and a majority decided in favor of the Planning Board's revisions.

UNACCEPTED/UNCORRECTED PROOF

Councillor Graves moved that the Ordinance be ordered to First Printing with Sections 1 and 2 of the amendment be revised to read, as follows:

> Section 1. Section 675–610. General Requirements, Section F, of the Code of the City of Gardner, is amended by deleting and repealing Section F in its entirety and inserting in place thereof, the following:
>
> > Within an area formed by the curb lines of intersecting streets and a line joining points on such lines 30 feet distant from their point of intersection or, in case of a rounded corner, from the point of intersection of their tangents, no structure shall be erected and no foliage maintained between a height of 3 feet and a height of eight feet above the plane through their street grades.
>
> Section 2. Section 675–1050. Fences and hedgerows, is hereby amended by deleting and repealing Section 675-1050 in its entirety and inserting in place thereof, the following:
>
> > Fences dividing property or facing the street shall have the smooth or unclimbable side facing out. At corners, no fence or hedgerow shall be allowed to block vision over 3 feet above the street grade within an area formed by the intersecting curb lines and straight line joining the point of said curb line 30 feet back from their points of intersection. Fencing and hedgerows running perpendicular to the streets shall not be allowed to block vision over 3 feet above the street grade for a distance of 15 feet along driveways immediate in location.

Councillor Judy Mack seconded the motion.

On the motion by Councillor Graves and seconded by Councillor Mack, it was voted viva voce, ten (10) yeas, President James Walsh and Councillors Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Elizabeth Kazinskas, Judy Mack, and George Tyros, to Order the following Ordinance to First Printing:

> AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 675 THEREOF, ENTITLED "ZONING," TO REVISE ARTICLE VI, DENSITY AND DIMENSIONAL REGULATIONS, AND ARTICLE X, SUPPLEMENTAL REGULATIONS.
>
> Be it ordained by the City Council of the City of Gardner, as follows:
>
> Section 1. Section 675–610. General Requirements, Section F, of the Code of the City of Gardner, is amended by deleting and repealing Section F in its entirety and inserting in place thereof, the following:
>
> > Within an area formed by the curb lines of intersecting streets and a line joining points on such lines 30 feet distant from their point of intersection or, in case of a rounded corner, from the point of intersection of their tangents, no structure shall be erected and no foliage maintained between a height of 3 feet and a height of eight feet above the plane through their street grades.

UNACCEPTED/UNCORRECTED PROOF

Section 2. Section 675–1050. Fences and hedgerows, is hereby amended by deleting and repealing Section 675-1050 in its entirety and inserting in place thereof, the following:

> Fences dividing property or facing the street shall have the smooth or unclimbable side facing out. At corners, no fence or hedgerow shall be allowed to block vision over 3 feet above the street grade within an area formed by the intersecting curb lines and straight line joining the point of said curb line 30 feet back from their points of intersection. Fencing and hedgerows running perpendicular to the streets shall not be allowed to block vision over 3 feet above the street grade for a distance of 15 feet along driveways immediate in location.

Section 3. This Ordinance shall become effective upon passage and publication as required by law. Any claims of invalidity by reason of any defect in the procedure of adoption may only be made ninety days after the posting or the second publication.

FIRST PRINTING – MARCH 6, 2020

NEW BUSINESS

On a motion by Councillor Nathan Boudreau and seconded by Councillor Aleksander Dernalowicz, it was voted viva voce, ten (10) yeas, President James Walsh and Councillors Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Elizabeth Kazinskas, Judy Mack, and George Tyros, to consider New Business.

Councillor Karen Hardern reminded voters to cast their ballots on Tuesday.

President Walsh informed the Council that the information that he requested from the City Solicitor and Human Resources Director regarding the two Orders before the Finance Committee would be distributed to the Councillors when it is received.

CLOSING PRAYER

President Walsh led the Council in the Closing Prayer.

ADJOURNMENT

On a motion by Councillor Scott Joseph Graves and seconded by Councillor George Tyros, it was voted viva voce, ten (10) yeas, President James Walsh and Councillors Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Elizabeth Kazinskas, Judy Mack, and George Tyros, to adjourn at 7:49 p.m.

Accepted by the City Council:

UNACCEPTED/UNCORRECTED PROOF

10253

AN ORDER APPROPRIATING FROM FREE CASH TO AIRPORT PROFESSIONAL SERVICES.

ORDERED:

That there be and is hereby appropriated the sum of Twenty-Four Thousand Nine Hundred Twenty-Nine and No Cents ($24,929.00) from Free Cash to Airport Professional Services.

10253

City of Gardner, *Executive Department*

James M. Walsh, Acting Mayor

RECEIVED
2020 MAR 11 AM 11:03
CITY CLERK'S OFFICE
GARDNER, MA

March 11, 2020

Gardner City Council
City Hall
95 Pleasant Street
Gardner, MA 01440

RE: Airport Project Appropriation

Dear Councilors,

I am enclosing an Order appropriating $24,929.00, from Free Cash to the Airport Professional Services Account.

This is an additional amount necessary to secure grant funding from both the Federal and State governments to construct a six unit T-hangar to be owned by the City of Gardner at the airport. As you can see from the enclosed documentation, the sum of $26,250.00 has already been appropriated for this project. The additional amount is necessary to complete the City's share of 3.3% of the total project cost. A portion of this amount may not need to be spent if the FAA grant is amended at the end of the project.

The state's share of this project needs to be spent by June 30, 2020. The full amount of the City's share needs to be in place. As a result, I believe that the submission of this appropriation is a matter not admitting of delay.

Very truly yours,

James M. Walsh
Acting Mayor

Enclosures

City Hall, 95 Pleasant Street, Room 125, Gardner, Massachusetts 01440
Telephone: (978) 630-1490 • Facsimile (978) 630-3778 • Email: mayor@gardner-ma.gov

10253

GDM

Gardner Municipal Airport

RECEIVED
2020 MAR 11 AM 11:03
CITY CLERK'S OFFICE
GARDNER, MA

March 5, 2020

Mr. James Walsh
Acting Mayor
95 Pleasant Street, Room 125
Gardner, MA 01440

Re: Construct T-Hangars – Gardner Municipal Airport – Gardner, Massachusetts – AIP No. 3-25-0020-016-2018 – Project Funding Request

Dear Mr. Walsh:

In Federal Fiscal Year (FFY) 2019, the Gardner Municipal Airport accepted grant funding from the FAA through the Airport Improvement Program (AIP) to construct a pre-fabricated, 6-unit T-Hangar to be owned by the City of Gardner. At the time this project was programmed, the Airport was eligible to receive up to $810,450.00 in federal funds (This would make up 90% of the funding for the Project). The State and Local share of the project costs make up the final 10% of the funding (5% from the Massachusetts Dept. of Transportation, and 5% from the City of Gardner).

Upon review of the bids submitted, it was determined that a budget shortfall of approximately $712,271.00 would prohibit award of this Contract. The Airport's Consultant, Gale Associates, Inc. has advocated for the City of Gardner to receive the additional funding for the Project from MassDOT and FAA, the result of which has been summarized in the table below:

4. PROJECT FUNDING BREAKDOWN			
	FAA ELIGIBLE WORK	INELIGIBLE WORK	TOTAL
FAA SHARE	$932,017.50		$932,017.50
STATE SHARE	$51,778.75	$532,171.00	$583,949.75
LOCAL SHARE	$51,778.75		$51,178.75
TOTAL PROJECT COST	$1,035,575.00	$532,171.00	$1,567,746.00

The information in this table suggests that the City of Gardner can leverage over $1.5M in funding for a local contribution of $51,778.75. It should be noted that the City of Gardner has already appropriated a sum of $26,250.00 for the estimated project cost. The appropriation of this $26,250.00 was based on the estimated construction cost in 2016, the time the project was added to the Airport's Capital Improvement Plan (CIP).

The intent of this letter is to respectfully request that the City of Gardner appropriate an additional amount totaling $24,929.00 to secure $1,387,475.00 in state and federal funding that is needed to complete this very important project. If approved, the City of Gardner will obtain a unit of hangars expected to generate approximately $20,000 of revenue for the Airport annually, while paying approximately 3.3% ("$0.03 on the dollar) for this Project.

Airport Commission
City Hall, Room 226 | 95 Pleasant Street | Gardner, MA 01440
KENNETH BONK, Chairman
JOHN LAVOIE
PHIL MORRISEY
ANDREW GUERTIN
JIM MORRISSEY

Airport Manager
KEVIN McCOLE

GDM

Gardner Municipal Airport

In order to obtain this additional funding through MassDOT, there is a requirement that the funding be spent by June 30th, 2020 (which is the end of the State's fiscal year) or the funding will be lost. your expeditious review and approval of this letter would be greatly appreciated.

Very truly yours,

Ken Bonk
Chairman, Gardner Airport Commission

cc: Nikolas A. Ippolito, P.E. – Gale Associates, Inc.
File

Airport Commission

City Hall, Room 226 | 95 Pleasant Street | Gardner, MA 01440

KENNETH BONK, Chairman
JOHN LAVOIE
PHIL MORRISEY
ANDREW GUERTIN
JIM MORRISSEY

Airport Manager

KEVIN McCOLE

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 March 11, 2020

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

These balances are as of March 10, 2020:

		Money Order	Balance
Free Cash	10000-35400		$1,368,995.00
to Fire Dept for Contract Renewal Retro Pay FY19	12220-510**	52,788.33	$1,316,206.67
to Fire Dept for Contract Renewal Retro Pay FY20	12220-510**	54,818.67	$1,261,388.00
to Airport Dept for Prof Services City's Portion of Hanger Project	14482-52190	24,929.00	$1,236,459.00
			$1,236,459.00

The Snow & Ice account currently has available ($237,482.32)
14421-52210

Sincerely

John Richard
City Auditor

copies: Acting Mayor
City Clerk

10254

ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 600 THEREOF, ENTITLED "VEHICLES AND TRAFFIC."

Be it ordained by the City Council of the City of Gardner as follows:

Section 1. Section 600-24 of Chapter 600, Vehicles and Traffic, Parking Prohibited on certain streets, is amended by adding the following:

Name of Street	Side	Location
Nutting Street	Both	Entire length

Section 2. This Ordinance shall take effect upon passage and publication as required by law.

10254

CITY OF GARDNER POLICE DEPARTMENT

200 Main Street, Suite 214
Gardner, Massachusetts 01440

Phone: (978) 632-5600
Fax: (978) 630-4027

James F. Trifiro Jr.
Deputy Chief of Police
Email: JTrifiro@gardner-ma.gov

March 10th, 2020

Gardner City Council Members,

In September of 2019, the members of the Traffic Commission discussed concerns received from a resident of South Gardner related to roadside parking complaints on Nutting Street. This information generated a dialogue that questioned if motor vehicles were legally parking or, could roadside parking create obstructions and conceivably affect the safe transit of motor vehicles along the travel route. According to Gardner City Code(s) 567-8/Specifications, in combination with 600-21/General Prohibitions, roadways shall have a width of not less than 28 feet and parking of a motor vehicle should leave a clear and unobstructed lane at least 10 feet wide for passing traffic. Given that the configuration of Nutting Street has a two way traffic pattern, and designated parking spots are required to be 8 feet wide it would be most relevant to have 28 feet in roadway width to meet the Gardner City Code(s) specifications and sanction roadway (one side) parking. An extensive survey was launched and measurements of Nutting Street had been conducted in joint venture with the Department of Public Works Director along with myself. The results of this survey determined that the width of the roadway ranged from approximately 21 feet in width near the vicinity of the Prospect Street intersection, funneling to a span of approximately 29 feet in width near the vicinity of the Union Street intersection. In addition, the span identified as being approximately 29 feet in width only extended for approximately 50 feet from the intersection and this dimension combined with the fact that motor vehicles are not permitted to park within 20 feet of an intersection (Gardner City Code 600/21) significantly restricted the availability of sanctioned roadside parking down to approximately 30 feet. In summary, our analysis showed that the bulk of Nutting Street predominantly did not appear to have the approved conditions permissible for roadside parking and was considered under width according to Gardner City Code.

On February 14th, 2020 at the quarterly Traffic Commission Meeting these survey items and talking points were brought forward for any additional discussion. After an examination regarding the factors as documented in City Code, in combination with the data gathered from the dimensions obtained on Nutting Street, a unanimous decision from the commission members was affirmed to recommend the following ordinance amendment in Gardner City Code:

600-24/Parking prohibited on certain streets – Nutting Street/Both Sides/Entire Length

In summary and on behalf of the Traffic Commission, we believe that this change meets the guidelines as documented in roadway guidance by Gardner City Code, acts in the best interest of public safety and would formally address any parking concerns generated from citizens in the area.

Your favorable consideration in our recommendation would be greatly appreciated.

James F. Trifiro Jr.

James F. Trifiro Jr.
Deputy Chief of Police
City of Gardner Police Department

10250-10251

City of Gardner, *Executive Department*

James M. Walsh, Acting Mayor

RECEIVED
2020 FEB 26 PM 2:57
CITY CLERK'S OFFICE
GARDNER, MA

February 26, 2020

City Council
Gardner City Hall
95 Pleasant Street
Gardner, MA 01440

RE: Firefighters Contract Funding

Dear Council Members,

With this correspondence, I am submitting a money order in the amount of $107,607.00 from Free Cash to fund the recently negotiated contract between the City and the Firefighter's Union through June 30, 2020. Also included is correspondence from the City Auditor identifying the specific amount necessary to fund the contract.

This contract was negotiated and entered into in mid-December. I have asked the City's negotiating team, which included the City Solicitor and the Human Resources Director, to provide me with additional information about the negotiations that led to the contract as well as legal and factual justification which would authorize me, as Acting Mayor, to finalize the deal. I have also enclosed a copy of my correspondence to the team requesting that information.

Until such time I receive that additional information and am satisfied of my authority to act further, I recommend that the money order be referred to the Finance Committee.

Please feel free to contact me, if you have further questions about this topic.

Very truly yours,

James M. Walsh

James M. Walsh
Acting Mayor

City Hall, 95 Pleasant Street, Room 125, Gardner, Massachusetts 01440
Telephone: (978) 630-1490 • Facsimile (978) 630-3778 • Email: mayor@gardner-ma.gov

10250-10251

Mayor

From: John Richard
Sent: Wednesday, February 19, 2020 3:13 PM
To: Mayor
Subject: RE: Funding for Firefighters Contract

Hi Jim

Here is the total estimated funding amount needed to satisfy the Firefighters contract. This amount includes the pay increase from now until 6/30/20.

ACTUAL FY19 RETRO	FY20 ESTIMATE RETRO AND REMAINDER OF YR AMT	TOTAL
$ 52,788.33	$ 54,818.65	$107,606.98

I will be out of the office the next two days. We can discuss this further on Monday on the game plan.

Thank you

JR

10250-10251

Rachel Stephano (Mayor's Office)

From: John Flick <jflick@flicklawgroup.com>
Sent: Wednesday, February 26, 2020 1:17 PM
To: Mayor
Subject: Firefighters July 1, 2018 to June 30, 2021 Contract

Acting Mayor Walsh,

In light of the legal issues pertaining to the MOA negotiated in December 2019 and the resulting Collective Bargaining Agreement (CBA) with the Firefighters, and now that the amount of the supplemental appropriation needed to fund the CBA is known, the Law Department recommends that a money order be submitted to the City Council for consideration at its March 2, 2020 meeting. Specifically, the City is required by M.G.L. c. 150E, sec. 7 to submit a money order to the appropriate legislative body for consideration of any appropriation needed to fund the contract within thirty (30) days of the execution of the agreement. Whereas the Agreement was signed by the Union on February 20, 2020, and in order to comply with M.G.L. c. 150E, it is appropriate to submit the required money order at this time.

Regards,
John Flick

****
John M. Flick, Esq., City Solicitor
City of Gardner Law Department
144 Central Street, Suite 201
Gardner, MA 01440
978-632-7948, Ext. 301 Voice
978-630-3703 Fax
****

WIRE FRAUD ALERT: If you receive an e-mail from this office requesting that you wire or otherwise transfer funds, you must confirm the request and any corresponding instructions by telephone with this office before you initiate any transfer.

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10250-10251

City of Gardner, *Executive Department*

James M. Walsh, Acting Mayor

February 24, 2020

Attorney John Flick, City Solicitor &
Debra Pond, Director of Personnel
144 Central Street
Gardner, MA 01440

Good Morning,

I have been asked, as Acting Mayor, to sign off on the recently negotiated contract with the Firefighters Union. Since I have not been involved with negotiating that contract and am limited in my authority, I ask that you provide me with the following:

1. As I understand it, the proposed contract covers the period from July 1, 2018 through June 30, 2021. Please provide me with a history of contract negotiations. Please also include a summary of any material changes from the existing contract, and of any state agency involvement and the binding effect, if any, of that involvement. I'd also appreciate a listing of all participants in each negotiating team.

2. As you know, as Acting Mayor, my authority is limited to matters "not admitting of delay". Please provide any factual basis which would justify my execution of this contract rather than deferring it to evaluation and consideration by the newly elected Mayor in mid-May 2020.

Depending on the content of your reply, I may have additional questions.

Thank you for your prompt consideration of this request.

Very truly yours,

James M. Walsh
Acting Mayor

JMW/rjs

cc: John Richard

City Hall, 95 Pleasant Street, Room 125, Gardner, Massachusetts 01440
Telephone: (978) 630-1490 • Facsimile (978) 630-3778 • Email: mayor@gardner-ma.gov

10250-10251

City of Gardner, *Executive Department*

James M. Walsh, Acting Mayor

HAND DELIVERY ONLY

March 11, 2020

John M. Flick, City Solicitor
City of Gardner Law Dept.
144 Central Street
Gardner, MA 01440

RE: Firefighters Contract

Dear Attorney Flick,

This will acknowledge receipt of your correspondence on March 9, 2020. Thank you for responding to the request for information that was contained in my letter of February 24, 2020, to you and Human Resources Director, Debra Pond.

The history of negotiations is informative.

Although there is an argument to be made to the contrary, I am not fully persuaded that I have the authority, as Acting Mayor, to sign the contract. I believe the better approach is to seek a judicial determination of that authority given the facts and circumstances presented.

Please promptly initiate legal proceedings.

Very truly yours,

James M. Walsh
Acting Mayor

C: Debra Pond

City Hall, 95 Pleasant Street, Room 125, Gardner, Massachusetts 01440
Telephone: (978) 630-1490 • Facsimile (978) 630-3778 • Email: mayor@gardner-ma.gov

CITY OF GARDNER
LAW DEPARTMENT

John M. Flick
City Solicitor

Priya Gandbhir
Assistant City Solicitor

144 Central Street, Suite 201
Gardner, MA 01440

Telephone (978) 632-7948
Fax (978) 630-3703

Writer's Email:

March 2, 2020

VIA HAND DELIVERY

James M. Walsh, Esq.
Acting Mayor
City of Gardner
95 Pleasant Street
Gardner, MA 01440

RECEIVED
MAR 09 2020
By RJS

Re: Fire Department Negotiations Timeline:

Dear Acting Mayor Walsh:

As requested, I am responding to your request for detailed information regarding the City's negotiations with the Gardner Fire Fighters, Local 2215 (the "Union"). In response to your request Debra Pond, the City's Human Resources Director prepared the following history of the negotiations for the June 2018 to June 2021 collective bargaining agreement (the "CBA").

In 2016 Mayor Mark Hawke negotiated an impact bargaining agreement with the Union without the assistance of Ms. Pond or legal counsel. This negotiation resulted in an agreement with the Union containing specific ambulance related language and the following wage terms.

- Ambulance Agreement (negotiations with Mayor, Steve Roy, Robert Jacques and Anthony Alario) – signed on 05/12/2016.
    - Included the following wage increases for EMT's:
        - ✓ 01/01/2017 – 1%
        - ✓ 07/01/2018 – 2%
        - ✓ 07/01/2019 – 3%
        - ✓ $1.00 ambulance stipend

Upon information and belief, the Mayor had initially proposed the above wage increases only for those employees of the Fire Department who physically worked on the ambulance. The Union countered arguing that the delivery of ambulance services increased the work of all Firefighters, therefore the wage increase should apply to all. Since all Firefighters are required to be EMT's these wage increases were applied to all Firefighters. It was the Mayor's position that these were pre-negotiated pay increases for the FY19 and FY20.

Thereafter, the Union presented proposals for 07/01/2017 – 06/30/2020 Contract negotiations. The Mayor reviewed and assigned Debra Pond as the City's representative to negotiate the terms of this CBA. In its proposal, the Union requested a 7% increase for each year of the contract, FY18, FY19 and FY20. Several meetings were held and included Steve Roy, Matt Bettez, Greg Doyle and Debra Pond. Since the end of FY18 was fast approaching The City and Union agreed to a one-year contract with a 2% increase for FY18, a CBA duration of 07/01/2017 to 06/30/2018, and certain benefit pro-rations. A Memorandum of Agreement was signed on 06/26/2018.

The next round of negotiations commenced in September 2018 to negotiate the July 1, 2018 through June 30, 2021 CBA. The series of meetings proceeded as follows:

- 09/16/2018 – Negotiation meeting with Steve Roy, Mark Bettez, Greg Doyle and Debra Pond. Discussions involved previous original proposals that were not resolved or included in the one year CBA.
- 11/28/2018 - Provided Union with formal proposal and counter-proposal document. City held to pre-negotiated raises for FY19 and FY20.
- Union had a transition in members on negotiation/executive board.
- 01/08/2019 – The City re-sent proposal document to Union and requested meeting dates.
- 02/04/2019 – Union met (with the body) to discuss City proposals.
- 02/08/2019 – City requested negotiation dates.
- 02/13/2019 – Union confirmed meeting and informed City that they were collecting dates to meet for further negotiations.
- 02/19/2019 – Union sent counter-proposals and meeting dates. In addition to language changes and requests for more time off, Union requested in addition to the increased negotiated in the ambulance agreement FY19 – 2% + 15 year step added at 5%; FY20 - 1%; FY21 – 2%; and an increase in ambulance stipend from $1.00 to $3.00.
- 03/13/2019 – City sent response/counter-proposals to Union prior to negotiation meeting.
- 03/15/2019 – Negotiation meeting – Jeremy Salo, Greg Doyle, Mark Bettez, Mayor Hawke & Debra Pond
- 03/28/2019 – Negotiation meeting – Jeremy Salo, Greg Doyle, Mark Bettez, Mayor Hawke & Debra Pond. Agreed upon all items with the exception of wages and ambulance stipend. City offered two different wage proposals. One included no other increase for FY19 or FY20 (other than pre-negotiated increases), with an increase in the ambulance stipend and for FY21 the addition of a 15 year step at 4% and a 2% increase; the second included no increase in ambulance stipend and an additional .5% the first two years of the contract. FY21 the addition of a 15 year step at 4% and a 2% increase.
- 04/16/2019 – Union notified City that proposals were presented to Union body and requested another negotiation meeting.
- 04/26/2019 – Negotiation meeting – Jeremy Salo, Mark Bettez, Mayor Hawke & Debra Pond. Union informed City that City's wage proposals for FY19 and FY20 were both rejected. Last negotiation meeting attended by Mayor.
- 04/26/2019 – Received additional wage proposal from Jeremy Salo via email with the following for FY19 – an additional 1%; FY20 – an additional 1%, plus additional $1.00 for ambulance stipend; FY21 the addition of a 15 year step at 4% and a 2% increase.

- 05/03/2019 – Debra Pond informed Jeremy Salo via email that new wage proposal was rejected and that the proposals made by the Mayor in the 04/26/2019 negotiation meeting were the City's best and final.
- 06/03/2019 – Debra Pond sent reminder to the Union that the fiscal year end was fast approaching (for contract completion purposes).
- 06/04/2019 – Union requested another meeting via email.
- 06/10/2019 – Debra Pond emailed Union (included Mayor on email) and sent another counter-proposal for wages adding an additional .5% but also requesting some "give backs."
- 06/20/2019 – Union declined City proposals and provided a counter-proposal.
- 06/20/2019 – Debra Pond responded informing Union that counter-proposals put City and Union even further apart.
- 07/18/2019 – Union filed petition with the JLMC.
- 08/02/2019 – Union sent City request for documents.
- 08/12/2019 – Investigative Committee Level Mediation at City Hall with Robert Dickson, Daniel Morgado, Priya Gandbhir, Mayor Hawke and Debra Pond. No progress.
- 09/17/2109 – Second meeting Investigative Committee Level Mediation with Robert Dickson, Daniel Morgado, John Flick, Priya Gandbhir, Mayor Hawke and Debra Pond. No progress.
- 11/07/2019 – Third and final meeting Investigative Committee Level Mediation with Robert Dickson, Daniel Morgado, John Flick, and Debra Pond. City made two offers (an additional .5% in the first two years of the contract; second proposal was an additional 1% for the first two years of the contract and Union declined. Move to formal mediation.
- 11/26/2019 – Mayor Hawke's last actual physical day in City Hall. Also HR Administrative Coordinator's last day with the City HR Department (position vacant for 2 months).
- 12/16/2019 – Mediation – 3(a) Hearing in Boston. Debra Pond and John Flick. Memorandum of Agreement ("MOA") reached and executed.

The final City Council meeting of 2019 was held on December 16, 2019. Whereas 2019 was an election year for the City's government, this final Council meeting of 2019 was the final meeting of this Council as there were three new councilors elected to the City Council. It was also expected that Mayor Hawke would be resigning from office although his planned date of resignation was not known. Nevertheless, the City continued to work with the Union to complete the process of establishing the CBA as negotiated. The progress was as follows:

- 12/19/2019 (@9:14 PM) – Union (Jeremy Salo) sent email to Debra Pond informing City that Union voted to ratify the MOA. *(12/19/2019 email was received long after closing hours for City Hall. Email was viewed on Friday.)*
- 12/20/2019 (@1:49 PM) – Union (Jeremy Salo) sent email to Debra Pond informing City that Union voted to ratify the MOA. *(Time frame after receipt of email included half day and full days of closing due to holidays.)*

Following the ratification the MOA by the Union, the progression of the CBA to final approval is as follows:

- 01/03/2020 – Debra Pond completed contract document changes and sent them to John Flick and Mayor Hawke for review.

Mayor Hawke and the members of the new City Council were sworn into a new term of office on January 6, 2020. It was expected that Mayor Hawke would resign imminently as he had accepted a position as Town Administrator in Westminster, MA. January 6, 2020 was also the inaugural meeting of the new City Council. The only order of business before the City Council was the election of a Council President.

- 01/13/2020 – Received communication from Dan Morgado inquiring on status.
- 01/13/2020 – Debra Pond emailed John Flick and Mayor Hawke regarding status of the contract review.
- 01/13/2020 – John Flick responded via email that contract document looked good.
- 01/17/2020 – After no response from Mayor Hawke on the status of contract review, Debra Pond spoke with John Flick and they decided to forward the documents to the Union for final review.
- 01/17/2020 – Contract with changes marked was sent to Union (Jeremy Salo) with wage schedule via email.

The next regular meeting of the City Council was Tuesday January 21, 2020. Mayor Hawke resigned that same day effective at 4:30 PM. The City Council convened at their normally scheduled time of 7:30 PM. At the time of the Council meeting Gardner had no Mayor. City Council President James Walsh, thereafter, assumed the duties of Acting Mayor.

Following the resignation of Mayor Hawke, discussions with the Union continued in order to reach a final agreement, as follows.

- 01/24/2020 (@ 3:11 PM – after City Hall closed) – Received email from Union with issues requiring review, which included minor language changes. Also notified City that there was a change in one Union officer: Matthew Bettez replaced Greg Doyle.
- 01/24/2020 (@ 3:25 PM from mobile device) – Debra Pond requested a meeting with the Union to review in person.
- Last week of January (not sure of exact date) Jeremy Salo and Matt Bettez stopped by Debra Pond's office. Questions were discussed, including wage schedule. Debra Pond informed Union she would make some language modifications and discuss the wage schedule with John Flick. The wage schedule was originally drafted with the ambulance agreement for each fiscal year plus the additional percentage agreed to tin the MOA – FY19 – 4%, FY20 – 5% AND FY21 – 2%. The Union wanted the percentages calculated out as follows: FY19 2% (ambulance), FY19 2% (MOA); FY20 3% (ambulance), FY20 2%, FY21 2% - for EMT wage schedule. This change resulted in a slight increase in the appropriation needed.

- 02/07/2020 – Jeremy Salo emailed Debra Pond inquiring about status of wage schedule. Debra Pond informed Jeremy Salo that it was all set and that all changes would be completed and sent over the following week.
- 02/11/2020 Debra Pond emailed language changes to Jeremy Salo. Language changes were approved by Union.
- 02/11/2020 The Union requested a format change to the wage schedule. Debra Pond revised and emailed a new wage schedules to the Union for review per the Union's request.
- 02/12/2020 Jeremy Salo identified a few issues with wage schedule via email to Debra Pond.
- 02/12/2020 Wage schedules were further adjusted (spreadsheet formulas) and two full contract documents were prepared for execution.
- 02/12/2020 Union executed the Contract documents. Documents were presented to Acting Mayor Walsh for execution, who requested a signature block for John Flick (as to approval of form) and John Richard, City Auditor (as to availability of funds). Both signature blocks were added.
- 02/19/2020 - City Auditor, John Richard prepared retroactive pay calculations.
- 02/24/2020 – Acting Mayor Walsh requests history of CBA negotiations and mediation from the City's Law Department.
- 02/25/2020 – Leah Barrault, the attorney for the Union filed a Charge of Prohibited Practice against the City.
- 02/26/2020 – John M. Flick, Esq. sends e-mail to Acting Mayor Walsh at 1:17 PM advising that a money order should be submitted to the City Council seeking an appropriation to fund the CBA.
- 02/26/2020 – Acting Mayor Walsh submits a money order to the City Clerk's office for submission to the City Council at 2:57 PM, CBA remains unsigned by Acting Mayor Walsh while awaiting analysis from Law Department regarding the CBA negotiation history and the Acting Mayor's authority to sign the CBA.

This timeline is provided in order to facilitate the legal analysis of your authority as Acting Mayor to sign this CBA. The signing of the CBA by all parties prior to the approval of the appropriation is contemplated by M.G.L. c. 150E, §7. Technically once the CBA is signed, a request is then sent to the City Council to approve the appropriation necessary to fund the CBA. Should the Council not approve the appropriation, the CBA is sent back to the City and Union for further negotiations. *M.G.L. c. 150E, § 7(b).*

As you know Section 32 of the City's Charter only permits the acting mayor to act in matters "not admitting of delay." An acting mayor is further limited by the Charter in that an acting mayor cannot make long term appointments. Therefore, in accordance with the Charter, the acting mayor does not possess full executive authority as does a duly elected mayor. As we have discussed, there are two court cases which address the meaning of the clause "matters not admitting of delay": *Ryan v. City of Boston*, 204 Mass. 456 (1910), and *Dimick v. Barry*, 211

Mass. 165 (1912). Despite the age of these cases, they present the controlling law on the meaning of the clause "matters not admitting of delay."

In *Ryan v. City of Boston*, the Court considered the validity of a contract to construct a public sewer signed by the then acting mayor Whelton. The Court posed the question:

> "But the powers of an acting mayor are expressly limited . . . to matters requiring immediate action. If this limitation is applicable to the defendant city, the contract is invalid, as it does not appear there was any urgent public necessity for the construction of the sewer." *Ryan,* at 459.

Dimick v. Barry provides a more robust analysis of the meaning of the clause "matters not admitting of delay." In presenting its initial analysis the *Dimick* Court states:

> "While this language should not be given narrow or refined interpretation *and should be construed in view of the practical necessities of municipal administration* . . .. The words are both plain and emphatic. They express a definite conception of a necessity so importunate that it cannot be resisted with reason." *Dimick* at 166-67.

The *Dimick* Court provides concrete examples to illustrate the meaning of "matters not admitting of delay." These examples include the following:

> "Cases might arise where it would be apparent as matter of law upon the face of the papers that the approval of the order was 'a matter not admitting of delay.' Such an inference might be drawn respecting a warrant for an election or an appropriation of money to be used for a Fourth of July celebration or a corporate anniversary, or like orders where time appears to be of the essence of the subject." *Id.* at 167.
>
> "Appropriations necessary for immediate payment of fixed charges of various municipal departments would come within this rule." *Id.*

Ultimately, the *Dimick* Court concluded: "The mayor is the one designated by law to be the executive of the city. It is not a mere passing incident which enables another to supplant him, but a *pressing urgency of an unusual kind*." *Id.* at 168.

There is no case law which addresses the interpretation of this limiting language in the context of negotiating and executing a collective bargaining agreement in accordance with M.G.L. c. 150E. When considering if a matter is "not admitting of delay" other factors to consider are whether or not the matter was before, and agreed upon, by the duly elected mayor, and the amount of time a matter had been pending before the municipality. *See Id.*

In the current matter regarding the CBA with the firefighters, M.G.L. c. 150E, §7 requires that upon execution of the CBA *by both parties*, the City is obligated, within 30 days of full execution, to seek appropriations to fund the contract from the appropriate legislative body. The threshold question is whether or not you, as Acting Mayor, have the legal authority to sign the

CBA. On the one hand, and as can be seen from the above timeline, this has been a lengthy bargaining process. The length of time that passed between the initiation of negotiations and the mediation of the MOA, the fact that multiple issues were raised by the Union regarding the interpretation of the MOA and their application to the CBA's wage schedule (after Mayor Hawke had resigned), support a conclusion that the execution of the CBA by the City is not a matter "not admitting of delay" and that the execution of, and adoption of the terms of, the CBA are properly left to the new Mayor.

When considering the fact that the final terms of the CBA were negotiated during a protracted mediation process with the Joint Labor Management Commission, involved Mayor Hawke, and ultimately resulted in a signed MOA during Mayor Hawke's term of office, supports a conclusion that Mayor Hawke would have executed the CBA were he still in office. However, the fact that the Union continued to negotiate the interpretation of the MOA as it applied to the wage schedule raises a significant question regarding the former Mayor's willingness to sign the CBA and request an appropriation from the City Council to fund the CBA. One could conclude that Mayor Hawke would not have signed the CBA in that circumstance. Nevertheless, this is an argument based on speculation and as Acting Mayor, speculation as to what the previous Mayor would have done is not a basis upon which you can assert any authority as Acting Mayor.

As you know, the limitations of your authority as Acting Mayor to execute contracts and bind the City leaves any contracts you do execute open to challenge. In looking at the facts and the timeline set forth herein (in particular the Union's continued negotiations after Mayor Hawke resigned) presents a significant legal question regarding your authority to execute the CBA and, should you do so, whether the enforceability of the CBA could be successfully challenged either by a Mayor to be elected in May 2020, another collective bargaining unit, or third parties challenging your authority as Acting Mayor.

The case law clearly states that you, as Acting Mayor, have the ability to use your sound judgment in deciding in this matter, as all others, to act and execute the CBA. Nevertheless, in order to ensure that the CBA is binding on the City, should you sign it, it may be prudent to obtain a judicial determination as to your authority to act in this particular instance.

Please let the Law Department know if you require any additional information at this time.

Very truly yours,

John M. Flick

Cc: Debra Pond, Human Resources

10251

AN ORDER APPROPRIATING FROM FREE CASH TO FIREFIGHTERS SALARY AND WAGES ACCOUNT.

ORDERED:

That there be and is hereby appropriated the sum of Fifty-four Thousand Eight Hundred Eighteen and 67/100 ($54,818.67) from Free Cash to the Firefighters Salary and Wages Account.

10207

CITY OF GARDNER
FIRST PRINTING
MARCH 6, 2020

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 675 THEREOF, ENTITLED "ZONING," TO REVISE ARTICLE VI, DENSITY AND DIMENSIONAL REGULATIONS, AND ARTICLE X, SUPPLEMENTAL REGULATIONS.

Be it ordained by the City Council of the City of Gardner, as follows:

Section 1. Section 675-610. General Requirements, Section F, of the Code of the City of Gardner, is amended by deleting and repealing Section F in its entirety and inserting in place thereof, the following:

Within an area formed by the curb lines of intersecting streets and a line joining points on such lines 30 feet distant from their point of intersection or, in case of a rounded corner, from the point of intersection of their tangents, no structure shall be erected and no foliage maintained between a height of 3 feet and a height of eight feet above the plane through their street grades.

Section 2. Section 675-1050. Fences and hedgerows, is hereby amended by deleting and repealing Section 675-1050 in its entirety and inserting in place thereof, the following:

Fences dividing property or facing the street shall have the smooth or unclimbable side facing out. At corners, no fence or hedgerow shall be allowed to block vision over 3 feet above the street grade within an area formed by the intersecting curb lines and straight line joining the point of said curb lines 30 feet back from their points of intersection. Fencing and hedgerows running perpendicular to the streets shall not be allowed to block vision over 3 feet above the street grade for a distance of 15 feet along driveways immediate in location.

Section 3. This Ordinance shall become effective upon passage and publication as required by law. Any claims of invalidity by reason of any defect in the procedure of adoption may only be made ninety days after the posting or the second publication.

A TRUE COPY, ATTEST:
ALAN L. AGNELLI, CITY CLERK

Mar 6 (1t)

10207

CITY OF GARDNER

DEPARTMENT OF COMMUNITY DEVELOPMENT AND PLANNING

RECEIVED
2020 FEB -3 PM 4:14
CITY CLERK'S OFFICE
GARDNER, MA

RECEIVED
2020 FEB -3 PM 3:28
CITY CLERK'S OFFICE
GARDNER, MA

February 3, 2020

President James M. Walsh
C/o Alan Agnelli, City Clerk
City Hall
Gardner, MA 01440

Re: **Re: Proposed Zoning Amendment for Corner Clearance, and Fence and Hedgerows Clearance**

Dear President Walsh:

At its meeting on January 21, 2020, The Planning Board voted unanimously to recommend that the City Council approve the proposed amendment noted above with the minor modification from the City Engineer and Planning Director as follows:

1. **Section 675 – 610 General Requirements, Section F:**

   Currently reads as:

   F. Corner clearance

   Within an area formed by the side lines of intersecting streets and a line joining points on such lines 15 feet distant from their point of intersection or, in case of a rounded corner, from the point of intersection of their tangents, no structure shall be erected and no foliage maintained between a height of 3 ½ feet and a height of eight feet above the plane through their curb grades.

   Initial Proposed Change presented at Public Hearing (proposed changes are in bold and underlined):

   F. Corner clearance

   Within an area formed by the side lines of intersecting streets and a line joining points on such lines **30** feet distant from their point of intersection or, in case of a rounded corner, from the point of intersection of their tangents, no structure shall be erected and no foliage maintained between a height of **3** feet and a height of eight feet above the plane through their **street** grades.

City Hall Annex, 115 Pleasant Street, Room 201, Gardner, Massachusetts 01440
Telephone: (978) 630-4011 ◊ Facsimile: (978) 632-1905 ◊ CDBG (978) 632-3800

Proposed Change as a result of Public Hearing (proposed changes are in bold and underlined):

F. Corner clearance

Within an area formed by the **curb** lines of intersecting streets and a line joining points on such lines **30** feet distant from their point of intersection or, in case of a rounded corner, from the point of intersection of their tangents, no structure shall be erected and no foliage maintained between a height of **3** feet and a height of eight feet above the plane through their **street** grades.

Explanation: Change "side lines" to "curb lines" to address Public Hearing comments and remain consistent with Chapter 675-1050.

1. **Chapter 675 – 1050 Fences and hedgerows:**

Currently reads as:

Fences dividing property or facing the street shall have the smooth or unclimbable side facing out. At corners, no fence or hedgerow shall be allowed to block vision over 2 ½ feet above the street grade within an area formed by the intersecting street lines and straight line joining the point of said street line 20 feet back from their points of intersection. Fencing and hedgerows running perpendicular to the sidewalks shall not be allowed to block vision over 2 1/2 feet above the sidewalk grade for a distance of 15 feet along driveways immediate in location.

Initial Proposed Change presented at Public Hearing (proposed changes are in bold and underlined):

Fences dividing property or facing the street shall have the smooth or unclimbable side facing out. At corners, no fence or hedgerow shall be allowed to block vision over **3** feet above the street grade within an area formed by the intersecting street lines and straight line joining the point of said street line **30** feet back from their points of intersection. Fencing and hedgerows running perpendicular to the **streets** shall not be allowed to block vision over **3** feet above the **street** grade for a distance of 15 feet along driveways immediate in location.

Proposed Change as a result of Public Hearing (proposed changes are in bold and underlined):

> Fences dividing property or facing the street shall have the smooth or unclimbable side facing out. At corners, no fence or hedgerow shall be allowed to block vision over **3** feet above the street grade within an area formed by the intersecting **curb** lines and straight line joining the point of said **curb** lines **30** feet back from their points of intersection. Fencing and hedgerows running perpendicular to the **streets** shall not be allowed to block vision over **3** feet above the **street** grade for a distance of 15 feet along driveways immediate in location.

Explanation: Change "street lines" to "curb lines" to address Public Hearing comments and be consistent with Chapter 675-610.

These proposed minor changes take into consideration comments received at the Joint Public Hearing held on January 21, 2020. The Planning Board respectfully requests that the City Council move forward with approving the proposed zoning amendment as submitted herein. Please contact Trevor Beauregard if you have any questions, concerns, or need additional information.

Sincerely,

Mark M. Schafron
Chairman

10207

CITY OF GARDNER

DEPARTMENT OF COMMUNITY DEVELOPMENT AND PLANNING

November 4, 2019

President Scott J. Graves, Esq.
Gardner City Council
C/o Alan Agnelli, City Clerk
Gardner, MA 01440

Re: Proposed Zoning Amendment for Corner Clearance, and Fence and Hedgerows Clearance

Dear President Graves:

At its meeting on October 7, 2019, the Planning Board voted unanimously, 4-0, to recommend that the City Council consider amending the City Zoning Code Chapter 675 – 610 General Requirements, Section F; and Chapter 675 – 1050 Fences and hedgerows as follows:

1. **Section 675 – 610 General Requirements, Section F:**

   Currently reads as:

   F. Corner clearance

   Within an area formed by the side lines of intersecting streets and a line joining points on such lines 15 feet distant from their point of intersection or, in case of a rounded corner, from the point of intersection of their tangents, no structure shall be erected and no foliage maintained between a height of 3 ½ feet and a height of eight feet above the plane through their curb grades.

   Change to (proposed changes are in bold and underlined):

   F. Corner clearance

   Within an area formed by the side lines of intersecting streets and a line joining points on such lines **30** feet distant from their point of intersection or, in case of a rounded corner, from the point of intersection of their tangents, no structure shall be erected and no foliage maintained between a height of **3** feet and a height of eight feet above the plane through their **street** grades.

Explanation: The Zoning Code shows a diagram in this section that depicts the corner clearance as 30 feet. Based on input from the Building Commissioner, City Engineer, and Director of the Department of Public Works, the Planning Board requests the narrative for corner clearance be consistent with the diagram at 30 feet. Changing 3 ½ feet to 3 feet, and curb plane to street plane makes this Section consistent with Section 675-1050 below.

City Hall Annex, 115 Pleasant Street, Room 201, Gardner, Massachusetts 01440
Telephone: (978) 630-4011 ◊ Facsimile: (978) 632-1905 ◊ CDBG (978) 632-3800

10207

2. **Chapter 675 – 1050 Fences and hedgerows:**

Currently reads as:

Fences dividing property or facing the street shall have the smooth or unclimbable side facing out. At corners, no fence or hedgerow shall be allowed to block vision over 2 ½ feet above the street grade within an area formed by the intersecting street lines and straight line joining the point of said street line 20 feet back from their points of intersection. Fencing and hedgerows running perpendicular to the sidewalks shall not be allowed to block vision over 2 1/2 feet above the sidewalk grade for a distance of 15 feet along driveways immediate in location.

Change to (proposed changes are in bold and underlined):

Fences dividing property or facing the street shall have the smooth or unclimbable side facing out. At corners, no fence or hedgerow shall be allowed to block vision over **3** feet above the street grade within an area formed by the intersecting street lines and straight line joining the point of said street line **30** feet back from their points of intersection. Fencing and hedgerows running perpendicular to the **streets** shall not be allowed to block vision over **3** feet above the **street** grade for a distance of 15 feet along driveways immediate in location.

Explanation: Based on input from the Building Commissioner, City Engineer, and Director of the Department of Public Works, the Planning Board requests the narrative for fences and hedgerows be consistent with Section 675-610 in order effectively and consistently enforce the City's Zoning Code. Correspondence from the Building Commissioner requesting said changes is attached hereto.

The Planning Board respectfully requests a joint public hearing with the City Council in order to present this information and address any questions and concerns that arise. Please contact Trevor Beauregard if you have any questions or need additional information.

Sincerely,

Mark M. Schafron
Chairman

Cc: Mayor
Planning Board
Building Commissioner
City Engineer
Director DPW

/0207

City of Gardner

Department of Inspectional Services
115 Pleasant Street, Room 101
Gardner, MA 01440
Tel. (978) 630-4007 Fax: (978) 632-3313

October 2, 2019

Dear Planning Board:

I would like to request a zoning change be made to the following City Code Chapters in order to make the code more consistent and better understandable:

- Zoning: Chapter 675 – 610 General Requirements, Section F
  - Reads as: "Corner clearance. Within an area formed by the side lines of intersecting streets and a line joining points on such lines 15 feet distant from their point of intersection or, in case of a rounded corner, from the point of intersection of their tangents, no structure shall be erected and no foliage maintained between a height of 3 ½ feet and a height of eight feet above the plane through their curb grades.
  - Change to: "Corner clearance. Within an area formed by the side lines of intersecting streets and a line joining points on such lines **30** feet distant from their point of intersection or, in case of a rounded corner, from the point of intersection of their tangents, no structure shall be erected and no foliage maintained between a height of **3** feet and a height of eight feet above the plane through their curb grades.
- Zoning: Chapter 675 – 1050 Fences and hedgerows
  - Reads as: "Fences dividing property or facing the street shall have the smooth or unclimbable side facing out. At corners, no fence or hedgerow shall be allowed to block vision over 2 ½ feet above the street grade within an area formed by the intersecting street lines and straight line joining the point of said street line 20 feet back from their points of intersection. Fencing and hedgerows running perpendicular to the sidewalks shall not be allowed to block vision over 2 1/2 feet above the sidewalk grade for a distance of 15 feet along driveways immediate in location.
  - Change to: "Fences dividing property or facing the street shall have the smooth or unclimbable side facing out. At corners, no fence or hedgerow shall be allowed to block vision over **3** feet above the street grade within an area formed by the intersecting street lines and straight line joining the point of said street line 30 feet back from their points of intersection. Fencing and hedgerows running perpendicular to the streets shall not be allowed to block vision over **3** feet above the street grade for a distance of 15 feet along driveways immediate in location.

Please let me know if you have any questions or concerns.

Respectfully,

Roland Jean Jr.

Roland Jean Jr. C.B.O.
Building Commissioner
115 Pleasant St.-Rm. 101
City Hall Annex
Gardner, MA 01440
(978) 632-1900 Ext. 8050
rjean@gardner-ma.gov

Mission Statement

To promote the safe and compatible development of the community through fair and consistent enforcement of building codes and zoning ordinances

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City of Gardner, MA
Thursday, November 14, 2019

Chapter 675. Zoning

Article VI. Density and Dimensional Regulations

§ 675-610. General requirements.

(See the Table of Lot, Area, Frontage, Yard and Height Requirements included at the end of this chapter)

A. A dwelling, building or any structure hereafter erected in any district shall not be located on a lot having less than the minimum requirements.

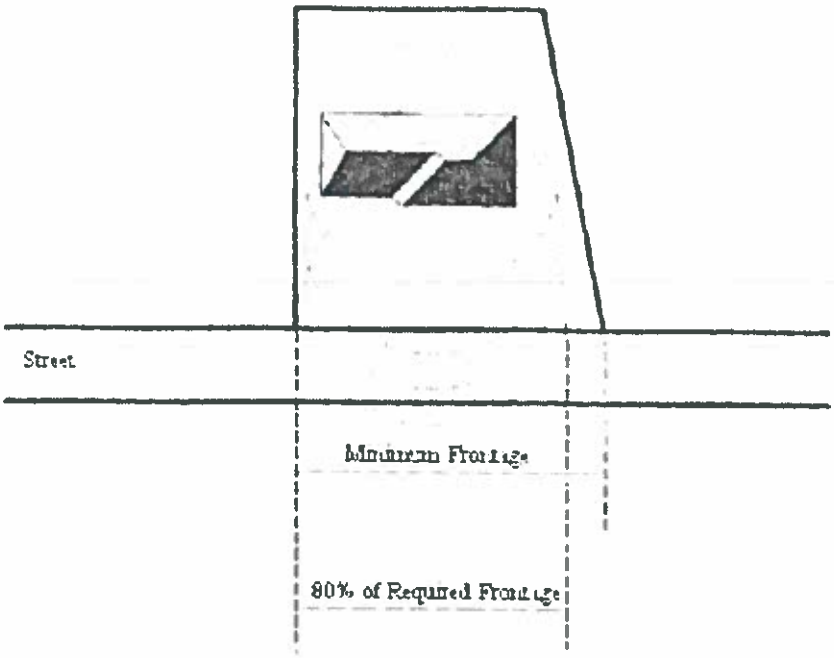
B. A lot or parcel of land having an area or a frontage of lesser amounts than required in the following schedule may be considered as coming within the area and frontage requirements of this section, provided that, at the time of building, such lot has an area of more than 5,000 square feet, has a frontage of 50 feet or more and is in a district zoned for residential use, and provided further that such lot or parcel of land was shown on a parcel or described in a deed duly recorded or registered at the time of the adoption of this chapter and did not at the time of such adoption adjoin other land of the same owner available for use in connection with such lot or parcel.

C. All minimum yard dimensions required in the following schedule are to be measured from the relevant lot line.

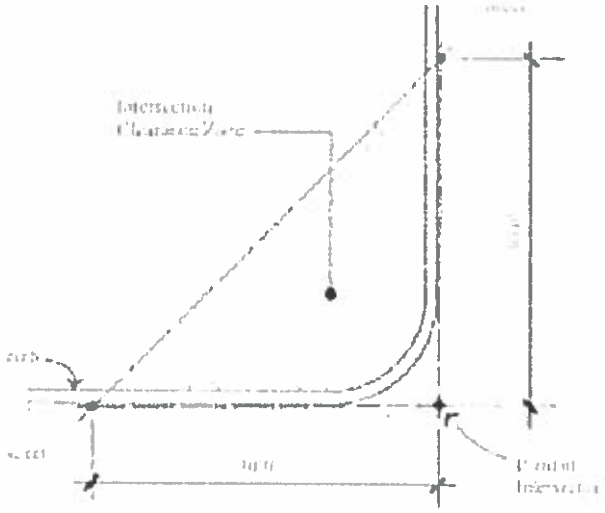
D. The limitation of height of buildings and structures in the following schedule shall not apply in any district to chimneys, ventilators, towers, spires, or other ornamental features of buildings, which features are in no way used for living purposes.

E. All lots shall have a lot width such that the center of a circle having a minimum diameter of at least 80% of the required frontage of the lot can be passed along a continuous line from the lot line along which the frontage is measured to any and all points of the principal structure or proposed principal structure without the circumference intersecting any side lot line.

10207



F. Corner clearance. Within an area formed by the side lines of intersecting streets and a line joining points on such lines 15 feet distant from their point of intersection or, in case of a rounded corner, from the point of intersection of their tangents, no structure shall be erected and no foliage maintained between a height of 3 1/2 feet and a height of eight feet above the plane through their curb grades.



§ 675-620. Table of lot, area, frontage, yard and height requirements.

The Table of Lot, Area, Frontage, Yard and Height Requirements is included at the end of this chapter.

§ 675-630. Infill development.

10207

City of Gardner, MA
Thursday, November 14, 2019

Chapter 675. Zoning

Article X. Supplemental Regulations

§ 675-1050. Fences and hedgerows.

Fences dividing property or facing the street shall have the smooth or unclimbable side facing out. At corners, no fence or hedgerow shall be allowed to block vision over 2 1/2 feet above the street grade within an area formed by the intersecting street lines and a straight line joining the points of said street line 20 feet back from their points of intersection. Fencing and hedgerows running perpendicular to sidewalks shall not be allowed to block vision over 2 1/2 feet above the sidewalk grade for a distance of 15 feet along driveways immediate in location.

10216

CITY OF GARDNER
FIRST PRINTING
MARCH 6, 2020

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 560 THEREOF, ENTITLED "SOLID WASTE," TO CHANGE THE FEE FOR SOLID WASTE COLLECTION.

Be it ordained by the City Council of the City of Gardner as follows:

Section 1. Section 560-3 B. of the Code of the City of Gardner, is hereby amended by deleting and repealing the sentence: "The annual fee for the collection and handling of rubbish, garbage, ashes and source-separated materials is set at $200 per apartment unit per building, effective July 1, 2013," and by inserting in place thereof, the following: "For the collection and handling of rubbish, garbage, ashes and source-separated materials, the annual fee for each household and each unit of apartment buildings containing eight or fewer units in the City shall be, as follows:

Effective July 1, 2020	$228.00
Effective July 1, 2021	$232.00
Effective July 1, 2022	$236.00
Effective July 1, 2023	$240.00

Section 2. Effective date.

This ordinance shall become effective upon passage and publication as required by law.

A TRUE COPY, ATTEST:
ALAN L. AGNELLI, CITY CLERK

Mar6-1t

	Number of Units	*6399*	*6460*	*6353*	*6500*	*6567*	*6567*	*6567*			
	Annual Fee per Unit	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00
$0 per		**2017**	**2018**	**2019**	**2020 (Budget)**	**2021**	**2022**	**2023**	**2024**	**2025**	**2025**
quarter	Per Unit Fee	$ 1,279,986.00	$ 1,292,057.00	$ 1,270,664.00	$ 1,300,000.00	$ 1,313,400.00	$ 1,313,400.00	$ 1,313,400.00	$ 1,313,400.00	$ 1,313,400.00	$ 1,313,400.00
increase	All Other Fees	$ 144,216.00	$ 156,071.00	$ 182,090.00	$ 185,571.00	$ 185,000.00	$ 185,000.00	$ 185,000.00	$ 185,000.00	$ 185,000.00	$ 185,000.00
	Total Revenue	$ 1,424,202.00	$ 1,448,128.00	$ 1,452,754.00	$ 1,485,571.00	$ 1,498,400.00	$ 1,498,400.00	$ 1,498,400.00	$ 1,498,400.00	$ 1,498,400.00	$ 1,498,400.00
	Solid Waste Expenses	$ 1,258,000.00	$ 1,385,000.00	$ 1,471,000.00	$ 1,575,000.00	$ 1,622,250.00	$ 1,670,917.50	$ 1,721,045.03	$ 1,772,676.38	$ 1,825,856.67	$ 1,880,632.37
	EOY Retained Earnings			$ 418,098.00	$ 328,669.00	$ 204,819.00	$ 32,301.50	$ (190,343.53)	$ (464,619.90)	$ (792,076.57)	$ (1,174,308.93)

	Annual Fee per Unit	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 220.00	$ 224.00	$ 228.00	$ 232.00	$ 236.00	$ 240.00
$5 per		**2017**	**2018**	**2019**	**2020 (Budget)**	**2021**	**2022**	**2023**	**2024**	**2025**	**2026**
initial	Per Unit Fee	$ 1,279,986.00	$ 1,292,057.00	$ 1,270,664.00	$ 1,300,000.00	$ 1,444,740.00	$ 1,471,008.00	$ 1,497,276.00	$ 1,523,544.00	$ 1,549,812.00	$ 1,576,080.00
increase	All Other Fees	$ 144,216.00	$ 156,071.00	$ 182,090.00	$ 185,571.00	$ 185,000.00	$ 185,000.00	$ 185,000.00	$ 185,000.00	$ 185,000.00	$ 185,000.00
$1/qt after	**Total Revenue**	$ 1,424,202.00	$ 1,448,128.00	$ 1,452,754.00	$ 1,485,571.00	$ 1,629,740.00	$ 1,656,008.00	$ 1,682,276.00	$ 1,708,544.00	$ 1,734,812.00	$ 1,761,080.00
($4/yr - up to	**Solid Waste Expenses**	$ 1,258,000.00	$ 1,385,000.00	$ 1,471,000.00	$ 1,575,000.00	$ 1,622,250.00	$ 1,670,917.50	$ 1,721,045.03	$ 1,772,676.38	$ 1,825,856.67	$ 1,880,632.37
$240/yr max)	**EOY Retained Earnings**			$ 418,098.00	$ 328,669.00	$ 336,159.00	$ 321,249.50	$ 282,480.48	$ 218,348.10	$ 127,303.43	$ 7,751.07

	Annual Fee per Unit	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 228.00	$ 232.00	$ 236.00	$ 240.00	$ 240.00	$ 240.00
$7.00 per qt		**2017**	**2018**	**2019**	**2020 (Budget)**	**2021**	**2022**	**2023**	**2024**	**2025**	**2026**
initial increase	Per Unit Fee	$ 1,279,986.00	$ 1,292,057.00	$ 1,270,664.00	$ 1,300,000.00	$ 1,497,276.00	$ 1,523,544.00	$ 1,549,812.00	$ 1,576,080.00	$ 1,576,080.00	$ 1,576,080.00
$1/qt after	All Other Fees	$ 144,216.00	$ 156,071.00	$ 182,090.00	$ 185,571.00	$ 185,000.00	$ 185,000.00	$ 185,000.00	$ 185,000.00	$ 185,000.00	$ 185,000.00
($4/yr - up to	**Total Revenue**	$ 1,424,202.00	$ 1,448,128.00	$ 1,452,754.00	$ 1,485,571.00	$ 1,682,276.00	$ 1,708,544.00	$ 1,734,812.00	$ 1,761,080.00	$ 1,761,080.00	$ 1,761,080.00
$240/yr max)	**Solid Waste Expenses**	$ 1,258,000.00	$ 1,385,000.00	$ 1,471,000.00	$ 1,575,000.00	$ 1,622,250.00	$ 1,670,917.50	$ 1,721,045.03	$ 1,772,676.38	$ 1,825,856.67	$ 1,880,632.37
	EOY Retained Earnings			$ 418,098.00	$ 328,669.00	$ 388,695.00	$ 426,321.50	$ 440,088.48	$ 428,492.10	$ 363,715.43	$ 244,163.07

	Annual Fee per Unit	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 240.00	$ 240.00	$ 240.00	$ 240.00	$ 240.00	$ 240.00
$10 per		**2017**	**2018**	**2019**	**2020 (Budget)**	**2021**	**2022**	**2023**	**2024**	**2025**	**2026**
quarter	Per Unit Fee	$ 1,279,986.00	$ 1,292,057.00	$ 1,270,664.00	$ 1,300,000.00	$ 1,576,080.00	$ 1,576,080.00	$ 1,576,080.00	$ 1,576,080.00	$ 1,576,080.00	$ 1,576,080.00
increase	All Other Fees	$ 144,216.00	$ 156,071.00	$ 182,090.00	$ 185,571.00	$ 185,000.00	$ 185,000.00	$ 185,000.00	$ 185,000.00	$ 185,000.00	$ 185,000.00
effective	**Total Revenue**	$ 1,424,202.00	$ 1,448,128.00	$ 1,452,754.00	$ 1,485,571.00	$ 1,761,080.00	$ 1,761,080.00	$ 1,761,080.00	$ 1,761,080.00	$ 1,761,080.00	$ 1,761,080.00
FY21	**Solid Waste Expenses**	$ 1,258,000.00	$ 1,385,000.00	$ 1,471,000.00	$ 1,575,000.00	$ 1,622,250.00	$ 1,670,917.50	$ 1,721,045.03	$ 1,772,676.38	$ 1,825,856.67	$ 1,880,632.37
	EOY Retained Earnings			$ 418,098.00	$ 328,669.00	$ 467,499.00	$ 557,661.50	$ 597,696.48	$ 586,100.10	$ 521,323.43	$ 401,771.07

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TRASH RECYCLING TRACKER FROM FY 2017 TO 2020

CURBSIDE TRASH TONS	FY17	FY18	FY19	FY20
JULY	319.47	319.33	345.04	371.71
AUG	350.55	389.24	396.52	360.38
SEPT	343.45	342.47	324.74	319.52
OCT	352.7	340.15	363.16	375.41
NOV	352.7	365.97	361.32	336.32
DEC	330.62	302.6	310.53	340.62
JAN	335.78	347.28	351.74	340
FEB	266.49	297.04	282.6	280
MAR	342.69	345.6	313.14	320
APR	317.44	318.62	334.79	320
MAY	354.73	388.41	384.42	375
JUNE	353.39	339.97	327.23	340
TONS	4020.01	4096.68	4095.23	4078.96
COST/TON	$73.00	$74.00	$75.00	$76.00
ANNUAL TON	$293,460.73	$303,154.32	$307,142.25	$310,000.96
FLAT FEE/MONTH	$33,330.00	$33,696.43	$34,673.63	$35,783.19
FLAT FEE/YR COST	$399,960.00	$404,357.16	$416,083.56	$429,398.28
TOTAL TRASH	$693,420.73	$707,511.48	$723,225.81	$739,399.24
INCREASE		$14,090.75	$15,714.33	$16,173.43

CURBSIDE RECYCLE TONS	FY17	FY18	FY19	FY20
JULY	123.81	128.8	131.64	125.95
AUG	139.2	153.94	130.78	120.1
SEPT	136.72	135.31	111.64	111.37
OCT	114.85	128.5	131.36	123.23
NOV	257.4	130.53	123.2	119.5
DEC	150.03	133.06	103.54	119.13
JAN	140.28	129.9	134.48	130
FEB	105.03	110.98	105.87	106
MAR	122.6	130.18	114.58	122
APR	124.51	119.84	118.41	119
MAY	136.86	144.64	126.25	135
JUNE	122.77	128.45	113.52	121
TONS	1674.06	1574.13	1445.27	1452.28
FLAT FEE/MONTH	$15,228.85	$15,396.28	$15,396.28	$16,349.74
FLAT FEE/YR	$182,746.20	$184,755.36	$184,755.36	$196,196.88
REC. PROCESSING	$27,489.65	$74,154.55	$136,337.25	$68,998.50
TOTAL RECYCLE	$210,235.85	$258,909.91	$321,092.61	$265,195.38
INCREASE		$48,674.06	$62,182.70	

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TRASH RECYCLING TRACKER FROM FY 2017 TO 2020

REC. PROCESSING	FY17	FY18	FY19	FY20
JULY	$3,095.25	$1,288.00	$12,505.80	$12,014.65
AUG	$2,784.00	$1,539.40	$12,424.10	$11,463.65
SEPT	$2,734.40	$2,029.65	$10,577.30	$10,732.15
OCT	$2,297.00	$4,497.50	$12,479.20	$11,829.40
NOV	$2,841.00	$4,568.55	$11,704.00	$11,423.75
DEC	$3,000.60	$4,657.10	$9,318.60	$11,534.90
JAN	$2,104.20	$4,546.50	$12,103.20	
FEB	$580.85	$3,884.30	$10,223.90	
MAR	($367.80)	$10,414.40	$10,979.15	
APR	$1,245.10	$10,785.60	$11,348.70	
MAY	$4,105.80	$13,740.80	$12,156.20	
JUNE	$3,069.25	$12,202.75	$10,847.10	
TOTAL	$27,489.65	$74,154.55	$136,667.25	$68,998.50

CONTAMINATED	FY19	FY20
JULY	$0.00	$0.00
AUG	$0.00	$0.00
SEPT	$0.00	$0.00
OCT	$902.25	$0.00
NOV	$1,775.25	$0.00
DEC	$1,910.25	$0.00
JAN	$2,835.00	
FEB	$130.50	
MAR	$0.00	
APR	$0.00	
MAY	$218.25	
JUNE	$0.00	
TOTAL	$7,771.50	$0.00

10216

City of Gardner, *Executive Department*

Mark Hawke, Mayor

RECEIVED
2019 NOV 21 PM 3:08
CITY CLERK'S OFFICE
GARDNER, MA

November 20, 2019

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

RE: Trash Fee Ordinance Change

Dear President Graves and Councilors,

In February of 2013, we presented the attached spreadsheet #1 demonstrating the need to increase the annual fee for solid waste enterprise fund. At the meeting I stated that I felt confident the rate increase would suffice for the next five (5) years. I was wrong. We were able to expertly manage the budget to make that rate increase last for seven (7) years.

Until recently, the majority of recyclable material collected by Massachusetts municipalities was purchased by China for processing. Many municipalities paid low fees to have their recycling hauled, and some even earned money from haulers for the materials.

Over time, the in-state market for processing recyclables such as paper and glass declined, as these businesses could not compete with the Chinese market.

On Jan. 1, 2018, the recycling market in Massachusetts and across the country experienced a massive disruption as China announced that it would no longer import 24 types of materials, including mixed paper and several types of plastic. Citing the increasing rate of impurities in the U.S. recycling stream, China, under its new National Sword policy, now will only accept materials with a contamination rate of one-half of 1 percent or less.

This Sword policy has decimated the recycling market and municipal solid waste budgets. On top of this is the impending expiration of a five (5) year contract with Waste Management. Needless to say, Waste Management did not accurately predict the markets of today when the contract was negotiated last. There will be an increase in rates in our next contract. Director of Public Health, Lauren Saunders and I have been meeting with Waste Management for the past few months trying to hammer out a new contract.

According to the attached spreadsheet #2, in fiscal year 2020, we are anticipating having to use approximately $90,000 in retained earnings in order to balance the budget. This is sustainable because we have the cushion of the retained earnings in order to deal with the projected shortfall.

City Hall, 95 Pleasant Street, Room 125, Gardner, Massachusetts 01440
Telephone: (978) 630-1490 • Facsimile (978) 630-3778 • Email: mayor@gardner-ma.gov

However, as you can see from the first box, if we do nothing, we anticipate depleting our retained earnings near the end FY 2022.

In the second, third and fourth box we demonstrate the effect a $5 per quarter ($20 per year), $7.50 per quarter ($30 per year), and $10 per quarter ($40 per year) increase would have on future budgets. The $5 per quarter ($20 per year) increase would stabilize the fund for approximately one (1) year before beginning to deplete the retained earnings. The $7.50 per quarter ($30 per year) increase would seem to carry us through FY 2023. The $10 per quarter ($40 per year) increase seems too large and would grow retained earnings at a rapid rate.

Given that the object of an enterprise fund is to be a self-sufficient entity, the Director of Public Health, City Auditor and I all agree that a $7.50 per quarter ($30 per year) increase in the annual fee would allow the Solid Waste Enterprise Fund adequate revenue to sustain a proper amount of retained earnings and cover the actual expected costs associated with the Fund.

Respectfully,

Mark Hawke
Mayor, City of Gardner

#1

			$200/yr total $20/yr increase						
		2013	2014	2015	2016	2017	2018	2019	2020
51010	Department Head	$17,850.00	$18,385.50	$18,937.07	$19,505.18	$20,090.33	$20,693.04	$21,313.83	$21,953.25
51011	Transfer Station Foreman	$20,272.00	$20,880.16	$21,506.56	$22,151.76	$22,816.31	$23,500.80	$24,205.83	$24,932.00
51013	Account Clerk	$32,159.00	$33,123.77	$34,117.48	$35,141.01	$36,195.24	$37,281.09	$38,399.53	$39,551.51
51018	Transfer Station Monitors	$15,200.00	$15,656.00	$16,125.68	$16,609.45	$17,107.73	$17,620.97	$18,149.59	$18,694.08
51030	Overtime	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00
51090	Clothing Allowance	$700.00	$700.00	$700.00	$700.00	$700.00	$700.00	$700.00	$700.00
51460	Longevity	$745.00	$1,300.00	$1,390.00	$1,480.00	$1,570.00	$1,660.00	$1,750.00	$1,840.00
52030	Repairs & Maint	$30,000.00	$10,000.00	$10,300.00	$10,609.00	$10,927.27	$11,255.09	$11,592.74	$11,940.52
52050	Minor Equipment	$4,000.00	$4,120.00	$4,243.60	$4,370.91	$4,502.04	$4,637.10	$4,776.21	$4,919.50
52110	Energy & Utilities	$6,000.00	$6,180.00	$6,365.40	$6,556.36	$6,753.05	$6,955.64	$7,164.31	$7,379.24
52150	Communications	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00
52170	Prof. Dev & Travel	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00
52190	Professional Svc	$15,000.00	$15,450.00	$15,913.50	$16,390.91	$16,882.63	$17,389.11	$17,910.78	$18,448.11
52230	Office Supplies	$2,000.00	$2,060.00	$2,121.80	$2,185.45	$2,251.02	$2,318.55	$2,388.10	$2,459.75
52232	Trash Bags	$15,000.00	$0.00	$15,000.00	$0.00	$15,000.00	$0.00	$15,000.00	$0.00
52240	Vehicle Supplies	$3,000.00	$3,090.00	$3,182.70	$3,278.18	$3,376.53	$3,477.82	$3,582.16	$3,689.62
52361	Trash Disposal	$365,000.00	$375,950.00	$387,228.50	$398,845.36	$410,810.72	$423,135.04	$435,829.09	$448,903.96
52362	Recycling Processing	$25,000.00	$25,750.00	$26,522.50	$27,318.18	$28,137.72	$28,981.85	$29,851.31	$30,746.85
52380	Indirect Costs	$65,000.00	$66,950.00	$68,958.50	$71,027.26	$73,158.07	$75,352.81	$77,613.40	$79,941.80
55126	Curbside Recycl.	$176,000.00	$181,280.00	$186,718.40	$192,319.95	$198,089.55	$204,032.24	$210,153.20	$216,457.80
55361	Curbside Trash	$399,000.00	$410,970.00	$423,299.10	$435,998.07	$449,078.02	$462,550.36	$476,426.87	$490,719.67
55363	Yard Waste	$57,500.00	$59,225.00	$61,001.75	$62,831.80	$64,716.76	$66,658.26	$68,658.01	$70,717.75
55365	Hou Haz Waste	$15,500.00	$15,965.00	$16,443.95	$16,937.27	$17,445.39	$17,968.75	$18,507.81	$19,063.04
	Debt Service	106,000.00	106,000.00	106,000.00	106,000.00	0.00	0.00	0.00	0.00
Totals		$1,372,426.00	$1,374,535.43	$1,427,576.49	$1,451,756.09	$1,401,108.37	$1,427,668.52	$1,485,472.78	$1,514,558.46
6600	Household Fee Revenue	$1,125,000.00	$1,250,000.00	$1,250,000.00	$1,250,000.00	$1,250,000.00	$1,250,000.00	$1,250,000.00	$1,250,000.00
	Other Revenue	$165,000.00	$165,000.00	$165,000.00	$165,000.00	$165,000.00	$165,000.00	$165,000.00	$165,000.00
	Net Balance	-$82,426.00	$40,464.57	-$12,576.49	-$36,756.09	$13,891.63	-$12,668.52	-$70,472.78	-$99,558.46
	Surplus Balance $307,000	$224,574.00	$ 265,038.57	$ 252,462.08	$ 215,705.99	$ 229,597.62	$ 216,929.10	$ 146,456.32	$ 46,897.86

Assumes a 3% increase in expenses
Assumes no new growth in houshold fee revenue (6250 Customers)
Assumes no new growth in other revenue

#2

	Number of Units	6399	6460	6353	6500	6567	6567	6567
	Annual Fee per Unit	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00
$0 per quarter increase		**2017**	**2018**	**2019**	**2020 (Budget)**	**2021**	**2022**	**2023**
	Per Unit Fee	$ 1,279,986.00	$ 1,292,057.00	$ 1,270,664.00	$ 1,300,000.00	$ 1,313,400.00	$ 1,313,400.00	$ 1,313,400.00
	All Other Fees	$ 144,216.00	$ 156,071.00	$ 182,090.00	$ 185,571.00	$ 185,000.00	$ 185,000.00	$ 185,000.00
	Total Revenue	$ 1,424,202.00	$ 1,448,128.00	$ 1,452,754.00	$ 1,485,571.00	$ 1,498,400.00	$ 1,498,400.00	$ 1,498,400.00
	Solid Waste Expenses	$ 1,258,000.00	$ 1,385,000.00	$ 1,471,000.00	$ 1,575,000.00	$ 1,622,250.00	$ 1,670,917.50	$ 1,721,045.03
	EOY Retained Earnings			$ 418,098.00	$ 328,669.00	$ 204,819.00	$ 32,301.50	$ (190,343.53)

	Annual Fee per Unit	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 220.00	$ 220.00	$ 220.00
$5 per quarter increase		**2017**	**2018**	**2019**	**2020 (Budget)**	**2021**	**2022**	**2023**
	Per Unit Fee	$ 1,279,986.00	$ 1,292,057.00	$ 1,270,664.00	$ 1,300,000.00	$ 1,444,740.00	$ 1,444,740.00	$ 1,444,740.00
	All Other Fees	$ 144,216.00	$ 156,071.00	$ 182,090.00	$ 185,571.00	$ 185,000.00	$ 185,000.00	$ 185,000.00
	Total Revenue	$ 1,424,202.00	$ 1,448,128.00	$ 1,452,754.00	$ 1,485,571.00	$ 1,629,740.00	$ 1,629,740.00	$ 1,629,740.00
	Solid Waste Expenses	$ 1,258,000.00	$ 1,385,000.00	$ 1,471,000.00	$ 1,575,000.00	$ 1,622,250.00	$ 1,670,917.50	$ 1,721,045.03
	EOY Retained Earnings			$ 418,098.00	$ 328,669.00	$ 336,159.00	$ 294,981.50	$ 203,676.48

	Annual Fee per Unit	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 230.00	$ 230.00	$ 230.00
$7.50 per quarter increase		**2017**	**2018**	**2019**	**2020 (Budget)**	**2021**	**2022**	**2023**
	Per Unit Fee	$ 1,279,986.00	$ 1,292,057.00	$ 1,270,664.00	$ 1,300,000.00	$ 1,510,410.00	$ 1,510,410.00	$ 1,510,410.00
	All Other Fees	$ 144,216.00	$ 156,071.00	$ 182,090.00	$ 185,571.00	$ 185,000.00	$ 185,000.00	$ 185,000.00
	Total Revenue	$ 1,424,202.00	$ 1,448,128.00	$ 1,452,754.00	$ 1,485,571.00	$ 1,695,410.00	$ 1,695,410.00	$ 1,695,410.00
	Solid Waste Expenses	$ 1,258,000.00	$ 1,385,000.00	$ 1,471,000.00	$ 1,575,000.00	$ 1,622,250.00	$ 1,670,917.50	$ 1,721,045.03
	EOY Retained Earnings			$ 418,098.00	$ 328,669.00	$ 401,829.00	$ 426,321.50	$ 400,686.48

	Annual Fee per Unit	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 240.00	$ 240.00	$ 240.00
$10 per quarter increase		**2017**	**2018**	**2019**	**2020 (Budget)**	**2021**	**2022**	**2023**
	Per Unit Fee	$ 1,279,986.00	$ 1,292,057.00	$ 1,270,664.00	$ 1,300,000.00	$ 1,576,080.00	$ 1,576,080.00	$ 1,576,080.00
	All Other Fees	$ 144,216.00	$ 156,071.00	$ 182,090.00	$ 185,571.00	$ 185,000.00	$ 185,000.00	$ 185,000.00
	Total Revenue	$ 1,424,202.00	$ 1,448,128.00	$ 1,452,754.00	$ 1,485,571.00	$ 1,761,080.00	$ 1,761,080.00	$ 1,761,080.00
	Solid Waste Expenses	$ 1,258,000.00	$ 1,385,000.00	$ 1,471,000.00	$ 1,575,000.00	$ 1,622,250.00	$ 1,670,917.50	$ 1,721,045.03
	EOY Retained Earnings			$ 418,098.00	$ 328,669.00	$ 467,499.00	$ 557,661.50	$ 597,696.48

City of Gardner, MA
Monday, November 25, 2019

Chapter 560. Solid Waste

Article I. Collection and Disposal

§ 560-3. Solid waste collection program.

Under the authority of MGL c. 44, § 28C, the following system of fees, charges and exemptions is established to cover all of the costs of operating the City's municipal solid waste programs:

A. An annual fee for the collection and handling of rubbish, garbage, ashes, and source-separated materials shall be established on all households and apartment buildings with eight apartments or fewer in the City, and said fee shall be paid by the property owner. The fee shall be assessed at an amount the Mayor and City Council deem appropriate to cover all of the fixed costs of such collection. The City shall make this system self-sufficient, utilizing an enterprise fund established under MGL c. 44, § 53F 1/2.

B. The annual fee for the collection and handling of rubbish, garbage, ashes and source-separated materials is set at $200 per apartment unit per building, effective July 1, 2013. The City of Gardner trash bag fee is set at $3.50 per bag. Every collection day as of October 1, 2010, each single-family household, or single-family apartment unit in a building with eight apartments or fewer, may place a single approved rubbish container, with a tight-fitting cover securely in place, out for collection. Said rubbish container must be clearly labeled with the unit identification and identifying City logo. Any additional rubbish that does not fit within said container must be placed in a valid City of Gardner trash bag.
[Amended 6-16-2008 by Ord. No. 1474; 9-7-2010 by Ord. No. 1519; 3-18-2013 by Ord. No. 1558]

C. An owner of any residential property in the City with eight apartments or fewer may be exempted from participating in the mandatory program (including payment of the annual fee and use of the City trash bags) by contracting with a solid waste hauling company duly licensed to operate in the City of Gardner for the removal and disposal of all rubbish, garbage, ashes, source-separated recyclable materials, household appliances, furniture and consumer electronic materials. Any property owner seeking this exemption must annually provide the Director of Public Health with a copy of an acceptable signed contract from a properly licensed hauler.

D. An owner of any residential property in the City with nine apartments or more situated on a public way may voluntarily participate in the solid

waste collection program. Any property owner seeking such participation must annually provide the Director of Public Health with written notice of intent to participate on a form provided by the Health Department. Such participation renders the property subject to the fees as outlined in Subsection **A** above.

E. Exemptions from the payment of the annual fee may be approved by the Director of Public Health with the approval of the Public Safety Committee of the City Council for apartment units in apartment buildings that are vacant and that the owner intends to maintain in a vacant state. Any property owner seeking this exemption must submit documentation of the status of the vacant unit and a letter certifying his or her intent to maintain the unit in the vacant state for the next year and have the unit inspected by the Director of Public Health or his designee. Occupation of the apartment unit makes the exemption null and void. It is the owner's responsibility to inform the City of the occupation of the unit; failure to do so renders the unit subject to the full amount of the annual fee for the time period covered by the exemption. This exemption is subject to written guidelines and limitations on file in the Board of Health office. Persons aggrieved by findings by the Director of Public Health under this section may appeal such finding to Public Safety Committee of the City Council.

F. Unpaid solid waste collection program fees will become a lien on a homeowner's property tax account as provided in the Massachusetts General Laws. Failure to make payment when due in any year, unless an exemption is granted, shall result in the assessment of interest, penalties, and charges or termination of services as authorized by state statute. [Amended 6-16-2008 by Ord. No. 1474]

NEW BUSINESS

City of Gardner, *Executive Department*

James M. Walsh, Acting Mayor

RECEIVED
2020 MAR 16 PM 2:17
CITY CLERK'S OFFICE
GARDNER, MA

March 16, 2020

City Council
Gardner City Hall
95 Pleasant Street
Gardner, MA 01440

RE: Money Order – Virus Pandemic Services/COVID-19 Expenditures

Dear Councilors,

I am submitting a Money Order in the amount of $100,000 to cover potential extraordinary expenses associated with our efforts to minimize and mitigate the potential spread of the COVID-19 virus.

Although it is impossible to know, at this time, exactly what these extraordinary expenses might be, I think it is wise to establish a pool of funds that can be accessed in the event that existing budgets for these items become exhausted. These expenses may include disinfectant hand soaps, disposable gloves, hand sanitizers, masks, paper towel products, portable hand washing stations, sanitizing cleaning services and sanitizing wipes.

We may also incur expense for the need to establish remote meeting locations that would require the purchase of potentially expensive equipment. Many if not all of these expenses may be reimbursable to the City based on the President's Declaration of a National Emergency. By having all of these extraordinary expenses paid from a single unclassified account, it will make the submission request for reimbursement much easier.

I realize that this is a request that must be considered under New Business and thus would require eight votes. I am hopeful, however, that you will understand that we are experiencing unusual circumstances at the present time and I want the City to be as prepared as possible to face the challenges ahead.

Thank you for your consideration.

Very truly yours,

James M. Walsh
Acting Mayor

City Hall, 95 Pleasant Street, Room 125, Gardner, Massachusetts 01440
Telephone: (978) 630-1490 • Facsimile (978) 630-3778 • Email: mayor@gardner-ma.gov

NEW BUSINESS

AN ORDER APPROPRIATING FROM FREE CASH TO MAYOR'S UNCLASSIFIED-VIRUS PANDEMIC SERVICES/COVID-19 EXPENDITURES.

ORDERED:

That there be and is hereby appropriated the sum of One Hundred Thousand Dollars and No Cents ($100,000.00) from Free Cash to Mayor's Unclassified – Virus Pandemic Services/COVID-19 Expenditures.