City of Gardner, Massachusetts
Office of the City Council

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CITY CLERK'S OFFICE
GARDNER, MA

CALENDAR FOR THE MEETING
of
MONDAY, MAY 4, 2020
REMOTELY*
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 April 6, 2020 Informal Meeting, the April 13, 2020 Special Meeting, and the April 21, 2020 Regular Meeting.

VII. PUBLIC HEARINGS

VIII. COMMUNICATIONS FROM THE ACTING MAYOR

IX. PETITIONS, APPLICATIONS, COMMUNICATIONS, ETC.

10268 – A Measure Postponing the May 12, 2020 Preliminary Election and the June 9, 2020 Special Election *(Finance Committee).*

10269 – A Measure Adopting Special Preliminary Election and Special Election Orders *(Finance Committee).*

10270 – A Measure Authorizing Acceptance of a Conservation Restriction on 20.47 acres of land owned by the Gardner Fish & Gun Club on the south side of Clark Street *(Finance Committee).*

10271 – A Measure Authorizing the Mayor to Accept Grant Funds for the purpose of purchasing a Conservation Restriction for 20.47 acres of land owned by the Gardner Fish & Gun Club on the south side of Clark Street *(Finance Committee).*

X. REPORTS OF STANDING COMMITTEES

PUBLIC SERVICE COMMITTEE

10260 – A Petition by National Grid for permission to install one (1) SO Pole on East Broadway beginning at a point approximately115' southeast of the centerline of Prospect Street *(Public Service Committee)(Public Hearing Pending).*

PUBLIC SAFETY COMMITTEE

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 *(In City Council and Referred to Public Safety, 3/16/2020).*

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).*

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

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.

**Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Gardner City Council will be conducted via remote participation and broadcast live on Gardner Educational Television, Channel 8. The audio or video recording, transcript, or other comprehensive record of proceedings will be posted on the City's website as soon as possible after the meeting.*

CITY OF GARDNER IN CITY COUNCIL

INFORMAL MEETING OF APRIL 6, 2020

Informal Meeting of the City Council was held remotely on Monday evening, April 13, 2020, via Zoom teleconference and broadcast live on WGET.

CALL TO ORDER

Council President James Walsh called the meeting to order at 7:00 o'clock p.m.

CALL OF THE ROLL

City Clerk Alan Agnelli called the Roll of Members. Eleven (11) Councillors were present including President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros.

President Walsh announced the Informal Meeting was called to review the Special Municipal Elections schedule as a result of the Governor's State of Emergency Order through May 4, 2020. He said that the Special Preliminary Election is scheduled for Tuesday, April 7 and the Special Election is scheduled for May 5 and that on March 30, the Council voted to postpone the elections.

President Walsh stated that the Council has to vote not later than 20 days before the date of the Preliminary. He presented the following Scheduling options:

2020 SPECIAL CITY PRELIMINARY AND FINAL ELECTION
SCHEDULING OPTIONS FOR POSTPONED ELECTIONS

Council Votes no later than	For Preliminary on	Final Election held on	Election is certified and earliest that Mayor can take office (after 5pm)
April 15	May 5	June 2	June 12
April 22	May 12	June 9	June 19
April 29	May 19	June 16	June 26
May 6	May 26*	June 23	July 3

**May 26 – day following Memorial Day.*

President Walsh cited "dueling considerations" including the length of the pandemic and in-person voting at the polls, although Early Voting by Mail is an option. He commented that May 5 may be too soon for the Preliminary and to schedule the election "not too late" in order to give the newly-elected time for end of year issues and new Fiscal Year issues. He suggested May 12 for the Preliminary.

UNACCEPTED/UNCORRECTED PROOF

Councillor Ronald Cormier said that it seemed to him that May 12 may be the best of the options, as a later date may make it difficult for the newly-elected Mayor. "We should go with the 12th and hope for the best," he added.

Councillor Kazinskas asked the City Clerk to offer input on the issue.

The City Clerk expressed concern for the health and safety of poll officials and voters, but that his Office is prepared to run an election at any time. He added that the choice of dates is a public policy question, whereas the managing an election is an administrative one.

Councillor Aleksander Dernalowicz questioned whether there are extra cost associated with setting or not setting a new date for the election.

The Clerk remarked that the financial risk [of delaying the election] is minimal, citing the cost for legal advertising for voter registration sessions prior to each election. He added that the April 7, 2020 Preliminary ballots are valid for a postponed Preliminary election.

Councillor Judy Mack stated that the 19th is her preference in order to allow voters more time to return their ballots and for the safety of the election officers.

Councillor George Tyros suggested May 19th as the date for the Preliminary since the City may experience [virus] peak shortly and that no one knows how long the peak will last. He suggested that the Council cautious and consider the health and safety of workers.

Councillor James Boone remarked that either date would be acceptable to him; however, he suggested that he prefers the 12th.

President Walsh said that he hoped to avoid having to reschedule the elections again, which would become confusing.

On straw poll, Councillors Craig Cormier, Judy Mack, and George Tyros favored May 19, while President James Walsh and Councillors James Boone, Nathan Boudreau, Ronald Cormier, Aleksander Dernalowicz, Karen Hardern, and Elizabeth Kazinskas favored May 12.
Councillor Scott Joseph Graves abstained.

The Informal Meeting concluded at 7:18 p.m.

Accepted by the City Council:

UNACCEPTED/UNCORRECTED PROOF

CITY OF GARDNER IN CITY COUNCIL

SPECIAL MEETING OF APRIL 13, 2020

Special Meeting of the City Council was held remotely on Monday evening, April 13, 2020.

CALL TO ORDER

Council President Elizabeth Kazinskas called the meeting to order at 6:00 o'clock p.m.

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Gardner City Council will be conducted via remote participation and broadcast live on Gardner Educational Television, Channel 8. The audio or video recording, transcript, or other comprehensive record of proceedings will be posted on the City's website as soon as possible after the meeting.

CALL OF THE ROLL

City Clerk Alan Agnelli called the Roll of Members. Eleven (11) Councillors were present including President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh.

President Kazinskas opened discussion by citing Calendar No. 10264, proposed polling hours for the re-scheduled May 12, 2020 Special Preliminary, the June 9, 2020 Special Election, and the designation of the polling locations. She offered the following:

- The office at the High Rise is closed to the public. The decision was made as a result of the Department of Housing and Community Development directive issued on March 20.
- The Community Room that is used as the Precinct 3B polling place has been sealed off. The room is very small and with the regular number of poll workers applying 6' social distancing, an obstacle due to the room's size.
- The same rules will apply to all other polling locations.
- Minimum hours for cities set by statute – 10:00 a.m. until 8:00 p.m.
- Proposal to reduce the number of hours for poll workers.
- There are hundreds of elderly citizens that do not have at polling site in the building where they reside.
- The Clerk's Office will mail an Early Ballot Application to each voter.
- When the Application is returned, a ballot will be mailed to the voter.
- Voting by mail will be encouraged considering the unprecedented times.
- All voters afforded equal opportunity, as well as the option to vote at the polls.
- Extensive work involved in preparing a mailing to approximately 12,000 voters, then to receive applications, and to mail the ballots.

President Kazinskas entertained a motion to adopt the Election Orders.

UNACCEPTED/UNCORRECTED PROOF

Councillor James Walsh moved to adopt the following Orders:

CITY OF GARDNER, MASSACHUSETTS
MAY 12, 2020 SPECIAL MUNICIPAL PRELIMINARY ELECTION ORDER
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JUNE 9, 2020 SPECIAL MUNICIPAL ELECTION ORDER
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DESIGNATION OF POLLING PLACES FOR SPECIAL ELECTIONS
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ORDER: In accordance with the provisions of Section 64 of Chapter 54 of the General Laws, that meetings of the citizens of this City qualified to vote for City officers shall be held on TUESDAY, the 12th DAY of MAY, 2020 from 10:00 o'clock in the morning until 8:00 o'clock in the evening for the purpose of casting their votes for the nomination of Mayor to serve for the unexpired term.

ORDER: In accordance with the provisions of Section 64 of Chapter 54 of the General Laws, that meetings of the citizens of this City qualified to vote for City officers shall be held on TUESDAY, the 9th DAY of JUNE, 2020 from 10:00 o'clock in the morning until 8:00 o'clock in the evening for the purpose of casting their votes for Mayor to serve for the unexpired term.

ORDER: In accordance with the provisions of Section 24 of Chapter 54 of the General Laws, the following polling places are designated by this Council:

WARD 1, PRECINCT A – Elk's Home, 31 Park Street
WARD 1, PRECINCT B – Elk's Home, 31 Park Street
WARD 2, PRECINCT A – Levi Heywood Memorial Library, 55 W Lynde Street
WARD 2, PRECINCT B – Levi Heywood Memorial Library, 55 W Lynde Street
WARD 3, PRECINCT A – Acadien Social Club, 193 Parker Street
WARD 3, PRECINCT B – Acadien Social Club, 193 Parker Street
WARD 4, PRECINCT A – Gardner Police Headquarters, 200 Main Street
WARD 4, PRECINCT B – Gardner Police Headquarters, 200 Main Street
WARD 5, PRECINCT A – Knights of Columbus Hall, 110 South Main Street
WARD 5, PRECINCT B – Knights of Columbus Hall, 110 South Main Street

Councillor George Tyros seconded the motion.

On the motion, Councillor Nathan Boudreau noted:

- The High Rise is his polling site, a State building, and is closed to the public.
- There is a global health pandemic that must be mitigated.
- Quick decision to change the polling site, but that the change could be mitigated.

UNACCEPTED UNCORRECTED PROOF
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Councillor Craig Cormier noted:

- Since the High Rise is closed, poll workers would not be allowed into the building.
- A separate ballot tabulator could not be implemented for only the High Rise.

The City Clerk stated that each Precinct may have only 1 tabulator and explained that each precinct has its own voter list and poll workers and results are reported by Precinct.

Councillor Boone questioned whether the application is complicated for the elderly to complete.

Clerk responded:

- Name, address, ballot mailed to (if different).
- Sign and date.

Councillor Karen Hardern noted:

- Concern that voters at the High Rise are locked down" in their building to keep them safe.
- They would have to leave to go to another site and bring back germs to their building.

Councillor Walsh noted:

- Absentee ballots have been mailed to voters for many years.
- Mailing of early ballots is an expansion of the absentee balloting process.
- Every voter in the City will have the opportunity to vote by mail.
- Many other elderly voters do not have their own polling place.
- He encouraged voter to vote my mail to minimize health risks.

Councillor Ronald Cormier concurred with Councillor Walsh and that comments made that elderly voters, of which he is one, "are incapable of completing a ballot application is almost insulting." "Many, many senior citizens do not live in the High Rise and are quite capable of using the mails or voting in person." He added that he is unaware of what the Council can do to make it easier for people to vote.

Councillor Nathan Boudreau said that he, President Kazinskas, and Councillor Walsh received an e-mail from Councillor Scott Graves questioned the legality of the Special Meeting and whether the Council can vote.

President Kazinskas stated that she called a Special Meeting of the Council to take action on Council Order #10264, which needs to be addressed.

UNACCEPTED/UNCORRECTED PROOF

Councilor Karen Hardern questioned when absentee ballots will be counted.

The City Clerk said that the ballots are processed at the polls on Election Day - checked-in, checked-out - and then placed in the ballot box (tabulator).

Councillor Scott Joseph Graves:

- The City Solicitor warned him that he cannot take part in any vote or discussion having to do with the special election, only procedures.
- He agrees with the Council President that she has the right to call a Special Meeting under Council Rule 1.

Councillor Judy Mack:

- Spoke with Health Director regarding relocating the 3B polling location, whose response was "Why would we even consider risking it? Putting a population at risk when we could avoid it."
- What the City is doing follows the CDCs guidelines for relocating polling places during the pandemic. The polls and equipment will have to be disinfected throughout the day to protect voters and poll workers.
- Citizens capable of Early and absentee voting.

President Elizabeth Kazinskas:

- The CDC directive dated March 27 "… encourages moving election polling locations away from long term care facilities and facilities housing older persons to minimize COVID-19 exposure among older individuals and those with chronic medical conditions."
- All voters living in Precinct 3B would also have to go to the High Rise to vote, as it is not only for the residents of the building.
- Vote by Mail in place for every Gardner registered voter, including Precinct 3B voters.

Councillor George Tyros noted:

- Expressed support for the Election Order
- Cited the various discussion points raised
- Cited common sense approach.

On the motion, on call of the roll, it was voted nine (9) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Judy Mack, Elizabeth Kazinskas, and George Tyros; one (1) nay, Councillor Karen Hardern; one (1) abstention, Councillor Scott Joseph Graves, to adopt the following Orders:

UNACCEPTED/UNCORRECTED PROOF

MAY 12, 2020 SPECIAL MUNICIPAL PRELIMINARY ELECTION ORDER

JUNE 9, 2020 SPECIAL MUNICIPAL ELECTION ORDER

DESIGNATION OF POLLING PLACES FOR SPECIAL ELECTIONS

ORDERED: In accordance with the provisions of Section 64 of Chapter 54 of the General Laws, that meetings of the citizens of this City qualified to vote for City officers shall be held on TUESDAY, the 12th DAY of MAY, 2020 from 10:00 o'clock in the morning until 8:00 o'clock in the evening for the purpose of casting their votes for the nomination of Mayor to serve for the unexpired term.

ORDERED: In accordance with the provisions of Section 64 of Chapter 54 of the General Laws, that meetings of the citizens of this City qualified to vote for City officers shall be held on TUESDAY, the 9th DAY of JUNE, 2020 from 10:00 o'clock in the morning until 8:00 o'clock in the evening for the purpose of casting their votes for Mayor to serve for the unexpired term.

ORDERED: In accordance with the provisions of Section 24 of Chapter 54 of the General Laws, the following polling places are designated by this Council:

WARD 1, PRECINCT A – Elk's Home, 31 Park Street
WARD 1, PRECINCT B – Elk's Home, 31 Park Street
WARD 2, PRECINCT A – Levi Heywood Memorial Library, 55 W Lynde Street
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WARD 3, PRECINCT A – Acadien Social Club, 193 Parker Street
WARD 3, PRECINCT B – Acadien Social Club, 193 Parker Street
WARD 4, PRECINCT A – Gardner Police Headquarters, 200 Main Street
WARD 4, PRECINCT B – Gardner Police Headquarters, 200 Main Street
WARD 5, PRECINCT A – Knights of Columbus Hall, 110 South Main Street
WARD 5, PRECINCT B – Knights of Columbus Hall, 110 South Main Street

Presented to the Acting Mayor for Approval – April 14, 2020
Approved – April 14, 2020
ELIZABETH J. KAZINSKAS, Acting Mayor

ADJOURNMENT

On a motion by Councillor James Walsh and seconded by Councillor Nathan Boudreau, on call of the roll, it was voted eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to adjourn at 6:24 p.m.

Accepted by the City Council:

UNACCEPTED UNCORRECTED PROOF

CITY OF GARDNER IN CITY COUNCIL

REGULAR MEETING OF APRIL 21, 2020

Regular Meeting of the City Council was held remotely on Tuesday evening, April 21, 2020.

CALL TO ORDER

Council President Elizabeth Kazinskas 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. Eleven (11) Councillors were present including Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Elizabeth Kazinskas, Judy Mack, George Tyros, and James Walsh.

OPENING PRAYER

President Kazinskas led the Council in reciting the Opening Prayer.

PLEDGE OF ALLEGIANCE

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

OPEN MEETING RECORDING & PUBLIC RECORDS ANNOUNCEMENT

President Kazinskas announced that pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Gardner City Council will be conducted via remote participation and broadcast live on Gardner Educational Television, Channel 8. The audio or video recording, transcript, or other comprehensive record of proceedings will be posted on the City's website as soon as possible after the meeting. She added that since the meeting is being conducted via **Zoom**, that all votes taken would be by roll call and asked Councillors to raise their hands to be recognized.

READING & ACCEPTANCE OF MINUTES

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, on call of the roll, it was voted eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to waive reading and to accept the Minutes of the April 6, 2020 Regular Meeting, as printed.

UNACCEPTED/UNCORRECTED PROOF

PETITIONS, APPLICATIONS, COMMUNICATIONS, ETC.

#10265

Reporting for the Finance Committee, Councillor James Walsh informed the Council that the Finance Committee voted favorably to recommend the three parts contained in the Measure, which are parts of Chapter 53 of the Acts of 2020 that authorizes the Chief Elected Officer to implement these provisions. He said that the City Council is not obligated to accept the provisions, but that the Finance Committee felt that it was an opportunity to endorse the exercise of the options that the Chief Executive Officer may provide, granting some relief to taxpayers and ratepayers due to the circumstances that the City finds itself.

Continuing, Councillor Walsh stated that the first section of the Measure provides an option to extend payments for real estate taxes, due by May 1, until June 1. The second part, he said, relates to extending the exercise of abatements and other options to ratepayers seeking relief from charges. The third section, he said, relates to waiving interest and penalties on charges that were due to be paid on or after March 10 to a date not later than June 30.

Concluding, Councillor Walsh said that the Finance Committee felt that all of the parts are beneficial to the citizens of Gardner and, although the City Council is not obligated to accept the legislative provisions, the Committee felt that it was an opportunity for the Council to support the actions that the Chief Executive Officer is authorized to take.

Councillor James Walsh moved to adopt the following Measure:

ENDORSING VARIOUS PROVISIONS OF
CHAPTER 53 OF THE ACTS OF 2020

VOTE: Part I. That the City of Gardner hereby endorses Section 10(a)(i-iii) of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to extend the due dates of property tax bills from May 1, 2020 to no later than June 1, 2020.

Part II. That the City of Gardner hereby endorses Section 10(a)(iv) of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to extend the due date for exemptions filed in accordance with M.G.L. c. 59, sec. 59 from April 1, 2020 to no later than June 1, 2020.

Part III. That the City of Gardner hereby endorses Section 11 of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to waive interest and other penalties for late payments of any excise, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to a tax for any payments with a due date on or after March 10, 2020 where payment is made after its respective due date but before June 30, 2020.

Councillor Ronald Cormier seconded the motion.

UNACCEPTED/UNCORRECTED PROOF

Councillor Judy Mack raised a point of order, noting that the City Clerk's connection to the Zoom meeting was disrupted.

President Kazinskas acknowledged that the City Clerk's Wi-Fi connection was disrupted; therefore, she declared a recess beginning at 7:37 p.m. so that the Clerk could reconnect and that the Council would reconvene at 7:42. The Council reconvened at 7:42 p.m.

On the motion, Councillor Scott Graves asked if the Acting Mayor had taken any action on the provisions of Chapter 53 of the Acts of 2020, since the City Council is asked to endorse something that hasn't happened yet.

Council President/Acting Mayor Elizabeth Kazinskas replied that no action has been taken.

Directing a question to the Finance Committee, Councillor Scott Graves asked, "What exactly is the City Council doing?"

Responding for the Finance Committee, Councillor James Walsh stated that the measure seeks to endorse "the taking of action" by the Acting Mayor to exercise options that are available to the Acting Mayor, as provided in the three sections under Chapter 53.

Councillor Scott Graves said that the "endorsement that the Council is being asked to vote on – all the endorsement is asking us to do is to endorse the law – which is ridiculous because the law is the law." "All we're saying is 'we like that law,' which is nonsense," he said. "What I think the Acting Mayor should do," he said, "I wasn't sure she had taken an Executive Order – she could have done an Executive Order and then we could have endorsed the Executive Order or she could have made some other action – could have endorsed it – but she hasn't done anything yet so we have nothing to endorse," he said.

Continuing, Councillor Graves stated, "What I would have done is, I would have taken John Flick's first shot at the adoption when he thought the City Council had to vote on it. If I were Acting Mayor… this is totally the Acting Mayor's role – we have no role in this, it's her call. 100%." "If she is going to adopt this Session law, all she has to do is take that first shot that Flick tried – just sign as an Executive Order and then you send your DLS Notice of Acceptance of the local option … and it's a done deal. That's what I would do if I were her," he said. Continuing, he said, "And, of course, this is an emergency, so she gets to do whatever she wants as if she's the Mayor. So, I just don't know what the City Council is doing. I'm lost."

Continuing, Councillor Graves said, "I don't know why it says 'the City of Gardner' on the Vote because usually on these local options – under General Law Chapter 4, section 7, it says 'if the City adopts this local option, – when it says that, then it means the legislature signs it." "In this situation," he said, "the Acting Mayor is 'the City, so we can't speak for the City… that's why I can't sign this thing – it's a mess."

UNACCEPTED/UNCORRECTED PROOF

Continuing, Councillor Graves stated, "Then, Jen Dymek had some questions about interest accruing to June 30. She thought interest should start on June 1, but Section 11, I think what they're saying, is they're giving the taxpayers a grace period on interest." "Jen had gray area questions. Does the Finance Committee know about that?" he added.

In response, Councillor James Walsh stated, "As I understand it, the Treasurer is satisfied that interest accrues through June 29. There was a FAQ issued by the Division of Local Services of the Department of Revenue that says that it is through June 29."

Councillor Graves questioned whether the Acting Mayor is inclined to adopt the local option.

Council President and Acting Mayor Elizabeth Kazinskas said that she is interested in seeing if the City Council endorses it, then she would make a decision.

Councillor James Boone asked for clarification as to whether interest will or will not accrue.

In response, Councillor James Walsh stated that if the legislation is adopted, then interest would not accrue.

Councillor Ronald Cormier noted that there will be a spillover to a new Mayor after the election and that typically, the Council accepts legislation as opposed to endorsing enabling legislation, which "this measure seems to cause some confusion." The measure, he said, would help to alleviate some problems facing the citizens, which is the reason that the Finance Committee is in favor of endorsing the measure.

On the motion, on recommendation of the Finance Committee, it was voted on call of the roll, ten (10) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Karen Hardern, Judy Mack, George Tyros, and James Walsh; one (1) nay, Councillor Scott Joseph Graves, to adopt the following Measure:

ENDORSING VARIOUS PROVISIONS OF
CHAPTER 53 OF THE ACTS OF 2020

VOTED: Part I. That the City of Gardner hereby endorses Section 10(a)(i-iii) of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to extend the due dates of property tax bills from May 1, 2020 to no later than June 1, 2020.

Part II. That the City of Gardner hereby endorses Section 10(a)(iv) of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to extend the due date for exemptions filed in accordance with M.G.L. c. 59, sec. 59 from April 1, 2020 to no later than June 1, 2020.

UNACCEPTED UNCORRECTED PROOF

Part III. That the City of Gardner hereby endorses Section 11 of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to waive interest and other penalties for late payments of any excise, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to a tax for any payments with a due date on or after March 10, 2020 where payment is made after its respective due date but before June 30, 2020.

Presented to the Acting Mayor for Approval – April 22, 2020
Approved – April 22, 2020
ELIZABETH J. KAZINSKAS, Acting Mayor

#10266

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that previously, the City Council appropriated funds to purchase new ballot tabulators – not voting machines – similar to the tabulators currently used. The tabulators "read paper ballots" and optically scan the information and the target date to implement their use is detailed in the Order (September 1). He added that the tabulators currently in-use are 20 years old and "have reached their life span," and that the Finance Committee recommends passage of the Measure.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, on recommendation of the Finance Committee, it was voted on call of the roll, ten (10) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Karen Hardern, Judy Mack, George Tyros, and James Walsh; one (1) abstention, Councillor Scott Joseph Graves, to adopt the following Measure:

DISCONTINUING ACCUVOTE ES2000 OPTICAL SCAN TABULATORS
AND IMPLEMENTING USE OF
IMAGECAST® PRECINCT OPTICAL (ICP) TABULATORS

VOTED: To discontinue use of the AccuVote ES2000 Optical Scan Tabulators and to implement use of the ImageCast® Precinct Optical (ICP) Tabulators in all precincts, effective for the September 1, 2020 State Primary and for the all elections thereafter, in accordance with M.G.L. Chapter 54, Section 34.

Presented to the Acting Mayor for Approval – April 22, 2020
Approved – April 22, 2020
ELIZABETH J. KAZINSKAS, Acting Mayor

#10267

Prior to entertaining a motion, Council President Elizabeth Kazinskas noted that the Greater Gardner Chamber of Commerce is offering assistance to all businesses whether or not they are members of the Chamber.

UNACCEPTED/UNCORRECTED PROOF

On a motion by Councillor Nathan Boudreau and seconded by Councillor Aleksander Dernalowicz, on call of the roll, it was voted eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to place on file *A Communication from the Greater Gardner Chamber of Commerce Relative to Resources for Business Owners and Managers During COVID-19.*

REPORTS OF STANDING COMMITTEES

PUBLIC SAFETY COMMITTEE

#10254

There being no objections, the Public Safety Committee was granted more time to study and to report on the following 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.

PUBLIC SERVICE COMMITTEE

#10260

There being no objections, the Public Service Committee was granted more time to study and to report on *A Petition by National Grid for permission to install one (1) SO Pole on East Broadway beginning at a point approximately115' southeast of the centerline of the intersection Prospect Street.*

PUBLIC WELFARE COMMITTEE

#10252

Public Welfare Committee Chairman Aleksander Dernalowicz reported that the Planning Board is scheduled to meet on April 28 to discuss the Petition; therefore, the Committee is requesting for time. There being no objections, the Public Welfare Committee was granted more time to study and report on *A Petition by Traven Development LLC to renew the designation of two (2) parcels at 525 Parker Street as a Development Overlay District 1.*

UNACCEPTED/UNCORRECTED PROOF

FINANCE COMMITTEE

#10250

Reporting for the Finance Committee, Councillor James Walsh informed the Council that the Committee's report addresses both #10250 and #10251, for which the Committee is seeking more time. The Judicial Determination Declaratory Action Judgment is pending in Worcester Superior Court and that there is some indication that the Council will have some on the status of that at the next Finance Committee and Council meetings, he added.

There being no objections, the Finance Committee was granted more time to study and report on the following Order:

> 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

There being no objections, the Finance Committee was granted more time to study and report on the following Order:

> 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.

UNFINISHED BUSINESS AND MATTERS FOR RECONSIDERATION

#10252

With action pending before the Planning Board, *A Petition by Traven Development LLC to renew the designation of two (2) parcels at 525 Parker Street as a Development Overlay District 1* was continued.

NEW BUSINESS

Councillor Karen Hardern questioned the lack of an EV application return envelope in the recent voter mailing.

The City Clerk offered clarification, saying that the return envelope postage will be applied to the returned Early Ballot, adding that voters can return their Early Ballot applications by US Mail, e-mail fax, and the City Hall Drop Box.

UNACCEPTED/UNCORRECTED PROOF

Councillor James Boone noted confusion as well as he thought that there would be a self-addressed stamped envelope included, so he called the City Clerk to seek clarification and was advised that the prepaid postage applied to the ballot. Councillor Boone said that he also contacted the City's IT Director to inquire about the security of sending an e-mail to the City, as Early Ballot Applications require a signature and date of birth. He was advised by the IT Director that e-mail is a very secure method, so Councillor Boone encouraged voters to scan and e-mail their EV Applications.

Councillor Aleksander Dernalowicz encouraged voters to return their EV ballot applications as soon as possible.

Councillor Scott Joseph Graves said some confusion arose from the website that says that the ballot return envelope is prepaid, which immediately followed the EV Application submission process.

Councillor Craig Cormier questioned whether a picture of a completed EV Ballot Application be valid.

The City Clerk confirmed the validity of an Application by any "scan method" including jpeg, pdf, etc.

In response to an earlier comment, the City Clerk said that the information that his Office sent to voters was likely extracted and placed on the website, not by the Clerk's Office – documents that perhaps were cut and pasted and placed into different sections on the website, which likely led to the confusion. He said that he would check the website in the morning to see where the confusion originates and to ask the Webmaster to make necessary changes, as he believes that the instructions in the FAQs (Frequently Asked Questions) that he distributed were very clear.

Councillor James Walsh congratulated and commended the Office of the City Clerk and all persons in City government who assisted with the process of distributing the correspondence and the Early Ballot application received by voters yesterday. "I understood that it would be the ballot return that would have the prepaid postage on the return envelope, but I understand how others felt otherwise," he said. He also encouraged everybody to exercise unique option to early vote by mail and that "it is an opportunity that may portend well to look ahead to future voting opportunities." Councillor Walsh expressed hope that "people would take advantage of the opportunity as everyone is in unique and challenging circumstances – to exercise the right to vote in a different way." To expand voting opportunities and to lessen the impact on in-person voting at the polls and to lessen the risks of transmitting the COVID-19 virus, he added.

UNACCEPTED/UNCORRECTED PROOF

President Elizabeth Kazinskas also commended the City Clerk's Office for its efforts to reach out to every voter about the special elections.

President Elizabeth Kazinskas commented on the communication for the Greater Gardner Chamber of Commerce, citing the Chamber's offer to assist all local businesses and for Carol Jacobson's leadership.

President Elizabeth Kazinskas announced that the school buildings have been closed through the end of the school year, but that the educational components of school will continue. She added that Superintendent Pellegrino acknowledged the resiliency of the faculty in delivering on-line education to Gardner students.

CLOSING PRAYER

President Kazinskas led the Council in the Closing Prayer.

ADJOURNMENT

On a motion by Councillor Nathan Boudreau and seconded by Councillor James Boone, on call of the roll, it was voted eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to adjourn at 8:08 p.m.

Accepted by the City Council:

UNACCEPTED/UNCORRECTED PROOF

10268

CITY OF GARDNER, MASSACHUSETTS

AN ORDER

POSTPONING THE MAY 12, 2020 SPECIAL CITY PRELIMINARY

AND THE JUNE 9, 2020 SPECIAL CITY ELECTION

ORDER: Pursuant to section 1 of chapter 45 of the Acts of 2020 and because of the state of emergency declared by the governor pursuant to executive order 591, Declaration of a State of Emergency to Respond to COVID-19, the Special City Preliminary Election scheduled for May 12, 2020 and the Special City Election scheduled for June 9, 2020 are hereby postponed.

FOR DISCUSSION PURPOSES ONLY

Ref: 10268
10258

POSTPONED SPECIAL CITY PRELIMINARY ELECTION
AND POSTPONED SPECIAL CITY ELECTION SCHEDULE

VOTED: To schedule the postponed April 7, 2020 Special City Preliminary Election for May 12, 2020 and the postponed May 5, 2020 Special City Election for June 9, 2020.

Vote

In City Council

April 6, 2020

Vote Passed

April 6, 2020
10 yeas, 1 abstention.

Clerk

Presented to Acting Mayor for approval

April 9, 2020

Approved on 4-10-2020

Acting Mayor
Acting Mayor's Signature

Reg: 10268

10269

CITY OF GARDNER, MASSACHUSETTS

SPECIAL MUNICIPAL PRELIMINARY ELECTION ORDER

~~~

SPECIAL MUNICIPAL ELECTION ORDER

~~~

DESIGNATION OF POLLING PLACES FOR SPECIAL ELECTIONS

~~~

ORDER: In accordance with the provisions of Section 64 of Chapter 54 of the General Laws, that meetings of the citizens of this City qualified to vote for City officers shall be held on TUESDAY, the ____ DAY of ____, 2020 from 10:00 o'clock in the morning until 8:00 o'clock in the evening for the purpose of casting their votes for the nomination of Mayor to serve for the unexpired term.

ORDER: In accordance with the provisions of Section 64 of Chapter 54 of the General Laws, that meetings of the citizens of this City qualified to vote for City officers shall be held on TUESDAY, the ____ DAY of ____, 2020 from 10:00 o'clock in the morning until 8:00 o'clock in the evening for the purpose of casting their votes for Mayor to serve for the unexpired term.

ORDER: In accordance with the provisions of Section 24 of Chapter 54 of the General Laws, the following polling places are designated by this Council:

WARD 1, PRECINCT A – Elk's Home, 31 Park Street
WARD 1, PRECINCT B – Elk's Home, 31 Park Street
WARD 2, PRECINCT A – Levi Heywood Memorial Library, 55 W Lynde Street
WARD 2, PRECINCT B – Levi Heywood Memorial Library, 55 W Lynde Street
WARD 3, PRECINCT A – Acadien Social Club, 193 Parker Street
WARD 3, PRECINCT B – Acadien Social Club, 193 Parker Street
WARD 4, PRECINCT A – Gardner Police Headquarters, 200 Main Street
WARD 4, PRECINCT B – Gardner Police Headquarters, 200 Main Street
WARD 5, PRECINCT A – Knights of Columbus Hall, 110 South Main Street
WARD 5, PRECINCT B – Knights of Columbus Hall, 110 South Main Street

BY ORDER OF THE CITY COUNCIL

TEMPLATE
~~~

Ref: 10267
10264

CITY OF GARDNER, MASSACHUSETTS

MAY 12, 2020 SPECIAL MUNICIPAL PRELIMINARY ELECTION ORDER

JUNE 9, 2020 SPECIAL MUNICIPAL ELECTION ORDER

DESIGNATION OF POLLING PLACES FOR SPECIAL ELECTIONS

ORDERED: In accordance with the provisions of Section 64 of Chapter 54 of the General Laws, that meetings of the citizens of this City qualified to vote for City officers shall be held on TUESDAY, the 12th DAY of MAY, 2020 from 10:00 o'clock in the morning until 8:00 o'clock in the evening for the purpose of casting their votes for the nomination of Mayor to serve for the unexpired term.

ORDERED: In accordance with the provisions of Section 64 of Chapter 54 of the General Laws, that meetings of the citizens of this City qualified to vote for City officers shall be held on TUESDAY, the 9th DAY of JUNE, 2020 from 10:00 o'clock in the morning until 8:00 o'clock in the evening for the purpose of casting their votes for Mayor to serve for the unexpired term.

ORDERED: In accordance with the provisions of Section 24 of Chapter 54 of the General Laws, the following polling places are designated by this Council:

WARD 1, PRECINCT A – Elk's Home, 31 Park Street
WARD 1, PRECINCT B – Elk's Home, 31 Park Street
WARD 2, PRECINCT A – Levi Heywood Memorial Library, 55 W Lynde Street
WARD 2, PRECINCT B – Levi Heywood Memorial Library, 55 W Lynde Street
WARD 3, PRECINCT A – Acadien Social Club, 193 Parker Street
WARD 3, PRECINCT B – Acadien Social Club, 193 Parker Street
WARD 4, PRECINCT A – Gardner Police Headquarters, 200 Main Street
WARD 4, PRECINCT B – Gardner Police Headquarters, 200 Main Street
WARD 5, PRECINCT A – Knights of Columbus Hall, 110 South Main Street
WARD 5, PRECINCT B – Knights of Columbus Hall, 110 South Main Street

BY ORDER OF THE CITY COUNCIL

Vote

In City Council

April 13,2020

Vote Passed

April 13, 2020
9 yeas, 1 nay, 1 abstention.

Alan Agnelli **Clerk**

Presented to Acting Mayor for approval

April 14, 2020

Approved on 4-14-2020

Elizabeth J Kazmierski **Acting Mayor**
Acting Mayor's Signature

Ref: 10269

10270

TO THE HONORABLE CITY COUNCIL OF THE CITY OF GARDNER

Ladies and Gentlemen:

The undersigned Petitions your Honorable Body

To authorize the Mayor of the City of Gardner to approve and accept a conservation restriction on 20.47 acres of land owned by the Gardner Fish & Gun Club, Inc., located on the south side of Clark Street, being a portion of Assessor's Parcels H32/ 4/ 19/ / and H37/ 23/ 1A/ /, as shown on the attached map and survey plan, comprised of the riverfront area of Bailey Brook, including wetlands complex and flood plain, to be held and monitored by the Conservation Commission for conservation and natural resource protection, pursuant to M.G.L. Chapter 40, Section 8C, and M.G.L. Chapter 184, Section 32, the property to be permanently conserved under Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

Respectfully Submitted:

_____

Gregory Dumas, Chairman
Gardner Conservation Commission

10270

GRANTOR: Gardner Fish & Gun Club, Inc.
GRANTEE: City of Gardner
ADDRESS OF PREMISES: Clark Street, Gardner, MA
FOR GRANTOR'S TITLE SEE: Worcester County
Registry of Deeds at Book 2642, Page 362

CONSERVATION RESTRICTION

The GARDNER FISH & GUN CLUB, INC., a Massachusetts non-profit corporation, with an address of 538 Clark Street, Gardner, MA 01440, acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, and for its successors and assigns (hereinafter, "Grantor"),

GRANTS WITH QUITCLAIM COVENANTS TO

The CITY OF GARDNER, a Massachusetts municipal corporation with an address of 95 Pleasant Street, Gardner, MA 01440, under the care, custody and control of its Conservation Commission, for conservation purposes, by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, and under the protection of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, its permitted successors and assigns, (hereinafter, "Grantee"),

FOR CONSIDERATION OF EIGHTEEN THOUSAND AND 00/100 ($18,000.00) DOLLARS,

IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located on the south side of Clark Street in the City of Gardner, Massachusetts, comprised of 20.47 acres of open land, (hereinafter, "Premises"), which Premises is more particularly described in Exhibit A and shown in a Plan entitled, "Conservation Restriction Plan for Owner, Gardner Fish & Gun Club", prepared for the City of Gardner, dated February 25, 2020 and recorded with the Worcester County Registry of Deeds at Plan Book _____, Plan _____, a reduced copy of which is attached hereto as Exhibit B.

I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure

that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values ("conservation values").

Conservation of the Premises, Tract #7X in the Gardner and Winchendon Wetlands Protection Project, is funded by the US Fish and Wildlife Service (USFWS), North American Wetlands Conservation Act (NAWCA), Small Grants Program, to carry out the purposes of the NAWCA Small Grants Program, which purposes include: to retain the Premises predominantly in its natural, scenic, and open condition; to protect and promote the conservation of biological diversity, forests, soils, natural watercourses, ponds, wetlands, water supplies, and wildlife thereon; to protect the natural resources of the Premises; to protect and enhance the natural resource value of abutting and nearby conservation areas; to protect the scenic qualities of the open space resources of the Premises; to allow passive recreational use; to allow for sustainable and sound management of the forest resources, and to encourage the long-term professional stewardship of these resources in a manner consistent with Best Management Practices (BMPs) and applicable local, state and federal law.

The conservation values to be protected by this conservation restriction include the following:

- Open Space. The Premises contributes to the protection of the scenic and natural character of the landscape around Bailey Brook, augmenting a conserved landscape of approximately 3900 acres running south from 19th Hill in Winchendon to recently conserved municipal land in Gardner, including the recently conserved Bailey Brook Park and Conservation Area which abuts the Premises to the north. Protection of the Premises will enhance the open-space value of these and nearby lands.

- Water Resources. The Premises include the Bailey Brook Riverfront, associated wetlands and the 100 year flood plain. Bailey Brook is a cold water stream that flows through a mostly protected, undeveloped landscape from its headwaters at 19th Hill in Winchendon to the Otter River in Gardner. The associated wetlands complex supports natural hydrologic conditions which filter and store water, maintaining water quality and quantity.

- Wildlife Habitat. The Premises include the river corridor of Bailey Brook, a state-designated Cold-water Fisheries Resource (SARIS ID 3523925) which flows through Premises for 1/3rd mile and provides habitat for cold water fish species such as Native Brook Trout (*Salvelinus fontinalis)*. The associated wetlands complex provides habitat for diverse aquatic species such as the Wood Turtle (*Glyptemys insculpta)* and wetland birds such as the Grasshopper Sparrow (*Ammodramus savannarum*).

- Floodplain and Climate Change Resiliency. Conservation of the Premises will ensure the protection of the floodplain and the continued availability of flood storage during major storm events, which are likely to increase as a result of climate change. The Premises are an extension of a mostly protected landscape in the Bailey Brook corridor, whose

north/south orientation and varied topography will provide increased climate resiliency for flora and fauna, migrating in response to climate change.

- Soils. The Premises includes 18.5 acres (75% of the Premises) of Prime Forest Soils, including Prime 2, Prime 3, and soils of statewide and local importance.

- Public Access. Public access to the Premises will be allowed for hunting, fishing and passive recreational activities, subject to Grantor's safety rules related to its use of its property as a firing range.

- Furtherance of Governmental Conservation Policy. The Premises are Tract #7X in the Gardner and Winchendon Wetlands Protection Project, funded by the US Fish and Wildlife Service (USFWS), North American Wetlands Conservation Act (NAWCA), Small Grants Program. This Project is administered by the USFWS Atlantic Coast Migratory Bird Joint Venture. The objectives of this project include the protection of wetland birds typical of the northern Worcester Plateau, including the Endangered American Bittern, (*Botaurus lentiginosus*) and the Threatened Grasshopper Sparrow (*Ammodramus savannarum*). The 2015 State Wildlife Action Plan lists, Brook Trout (*Salvelinus fontinalis)* and Wood Turtle (*Glyptemys insculpta)* as species of Greatest Conservation Need which can be found in small streams such as Bailey Brook. Conservation of the Premises also furthers goals of the City of Gardner's 2015 Open Space and Recreation Plan to: 1) Protect water resources and improve water quality; and 2) Increase public awareness and stewardship of the City's water resources.

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report ("Baseline Report") prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. Prohibited Acts and Uses

Subject to the exceptions set forth herein, the Grantor shall not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

(1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel, solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;

(2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;

(3) Archeological surveys or investigations except under an Archeological Field Investigation Permit issued by the Massachusetts Historic Commission (or appropriate successor agency) State Archeologist (or appropriate successor official) authorized pursuant to MGL Chapter 9, Section 26A and associated regulations, as further described in Paragraph II(B)(6);

(4) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;

(5) Storage, stockpiling, or use of hazardous materials, petroleum products, pesticides and herbicides, non-organic fertilizers, or any other such materials;

(6) Cutting, removing or otherwise destroying trees, grasses or other vegetation;

(7) Commercial Forestry, as defined by the Massachusetts Forest Cutting Practices Act, MGL Chapter 132 or successor law.

(8) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;

(9) Planting or release of any non-native species of plant, fungus or animal;

(10) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;

(11) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;

(12) The use of the Premises for business, residential or industrial use, or for more than *de minimis* commercial recreation;

(13) The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises;

(14) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

B. Reserved Rights and Exceptions

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not significantly impair the conservation values or purposes of this Conservation Restriction.

(1) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph II(B) shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.

(2) Vegetation Management. The selective minimal removing of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas as documented in the Baseline Report, woods roads, fence lines and trails and meadows;

(3) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;

(4) Composting. The stockpiling and composting of stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not impair the conservation values (including scenic values) of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody or stream. All exercise of this reserved right shall take into account sensitive areas and avoid harm to nesting species during nesting season;

(5) Wildlife Habitat Improvement. With the prior written approval of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;

(6) Archaeological Investigations. The right to conduct archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only (a) after written notification to and approval by Grantee, and (b) in accordance with an archaeological field investigation plan prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical

Commission ("MHC") State Archaeologist as required by Massachusetts General Laws. A copy of the results of any scientific investigation on the Premises is to be provided to the Grantee. Plans for restoration of the site of any archaeological activity shall be submitted to the Grantee in advance of restoration, and such restoration shall be conducted only in accordance with a plan approved by the Grantee.

Activities detrimental to archeological and historic resources, including but not limited to earth moving and the alteration of historic stone walls/cellar holes/features, shall not be deemed to be detrimental to archeological and historic resources if a description of the proposed activity and its location is submitted in writing (e.g., on a Project Notification Form) with a plan of land (or assessors map) and a USGS map with the Premises outlined thereon, to MHC and MHC issues a letter stating that the proposed activity is not within a resource area or is determined to not have an adverse effect on said resources. Grantor and Grantee shall make every reasonable effort to prohibit any person from conducting archaeological field investigation on the Premises, including metal detecting, digging, or artifact collecting, without approval of the MHC State Archaeologist (or appropriate successor official), and shall promptly report any such prohibited activity to the MHC State Archaeologist (or appropriate successor official). Grantor and Grantee shall include the prohibition against digging, artifact collecting, or metal detecting in any list of rules for visitors to the Premises;

(7) Trails. The marking, clearing and maintenance of existing trails as shown in the Baseline Report. With prior approval of the Grantee, the construction of new trails or the relocation or alteration of existing trails, provided that any construction, relocation, or alteration results in trails that are no wider than four (4) feet;

(8) Signs. The erection, maintenance and replacement of signs with respect to trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, any gift, grant, or other applicable source of support for the conservation of the Premises, and the protected conservation values and reserved rights.

(9) Outdoor Passive Recreational Activities. Fishing, hunting and passive, non-motorized outdoor recreational and educational activities that do not materially alter the landscape, do not degrade environmental quality, and do not involve more than minimal use for commercial recreational activities;

(10) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph B shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises, including Bailey Brook and associated wetlands, that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph B, any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that

existed prior to said work, if said work is done in any area not documented in the Baseline Report.

(11) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph B shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

C. Notice and Approval.

1. Procedure for Notification and Approval. Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.

2. Deemed Approval. Failure of the Grantee to respond in writing within such sixty (60) days to a request which materially complies with the requirements of this Paragraph II(C) shall be deemed to constitute approval of the request as submitted, so long as the request sets forth the provision of this section relating to deemed approval after the passage of time, the requested activity is not prohibited herein, and the activity will not impair the purposes of this Conservation Restriction.

III. LEGAL REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief.

1. Enforcement of Violations. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations, provided Grantor ceases objectionable actions and Grantee determines there is no ongoing damage to the conservation values of the Conservation Restriction.

2. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

B. Non-Waiver.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

C. Disclaimer of Liability

By acceptance of this conservation restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

D. Acts Beyond the Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

IV. ACCESS

1. To the Grantee. The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof.

2. To the General Public. The Grantor grants access to the Premises to the general public and agrees to take no action to prohibit or discourage access to and use of the Premises by the general public for hunting and fishing, as regulated by state and federal law. Access by the public for other passive recreation, nature study, and similar activities is not explicitly conveyed herein, since use of the Grantor's firing range would negatively

impact public safety. However, if the Grantor elects to discontinue the use of the firing range at specified days and times, the Grantor and Grantee may agree to allow general public access for passive outdoor activities as described in Paragraph II(B)(9), during those dates and times, provided that such agreement is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the safety of the public and the protection of the purposes and conservation values of this Conservation Restriction. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Paragraph II(B)(9)). The Grantor's right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in the Massachusetts General Laws Chapter 21, Section 17C (Recreational Use law) and the Grantor and Grantee hereto benefit from exemption from liability to the extent provided in such law. The Grantee may require the Grantor to post the Premises against any use that may result in rutting or erosion or other damage to the natural resources of the Premises.

V. EXTINGUISHMENT

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph V(B), subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Proceeds. Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the gift, bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements, including the NAWCA Small Grants Program.

C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in

accordance with Paragraph V(B), after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. ASSIGNABILITY

A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the Assignee is not an owner of the fee in the Property, and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than 20 days prior to the execution of any such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable. If any such deed or other legal instrument does not reference this Conservation Restriction, the Grantee may record a Notice of Restriction referencing this Conservation Restriction in the appropriate registry.

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of

this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Worcester County Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Worcester County Registry of Deeds.

XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Gardner Fish & Gun Club, Inc.
538 Clark Street
Gardner, MA 01440

To Grantee: City of Gardner
Conservation Commission
115 Pleasant Street
Gardner, MA 01440

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

XIII. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. MISCELLANEOUS

A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the

existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. Homestead. The Grantor attests that there is no residence on the Premises, and the Premises is not occupied or intended to be occupied as a residence by the Grantor, a spouse, former spouse, or children of the Grantor, or a member of the Grantor organization, or a spouse, former spouse, or children of said member.

C. The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance, assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

D. Attached hereto and incorporated herein by reference are the following:

Signature pages:
Grantor
Grantee Acceptance
Approval by Mayor and City Council of the City of Gardner
Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:
Exhibit A: Legal Description of Premises
Exhibit B: Reduced Plan of Premises

Executed as a sealed instrument this _____ day of _____, 2020

GARDNER FISH & GUN CLUB, INC.

_____
BY: ERIK STORM, President

_____
BY: DENNIS W. COMEE, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss. Dated: _____

Then personally appeared the above-named ERIK STORM, acting as President of the Gardner Fish & Gun Club, Inc., who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the foregoing document, and acknowledged the foregoing to be the free act and deed of the Gardner Fish & Gun Club, Inc.

Notary Public: _____

My commission expires: _____.

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss. Dated: _____

Then personally appeared the above-named DENNIS W. COMEE, acting as Treasurer of the Gardner Fish & Gun Club, Inc., who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the foregoing document, and acknowledged the foregoing to be the free act and deed of the Gardner Fish & Gun Club, Inc.

Notary Public: _____

My commission expires: _____

ACCEPTANCE OF GRANT
GARDNER CONSERVATION COMMISSION

The undersigned, being the Chairman of the Conservation Commission of the City of Gardner, Massachusetts, hereby certify that at a public meeting duly held on _____2020, the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from the Gardner Fish & Gun Club, Inc., pursuant to Section 32 of Chapter 184 and Section 8C of Chapter 40 of the Massachusetts General Laws and do hereby accept the foregoing Conservation Restriction.

By: _____
Greg Dumas, Chairman
Gardner Conservation Commission

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss. Dated: _____

Then personally appeared the above-named GREG DUMAS, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the foregoing document, and acknowledged to me that he signed it voluntarily for the stated purpose.

Notary Public: _____

My commission expires: _____.

(SEAL)

APPROVAL OF CITY OF GARDNER

Pursuant to a vote of the Gardner City Council on _____, 2020, to be recorded herewith, the above Conservation Restriction from the Gardner Fish & Gun Club, Inc. to the City of Gardner acting by and through its Conservation Commission, was approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws and accepted by the City of Gardner on this _____ day of _____, 2020. Further, I, _____, the undersigned, being the Mayor of the City of Gardner, hereby approve the foregoing Conservation Restriction in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

By: _____
, Mayor

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss: Dated: _____

Then personally appeared _____, Mayor of Gardner, who proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

_____
Notary Public
My Commission Expires:

VOTE OF GARDNER CITY COUNCIL

I, Alan L. Agnelli, Clerk of the City of Gardner, hereby certify that at a meeting of the Gardner City Council duly held on _____, 2020, the City Council voted to approve and accept the foregoing Conservation Restriction, in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

By: _____
Alan L. Agnelli, Clerk

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the Gardner Fish & Gun Club, Inc. to the City of Gardner acting by and through its Conservation Commission, has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 2020

_____
Kathleen A. Theoharides
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this _____ day of _____ , 2020, before me, the undersigned notary public, personally appeared Kathleen A. Theoharides, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

_____
Notary Public
My Commission Expires:

EXHIBIT A

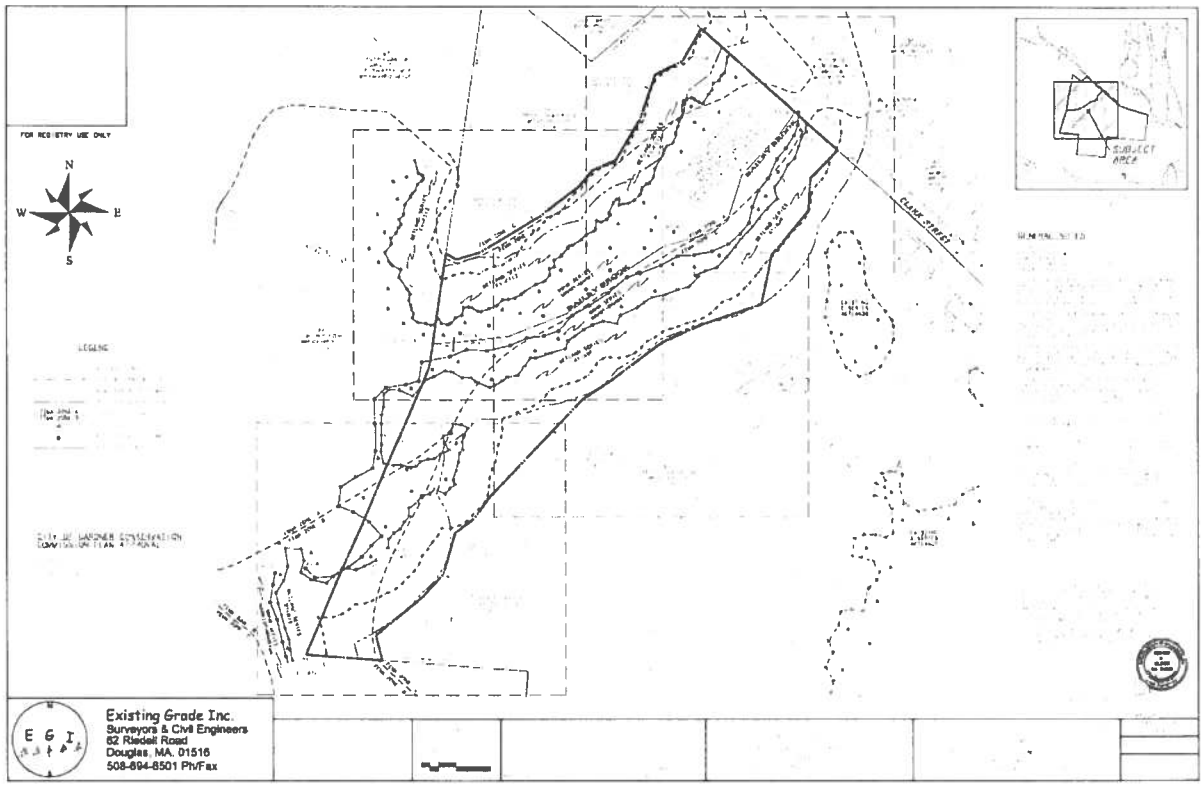
Legal Description of Premises

Beginning at an iron rod, said point being the northerly most corner of the conservation restriction, located on the southerly line of Clark Street;
thence S 48°07'16" E a distance of 363.71' along the southerly line of Clark Street to the centerline of Bailey Brook, as field determined in May of 2018;
thence S 48°07'16" E a distance of 123.37' along the southerly line of Clark Street to a point;
thence S 48°07'16" E a distance of 42.92' along the southerly line of Clark Street to an iron rod, said point being the easterly most corner of the conservation restriction;
thence S 43°09'04" W a distance of 113.72' to an iron rod;
thence S 03°43'30" W a distance of 94.45' to an iron rod;
thence S 39°50'09" W a distance of 166.17' to an iron rod;
thence S 11°37'52" W a distance of 147.30' to an iron rod;
thence S 70°52'50" W a distance of 185.52' to an iron rod;
thence S 66°00'45" W a distance of 124.01' to an iron rod;
thence S 53°02'58" W a distance of 176.46' to a point;
thence S 56°09'36" W a distance of 107.56' to an iron rod;
thence S 43°23'01" W a distance of 383.68' to a point;
thence S 36°04'46" W a distance of 82.49' to an iron rod;
thence S 52°34'33" W a distance of 70.44' to an iron rod;
thence S 15°40'41" W a distance of 124.00' to an iron rod;
thence S 42°20'42" W a distance of 87.08' to a point;
thence S 50°23'55" W a distance of 178.50' to an iron rod;
thence S 14°42'25" E a distance of 74.58' to an iron rod, said point being the southerly most corner of the conservation restriction on the property line of the Gardner Fish and Gun Club and land now or formerly of D&E Realty Corp;
thence N 85°44'39" W a distance of 222.06' to a point;
thence N 23°15'21" E a distance of 901.00' to a point;
thence N 13°15'21" E a distance of 26.00' to a point;
thence N 08°15'21" E a distance of 48.50' to a point in the centerline of Bailey Brook as field determined in May of 2018;
thence N 08°15'21" E a distance of 266.88' to an iron rod, said point being the westerly most corner of the conservation restriction;
thence S 58°46'23" E a distance of 33.90' to an iron rod;
thence N 73°22'36" E a distance of 73.99' to an iron rod;
thence N 58°31'46" E a distance of 200.07' to an iron rod;
thence N 52°30'13" E a distance of 140.04' to an iron rod;
thence N 39°35'35" E a distance of 65.58' to an iron rod;
thence N 67°47'21" E a distance of 70.88' to an iron rod;
thence N 30°31'02" E a distance of 139.92' to an iron rod;
thence N 18°37'33" E a distance of 136.54' to an iron rod;
thence N 62°48'59" E a distance of 89.25' to an iron rod;
thence N 29°52'02" E a distance of 109.57' to an iron rod on the southerly line of Clark Street, said point also being the point of beginning;

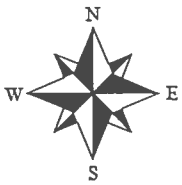
EXHIBIT B

Reduced Copy of Plan of Premises

For official full size plan see Worcester Registry of Deeds Plan Book _____ Page _____



FOR REGISTRY USE ONLY



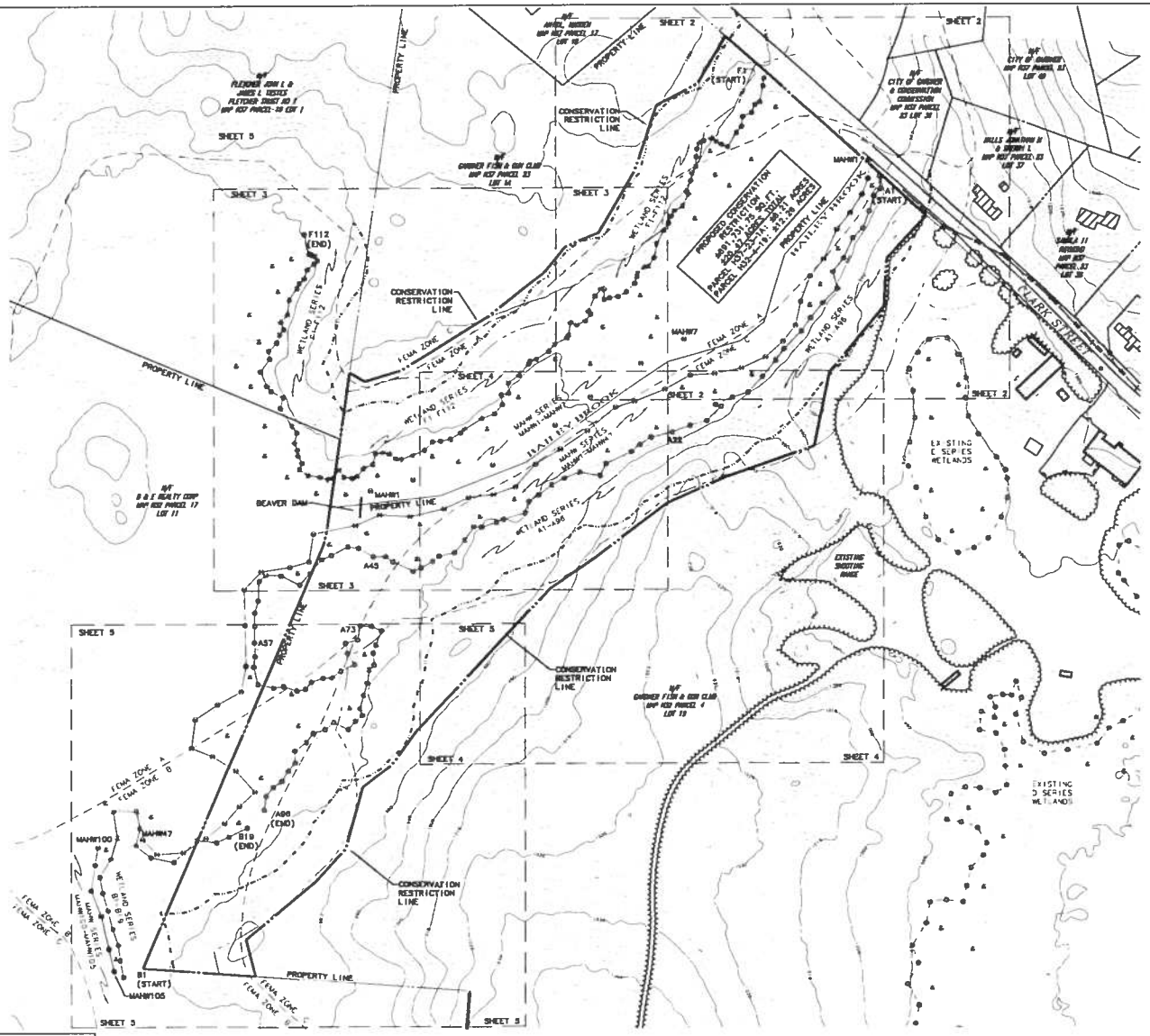
LEGEND

- WETLAND LINE
- 100' WETLAND BUFFER
- MEAN ANNUAL HIGH WATER LINE
- 200' RIVERFRONT AREA
- FEMA ZONE A / FEMA ZONE B = FEMA FLOOD ZONE
- WETLAND FLAG
- MEAN ANNUAL HIGH WATER FLAG
- CONSERVATION RESTRICTION

CITY OF GARDNER CONSERVATION COMMISSION PLAN APPROVAL

APPROVED (DATE:) _____

ENDORSED (DATE:) _____



LOCUS PLAN
1" = ±1,200'

GENERAL NOTES

1. RECORD OWNER
GARDNER FISH & GUN CLUB
538 CLARK STREET
GARDNER, MASSACHUSETTS 01440
DB.2837 PG.203

2. PROPERTIES ARE SHOWN AS PARCEL H32-4-19 AND PARCEL H37-23-1A AND APPEAR TO LIE WITHIN THE RURAL RESIDENTIAL (R-2) AND SOLAR OVERLAY ZONING DISTRICT PER THE CITY OF GARDNER ZONING MAP AND AVAILABLE ASSESSORS INFORMATION.

3. PROPERTY LINES SHOWN ARE COMPILED FROM AN ON THE GROUND SURVEY CONDUCTED BY EXISTING GRADE, INC IN JUNE OF 2017 AND NOVEMBER OF 2019, LINES OF OCCUPATION, FOUND MONUMENTATION, AND RECORDED INFORMATION.

4. PARCEL APPEARS TO PARTIALLY LIE WITHIN FLOOD ZONE A, B, AND C AS COMPILED HEREON PER FIRM MAPS 25030500058J, 25030500058J, AND 25030500070J LAST REVISED JULY 02, 1981, AS SHOWN ON THE FEMA WEBSITE.

5. EXISTING CONDITIONS SHOWN HEREON WERE COMPILED FROM AN ON THE GROUND SURVEY CONDUCTED IN JUNE OF 2017 AND NOVEMBER OF 2019 BY EXISTING GRADE, INC. AND FROM AERIAL IMAGERY PROVIDED BY THE STATE OF MASSACHUSETTS.

6. ORIGIN OF BEARINGS IS MASSACHUSETTS STATE PLANE (NAD83), DETERMINED FROM A GPS SURVEY CONDUCTED BY EXISTING GRADE, INC. IN JUNE OF 2017.

7. ORIGIN OF ELEVATIONS IS NAVD 88, DETERMINED FROM A GPS SURVEY CONDUCTED BY EXISTING GRADE, INC.IN JUNE OF 2017.

8. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.

9. WETLAND FLAG SERIES (F1-F112) SHOWN FIELD DELINEATED BY DAVID GORDON OF PEER CONSULTANTS, P.C., 99 SOUTH BEDFORD STREET, SUITE 200, BURLINGTON MA IN NOVEMBER OF 2019 AND FIELD SURVEYED BY EXISTING GRADE, INC. IN NOVEMBER OF 2019. ALL OTHER RESOURCE AREAS SHOWN DELINEATED AND LOCATED BY BRAD HOLMES OF ENVIRONMENTAL CONSULTING & RESTORATION, LLC., P.O. BOX 1319, PLYMOUTH MA.

I CERTIFY THAT THE PROPERTY LINES SHOWN ARE THE LINES DIVIDING EXISTING OWNERSHIPS AND THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIPS OR FOR NEW WAYS ARE SHOWN.

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS.

COMMONWEALTH OF MASSACHUSETTS
BRADLEY M. HOLMES
No. 34843
PROFESSIONAL LAND SURVEYOR

PROFESSIONAL LAND SURVEYOR _____ DATE _____

Existing Grade Inc.
Surveyors & Civil Engineers
62 Riedell Road
Douglas, MA. 01516
508-694-6501 Ph/Fax

SCALE
SCALE 1" = 100'

NO.	DATE	BY	REVISIONS
1	04/27/20	ZG	UPDATE ABUTTER INFORMATION

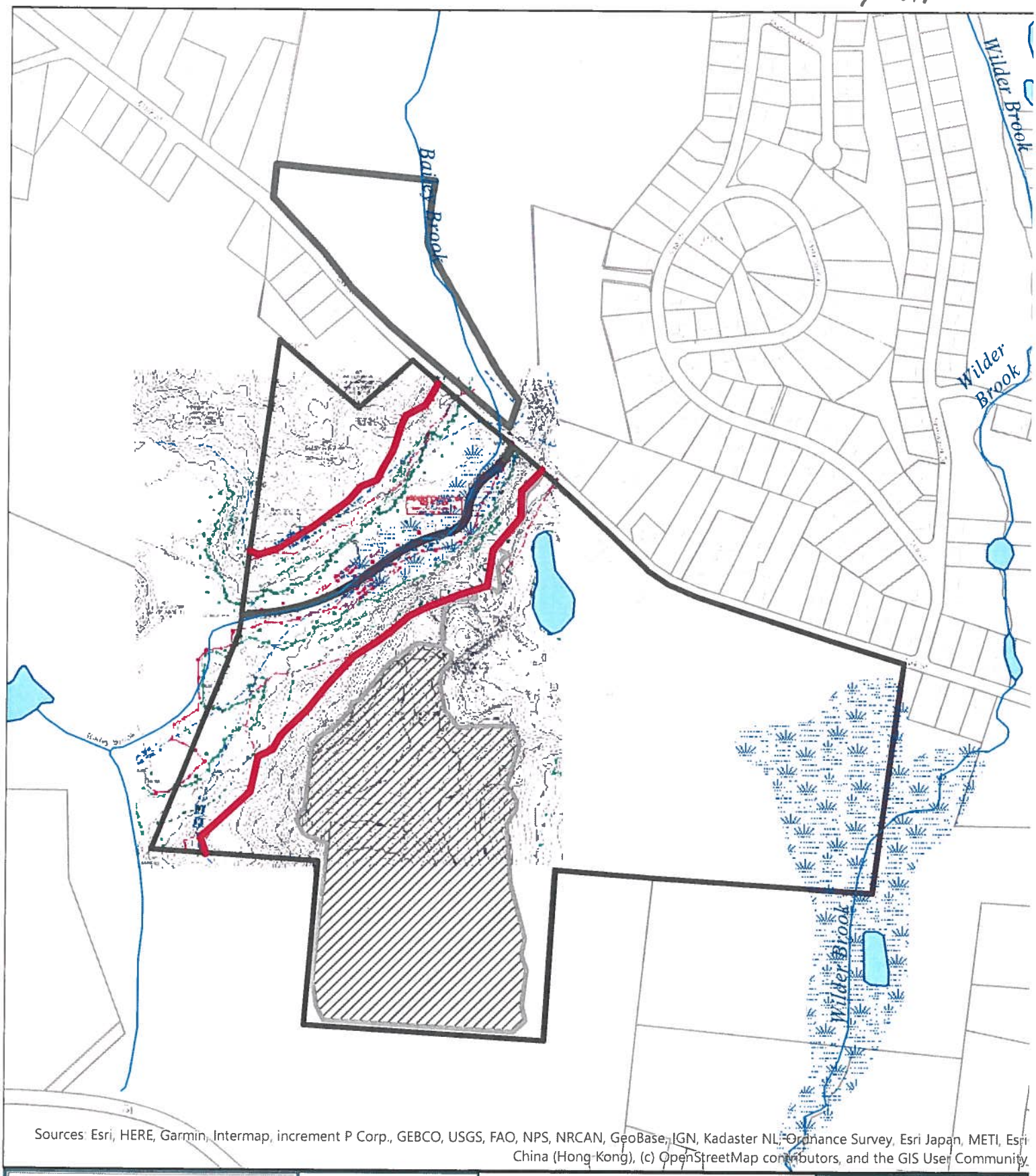
CLIENT
CITY OF GARDNER
CONSERVATION COMMISSION
115 PLEASANT STREET
GARDNER, MASSACHUSETTS 01440

CONSERVATION RESTRICTION PLAN
FOR/OWNER
GARDNER FISH & GUN CLUB
538 CLARK STREET
GARDNER, MASSACHUSETTS 01440

1895 CR-RESTRICTION
PROJECT NO. 1895
DATE: 02/25/20
SHEET NO. 1 OF 5

04/20

10270



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

Janet H. Morrison, Esq.
Land Conservation Consulting
59 Kelton Road, Ashburnham, MA 01430
978 827-5600; Cell: 978 502-0704
janet-morrison@comcast.net
JHMORRISON.COM

Source Credit: MassGIS

Gardner Fish & Gun Club

DEP Wetlands
- Marsh/Bog
- Open Water

GARDNER FISH & GUN CLUB

Solar Project and Conservation Restriction (20.47 acres)

- Conservation Restriction_boundary
- Solar Project_extent cleared

0 0.05 0.1 Miles

N

10270

Gardner and Winchendon

Landscape Connection Project

Project Phases

Phase I: 590 Ac.

Phase II: 93.5 Ac. Open Space
28.5 Ac. Park

Phase III: 101 Ac.

Project Total: 813 Ac.

Open Space Land

- Municipal
- Land Trust
- Private
- State DCR
- Religious
- Commercial

Riverfront and Wetlands

0 0.130.25 0.5 Miles N

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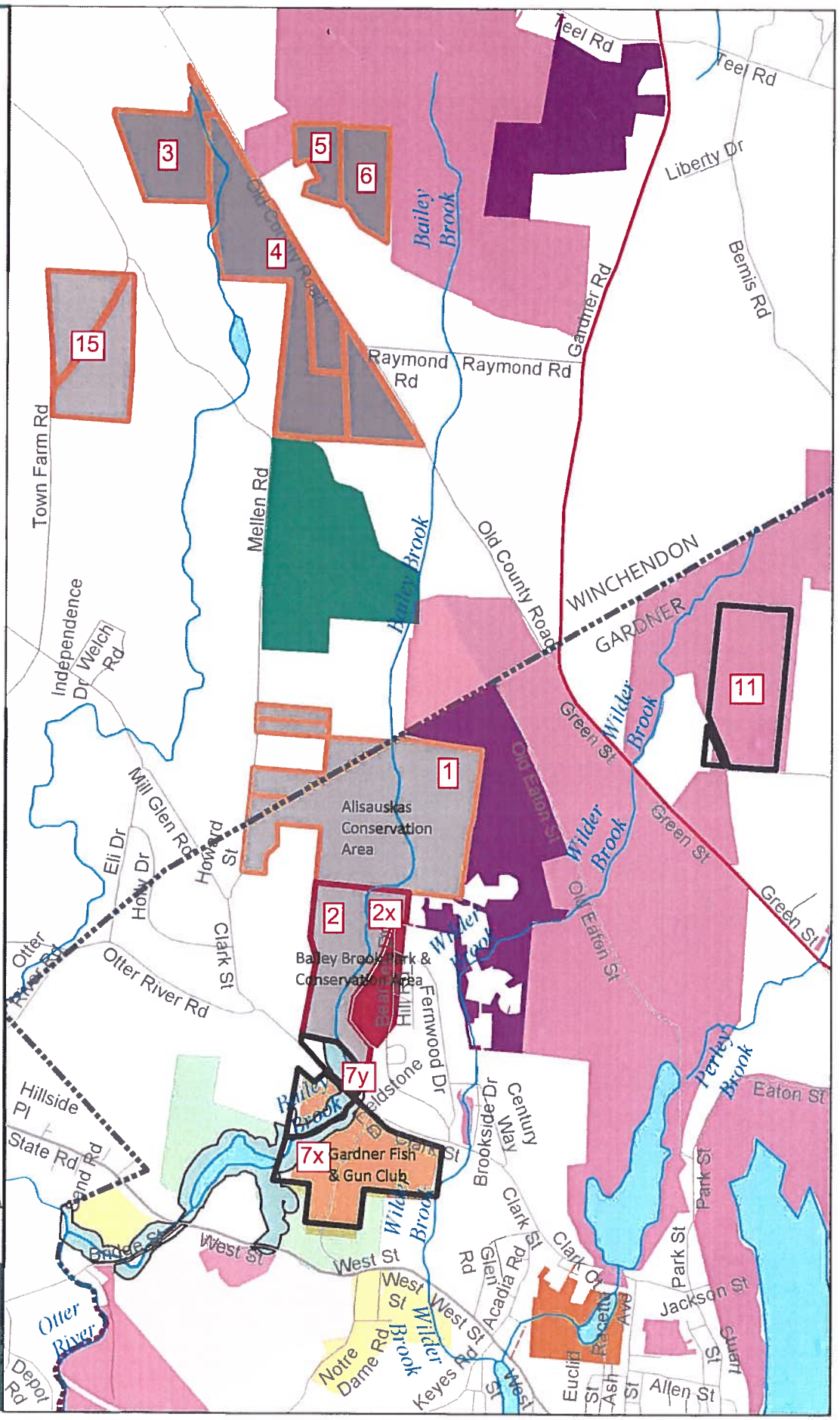
janet-morrison@comcast.net
JHMORRISON.COM

Source Credit: MassGIS



10270

Gardner Fish & Gun	Tract #7X	CR	
	Cost	Paid	To be Paid
CR Acquisition	$16,000		x
Due Diligence			
Appraisal	$2,000	x	
Title	$1,375	x	
Wetlands	$2,180	x	
Survey	$10,000	x	
BDR	$1,250	x	
Recording Fees	$900		x
TOTAL	**$33,705**		

10247

TO THE HONORABLE CITY COUNCIL OF THE CITY OF GARDNER

Ladies and Gentlemen:

The undersigned Petitions your Honorable Body

To authorize the Mayor of the City of Gardner to accept grant funds from the North American Wetlands Conservation Act, Small Grants Program, in the amount up to Thirty Three Thousand Eight Hundred and 00/100 Dollars ($33,800.00), as sub-recipient of an award to the Gardner and Winchendon Wetlands Protection Project, and to enter any necessary contracts thereto, for the purpose of purchasing a conservation restriction on 20.47 acres of land owned by the Gardner Fish & Gun Club, Inc., located on the south side of Clark Street, being a portion of Assessor's Parcels H32/ 4/ 19/ / and H37/ 23/ 1A/ /, as shown on the attached map and survey plan, to be held and monitored by the Conservation Commission for conservation and natural resource protection, pursuant to M.G.L. Chapter 40, Section 8C, and M.G.L. Chapter 184, Section 32, and to expend said funds for the purchase of said conservation restriction, and for necessary due diligence and costs, in accordance with the attached budget, the property to be permanently conserved under Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

Respectfully Submitted:

_____

Gregory Dumas, Chairman
Gardner Conservation Commission

10260

RECEIVED
2020 MAR 30 PM 12:10
CITY CLERK'S OFFICE
GARDNER, MA

Questions contact – Kim Tavallaimola 508-860-6448

PETITION FOR POLE AND WIRE LOCATIONS

North Andover, Massachusetts

To the City Council
Of Gardner, Massachusetts

Massachusetts Electric Company d/b/a National Grid requests permission to locate poles, wires, and fixtures, including the necessary sustaining and protecting fixtures, along and across the following public way:

East Broadway - National Grid to install 1 SO Pole on East Broadway beginning at a point approximately 115' feet southeast of the centerline of the intersection of Prospect Street. Install 1 SO pole 4-2, sidewalk anchor/guy for customer electrical upgrade.

Location approximately as shown on plan attached

Wherefore it prays that after due notice and hearing as provided by law, it be granted a location for and permission to erect and maintain poles and wires, together with such sustaining and protecting fixtures as it may find necessary, said poles to be erected substantially in accordance with the plan filed herewith marked – East Broadway - Gardner – Massachusetts.

No.# 27407276 March 26, 2020

Also for permission to lay and maintain underground laterals, cables, and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each of said petitioners may desire for distributing purposes.

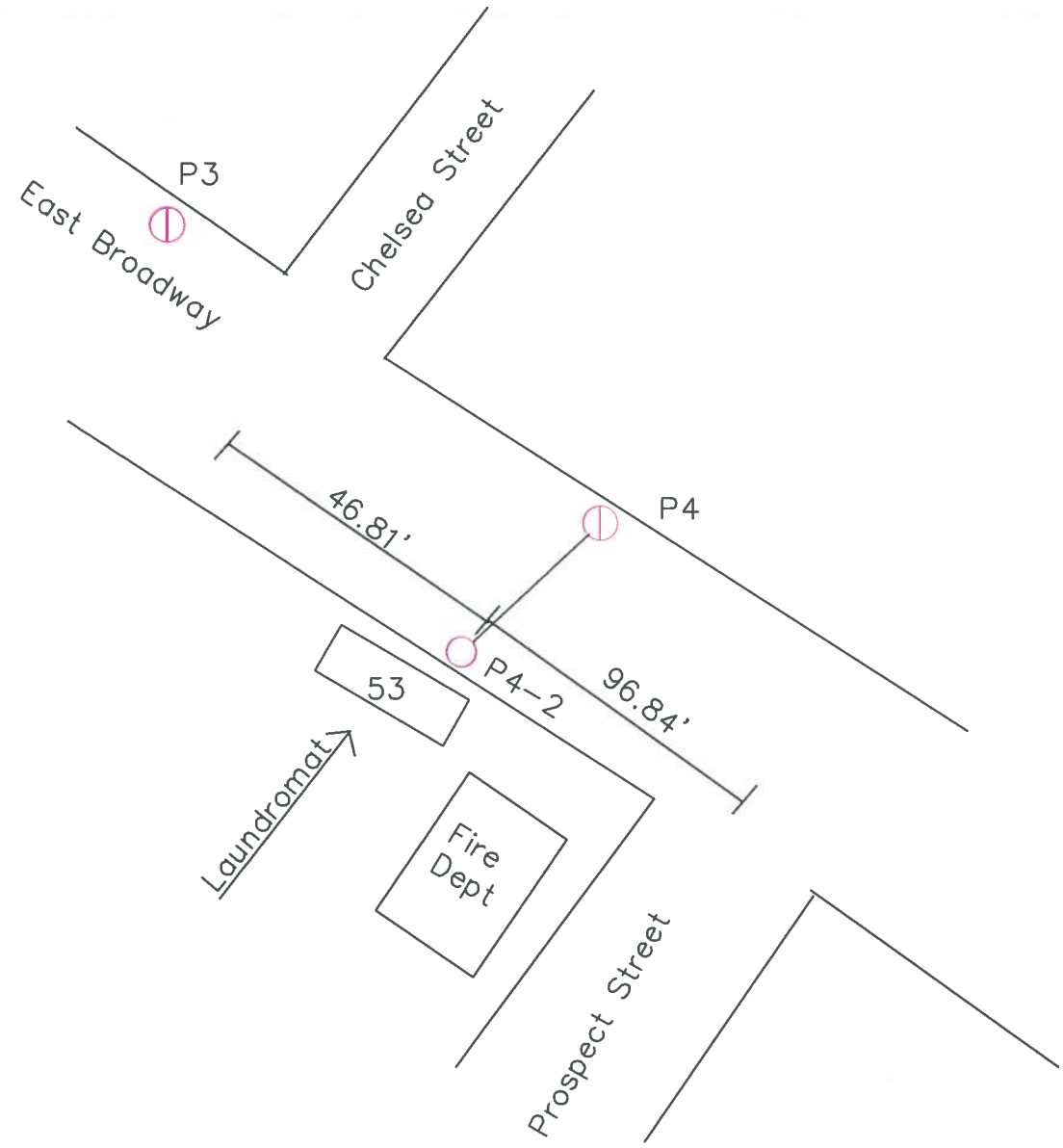
Your petitioner agrees to reserve space for one cross-arm at a suitable point on each of said poles for the fire, police, telephone, and telegraph signal wires belonging to the municipality and used by it exclusively for municipal purposes.

Massachusetts Electric Company d/b/a National Grid
BY Pat Cody
Engineering Department

10260

RECEIVED
2020 MAR 30 PM 12:10
CITY CLERK'S OFFICE
GARDNER, MA

EXHIBIT 'A' NOT TO SCALE
THE EXACT LOCATION OF SAID FACILITIES TO BE ESTABLISHED BY AND UPON THE INSTALLATION AND ERECTION OF THE FACILITIES THEREOF.



LEGEND

- Existing JO Pole
- Proposed SO Pole
- Overhead Line

53 East Broadway
Petition
53 East Broadway Gardner, MA
New pole for business

Date: 03/26/2020
Designer: Kim Tav
W/R: 27407276

nationalgrid

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

10252

CITY OF GARDNER
MASSACHUSETTS
CITY CLERK

95 PLEASANT STREET, ROOM 121
GARDNER, MA 01440-2630
TEL 978-630-4058

ALAN L. AGNELLI
City Clerk
Registrar of Voters

JOHN A. OLIVARI
Assistant City Clerk
FAITH A. GLOVER
Assistant City Clerk

March 3, 2020

Mark M. Schafron, Chairman
Gardner Planning Board
City Hall Annex, Room 201
115 Pleasant Street
Gardner, MA 01440

FILE COPY

Re: Petition by Traven Development LLC to renew the designation of two (2) parcels at 525 Parker Street as a Development Overlay District 1

Dear Mr. Schafron:

Pursuant to G.L. Chapter 40A, § 5, the City Council voted to transmit to the Planning Board for review and report the enclosed Petition by Traven Development LLC to renew the designation of two (2) parcels at 525 Parker Street as a Development Overlay District 1.

Should you have any questions, please feel free to contact me.

Very truly yours,

Alan L. Agnelli

ALAN L. AGNELLI
City Clerk

Enclosures (2)

10252

McCarty Engineering, Inc.
Civil Engineers

RECEIVED
2020 FEB 19 AM 8:56
CITY CLERK'S OFFICE
GARDNER, MA

February 19, 2020

James M. Walsh, Esq., Council President
City Council
95 Pleasant Street
Room 121
Gardner, MA 01440

Via: Hand Delivery

Ref.: Parker Place
525 Parker Place
Development Overlay District 1
Gardner, Massachusetts

Dear Council President and Members:

On behalf of Traven Development LLC., McCarty Engineering, Inc. (MEI) is hereby requesting that under section 675-530 of the City of Gardner Zoning Ordinance that the designation of the Development Overlay District 1, that was voted into action on April 18, 2006 and approved by Mayor Gerald E. St. Hilaire on April 19, 2006 continue to apply to the property situated at 525 Parker Street. Associated with this designation we are also hereby requesting that the approved use be amended from three- and four-unit condominiums to multi-unit residential buildings.

525 Parker Street consists of two parcels totaling approximately 7.5 acres±. The properties are depicted on the City of Gardner Assessors Maps as parcels M22-1-6 and M22-6-27 both of which are zoned Industrial 1 and are configured such that they have frontage along Parker Street, Water Street and Parker Pond.

This parcel is the former location of one of Gardner's premier furniture manufactures Gem Industries who specialized in the creation of dormitory furniture. The factory and parking areas were situated to the interior portions of the site while the perimeter was marked with undulating topography and wetland systems. In the early 2000s the factory was demolished and the site has remained vacant.

In harmony with the previously approved project and the City-wide growth and development policies, the applicant proposes to redevelop this parcel and construct three multi-family residential buildings, totaling 123 units.

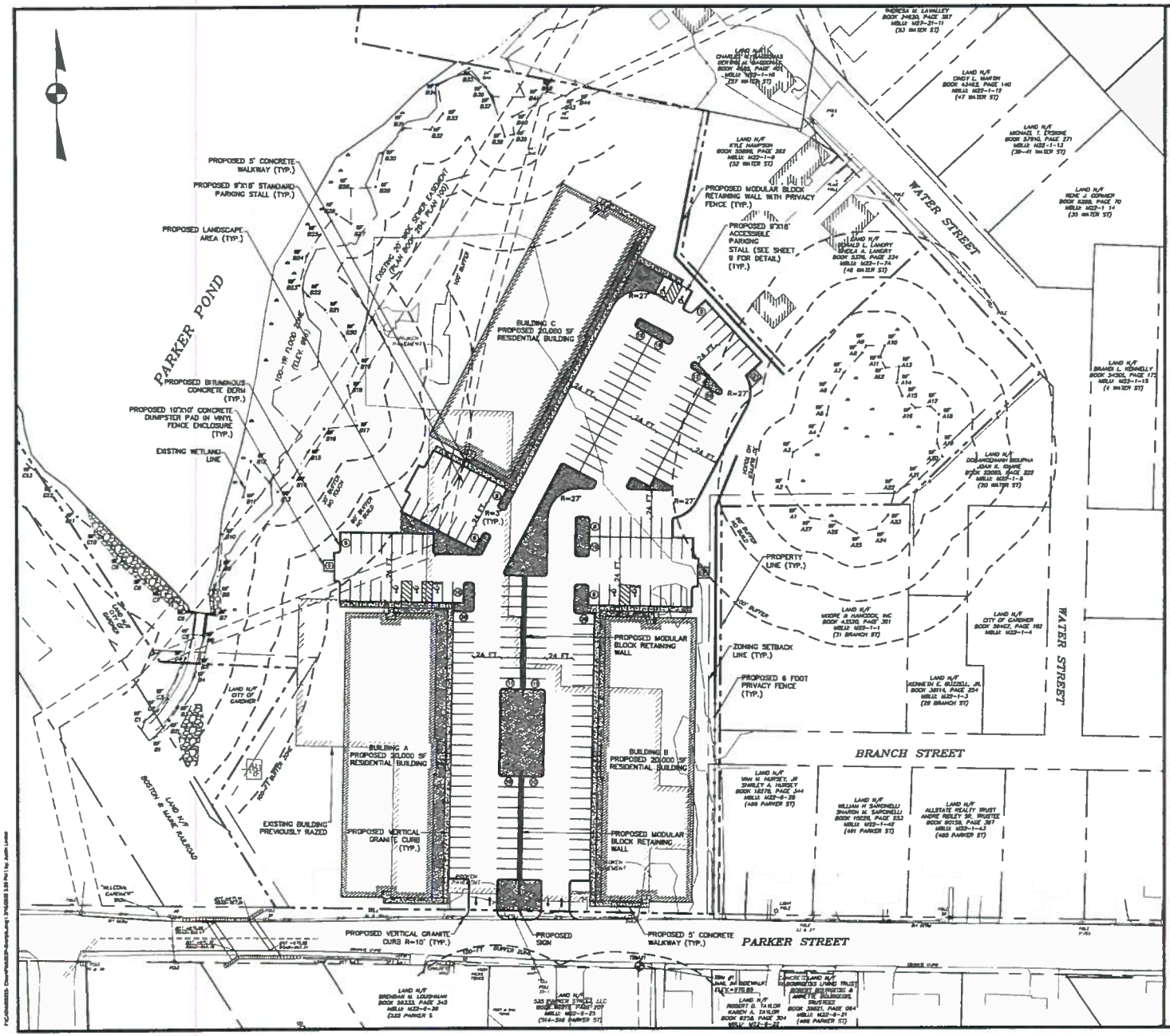
The site has been configured such that the access into the site will be off of Parker Street. The parking lots have been located within the interior of the site with the buildings positioned alongside the edge of the parking. This configuration allows for the buildings to buffer the parking areas to the abutting residences. Linked to this properties' revitalization, an extensive landscape plan is proposed which will aid in accenting the building architecture, complimenting the natural elements while also providing buffering and screening.

This request to amend the Overlay district is the first step in the permitting process. This project will require the filing for a Special Permit and Site Plan Review from the Planning Board and a Notice of Intent with the local Conservation Commission and DEP.

We feel this proposed development is consistent with the intent of the Development Overlay District 1 and we look forward to working with City Council on this matter. If you have any questions of comments, please feel free to contact our office.

Sincerely,

Lar Greene, RLA
P:\MEI\223-Olson\City Council\Docs\Development 1 Overlay Requestletter.docx



LOCUS PLAN

1"=1,000 FT.±

NOTES:

1. EXISTING CONDITIONS INFORMATION SHOWN WAS RECEIVED ELECTRONICALLY FROM HANNIGAN ENGINEERING, INC. DATED NOVEMBER 14, 2019.
2. THE WETLANDS WERE DELINEATED BY ECOTEC, INC. ON OCTOBER 30, 2019. FLAGS WERE FIELD LOCATED BY HANNIGAN ENGINEERING, INC. IN NOVEMBER 2019.
3. A PORTION OF THIS PARCEL IS LOCATED WITHIN THE LIMITS OF THE 100-YEAR FLOODPLAIN BASED ON A REVIEW OF THE MASS GIS ONLINE DATA VIEWER.

ZONING SUMMARY-EAST PARCEL

DISTRICT: INDUSTRIAL 1/DEVELOPMENT OVERLAY DISTRICT 1*

DIMENSIONAL REQUIREMENTS:

	REQUIRED:	PROVIDED:	CONFORMANCE:
MIN. LOT AREA:	5,000 S.F	708,849 S.F	Y
MAX. LOT COVERAGE:	80%	20.7%	Y**
FRONTAGE:	NONE	390.5 FT.	Y
MIN. SIDE YARD:	10 FT.	21 FT	Y
MIN. FRONT YARD:	NONE	10 FT.	Y
MIN. REAR YARD:	20 FT	591 FT.	Y
MAX. HEIGHT:	80 FT	52 FT.	Y
MAX. STORIES:	5	3	Y

*PER SECTION 5.3.3(2) OF THE ZONING BYLAW THIS PROJECT WILL REQUIRE A SPECIAL PERMIT BY THE CITY OF GARDNER PLANNING BOARD. THIS SITE HAS BEEN PREVIOUSLY APPROVED FOR A DEVELOPMENT OVERLAY DISTRICT 1 BY THE CITY COUNCIL ON APRIL 18, 2006 AND APPROVED BY MAYOR GERALD E. ST. HILAIRE ON APRIL 19, 2006.

**MAX LOT COVERAGE WITHIN THE USABLE AREA IS 44.8%.

PARKING SUMMARY:

REQUIREMENTS:

RESIDENTIAL 2 BEDROOM: 2 SPACE/UNIT

RESIDENTIAL 1 BEDROOM: 1 SPACE/UNIT

PROPOSED:

RESIDENTIAL. 90 2 BEDROOM UNITS

RESIDENTIAL. 33 1 BEDROOM UNITS

PARKING REQUIRED:

RESIDENTIAL. 90 UNITS X 2 SP/UNIT= 180 SPACES

RESIDENTIAL. 33 UNITS X 1 SP/UNIT= 33 SPACES

TOTAL SPACES REQUIRED: 213 SPACES

PARKING PROVIDED: 218 SPACES

TOTAL ACCESSIBLE REQUIRED: 7 SPACES

ACCESSIBLE PARKING REQUIRED: 7 SPACES

GRAPHIC SCALE

(IN FEET)

1 inch = 40 ft.

NOT FOR CONSTRUCTION

THESE PLANS WERE PREPARED FOR THE PURPOSE OF OBTAINING STATE AND LOCAL PERMITS AND ARE NOT INTENDED TO BE USED AS CONSTRUCTION DOCUMENTS.

No.	Date	Revision

Drawn By: JJ | Designed By: JJ | Checked By:

McCarty Engineering, Inc.
Civil Engineers
42 Jungle Road, Leominster, MA 01453
phone:(978) 534-1318 fax: (978) 840-6907
www.mccartyeng.com

Project Name

Parker Estates
Parker Street
Gardner, MA

Sheet Title

City Council Graphic

Job No: 223

File Name: 223F-Graphic

Date: February 19, 2020

Scale: 1"=40'

Sheet No. 1

10252

10250

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

ORDERED:

That there be and is hereby appropriated the sum of 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.

7-10251

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

10257

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

ORDERED:

That there be and is hereby appropriated the sum of One Hundred Thirteen Thousand One Hundred Fifty-Nine and 74/100 ($113,159.74) from Free Cash to the Firefighters Salary and Wages Account.

REVISED

10250 - 10251

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 25, 2020

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

These balances are as of March 25, 2020:

		Money Order	Balance
Free Cash	10000-35400		$1,244,066.00
to Fire Dept for Contract Renewal Retro Pay FY19	12220-510**	52,788.33	$1,191,277.67
to Fire Dept for Contract Renewal Retro Pay FY20	12220-510**	113,159.74	$1,078,117.93
			$1,078,117.93

The Snow & Ice account currently has available ($241,093.30)
14421-52210

Sincerely

John Richard
City Auditor

copies: Acting Mayor
City Clerk

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.

United States Internal Revenue Service (IRS) Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that, unless and to the extent we otherwise state, any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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10251

City of Gardner, *Executive Department*

James M. Walsh, Acting Mayor

RECEIVED
2020 MAR 24 AM 11:14
CITY CLERK'S OFFICE
GARDNER, MA

March 24, 2020

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

RE: Agenda Item 10251

Dear Committee Members,

I have received correspondence from our City Auditor indicating that his calculation for the amount necessary to fund the FY20 retroactive payment in accordance with the proposed new firefighter contract was mistaken.

Attached, please find a copy of his correspondence to me dated March 19, 2020, explaining the miscalculation.

As a result, I am submitting a revised money order in the amount of $113,159.74 which should be substituted for the previously submitted order. The grand total to fund FY19 and FY20 now totals $165,948.07.

I am also submitting the backup calculation data for your review. I expect that the Auditor will be available to attend our next Finance Committee Meeting to answer any questions.

In the meantime please contact me if you would like to discuss the matter further.

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

10251

CITY of GARDNER

Office of the City Auditor
John Richard, City Auditor
95 Pleasant Street, Room 114
Gardner, MA 01440
Phone: 978-632-1900 ext. 8020 • Fax: 978-630-3778
Email: jrichard@gardner-ma.gov

Date: 03/19/2020

To: Acting Mayor James M. Walsh

Re: Revise Free Cash requested amount for Fire Fighters FY20 Retro Payment.

My initial estimated FY20 retro payment calculation only accounted for a 2% rate increase for FY20 and should have been 4%. The new estimated amount needed is **$113,159.74** which I have attached a detailed calculation. In the new estimate I used FY19 hours worked for each employee with current rates paid vs FY20 new contract rates. I apologize for the oversite.

Sincerely

John Richard

John Richard
City Auditor

10251

FIREFIGHTERS FY20 RETRO PAY FROM 7-1-19 THRU 6-30-20 ESTIMATE

Emp #	Pay	Desc	Grade	Step	Old Rate	New Rate	Diff	Hrs	Amount
137	100	REG	4	3	$ 22.7824	$ 23.7029	$ 0.92	2,184.0	$ 2,010.28
137	200	REG OT 1.5	4	3	$ 34.4483	$ 35.8290	$ 1.38	327.5	$ 452.18
137	205	REG OT AMB	4	3	$ 34.4483	$ 35.8290	$ 1.38	134.0	$ 185.02
137	500	HOLIDAY	4	3	$ 4,809.14	$ 5,001.50	$ 192.37	1.0	$ 192.37
138	100	REG	4	3	$ 22.7824	$ 23.7029	$ 0.92	2,184.0	$ 2,010.32
138	200	REG OT 1.5	4	3	$ 35.6846	$ 37.0653	$ 1.38	178.5	$ 246.46
138	500	HOLIDAY	4	3	$ 4,809.14	$ 5,001.50	$ 192.37	1.0	$ 192.37
138	725	COLLATERAL	4	3	$ 0.6256	$ 0.6506	$ 0.03	28.5	$ 0.71
491	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	84.0	$ 74.34
491	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	462.0	$ 408.87
491	105	REG AMB	4	3	$ 21.9071	$ 22.7921	$ 0.88	1,638.0	$ 1,449.63
491	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	436.5	$ 579.45
491	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	200.5	$ 266.16
491	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	72.0	$ 95.58
491	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	34.0	$ 45.13
491	500	HOLIDAY	4	3	$ 4,506.18	$ 4,686.42	$ 180.25	1.0	$ 180.25
491	540	EDUC INCENTIVE	4	3	$ 21.9071	$ 22.7921	$ 0.88	63.0	$ 55.75
491	725	COLLATERAL	4	3	$ 33.1354	$ 34.4629	$ 1.33	81.0	$ 107.53
491	725	COLLATERAL	4	3	$ 33.1354	$ 34.4629	$ 1.33	57.0	$ 75.67
494	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	273.0	$ 241.60
494	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	147.0	$ 130.10
494	105	REG AMB	4	3	$ 21.9071	$ 22.7921	$ 0.88	1,764.0	$ 1,561.14
494	200	REG OT 1.5	4	3	$ 32.9981	$ 34.3256	$ 1.33	316.0	$ 419.49
494	200	REG OT 1.5	4	3	$ 32.9981	$ 34.3256	$ 1.33	64.0	$ 84.96
494	205	REG OT AMB	4	3	$ 32.9981	$ 34.3256	$ 1.33	51.0	$ 67.70
494	500	HOLIDAY	4	3	$ 4,438.86	$ 4,616.41	$ 177.55	1.0	$ 177.55
611	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	1,281.0	$ 1,133.69
611	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	903.0	$ 799.15
611	200	REG OT 1.5	4	2	$ 33.1354	$ 34.4629	$ 1.33	61.0	$ 80.98
611	200	REG OT 1.5	4	2	$ 33.1354	$ 34.4629	$ 1.33	100.0	$ 132.75
611	205	REG OT AMB	4	2	$ 33.1354	$ 34.4629	$ 1.33	33.5	$ 44.47
611	205	REG OT AMB	4	2	$ 33.1354	$ 34.4629	$ 1.33	20.0	$ 26.55
611	500	HOLIDAY	4	2	$ 4,199.74	$ 4,367.73	$ 167.99	1.0	$ 167.99
612	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	1,281.0	$ 1,133.69
612	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	903.0	$ 799.15
612	200	REG OT 1.5	4	2	$ 33.1354	$ 34.4629	$ 1.33	120.5	$ 159.96
612	200	REG OT 1.5	4	2	$ 33.1354	$ 34.4629	$ 1.33	213.0	$ 282.76
612	205	REG OT AMB	4	2	$ 33.1354	$ 34.4629	$ 1.33	88.0	$ 116.82
612	205	REG OT AMB	4	2	$ 33.1354	$ 34.4629	$ 1.33	188.0	$ 249.57
612	500	HOLIDAY	4	2	$ 4,199.74	$ 4,367.73	$ 167.99	1.0	$ 167.99
613	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	1,281.0	$ 1,133.69
613	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	903.0	$ 799.15
613	200	REG OT 1.5	4	2	$ 33.1354	$ 34.4629	$ 1.33	235.0	$ 311.96
613	200	REG OT 1.5	4	2	$ 33.1354	$ 34.4629	$ 1.33	193.0	$ 256.21
613	205	REG OT AMB	4	2	$ 33.1354	$ 34.4629	$ 1.33	130.5	$ 173.24
613	205	REG OT AMB	4	2	$ 33.1354	$ 34.4629	$ 1.33	69.3	$ 91.93
613	500	HOLIDAY	4	2	$ 4,199.74	$ 4,367.73	$ 167.99	1.0	$ 167.99
621	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	1,359.0	$ 1,202.72
621	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	819.0	$ 724.81
621	150	INJ PAY AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	6.0	$ 5.31

Emp #	Pay	Desc	Grade	Step	Old Rate	New Rate	Diff	Hrs	Amount
621	200	REG OT 1.5	4	2	$ 32.9981	$ 34.3256	$ 1.33	54.0	$ 71.69
621	200	REG OT 1.5	4	2	$ 32.9981	$ 34.3256	$ 1.33	98.0	$ 130.10
621	205	REG OT AMB	4	2	$ 32.9981	$ 34.3256	$ 1.33	54.0	$ 71.69
621	205	REG OT AMB	4	2	$ 32.9981	$ 34.3256	$ 1.33	48.0	$ 63.72
621	500	HOLIDAY	4	2	$ 4,199.74	$ 4,367.73	$ 167.99	1.0	$ 167.99
790	105	REG AMB	4	1	$ 18.7226	$ 19.4790	$ 0.76	2,184.0	$ 1,652.04
790	200	REG OT 1.5	4	1	$ 28.0839	$ 29.2186	$ 1.13	200.0	$ 226.93
790	205	REG OT AMB	4	1	$ 28.0839	$ 29.2186	$ 1.13	200.0	$ 226.93
790	500	HOLIDAY	4	1	$ 4,080.00	$ 4,243.20	$ 163.20	1.0	$ 163.20
885	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	399.0	$ 353.11
885	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	2,184.0	$ 1,932.84
885	150	INJ PAY AMB	4	3	$ 21.9071	$ 22.7921	$ 0.88	-	$ -
885	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	82.0	$ 108.85
885	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	14.0	$ 18.58
885	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	10.0	$ 13.27
885	500	HOLIDAY	4	3	$ 4,775.48	$ 4,966.50	$ 191.02	1.0	$ 191.02
885	540	EDU INC	4	3	$ 21.9071	$ 22.7921	$ 0.88	46.0	$ 40.71
885	725	COLLATERAL	4	3	$ 33.1354	$ 34.4629	$ 1.33	9.0	$ 11.95
885	725	COLLATERAL	4	3	$ 33.1354	$ 34.4629	$ 1.33	2.0	$ 2.65
969	105	REG AMB	4	1	$ 20.2202	$ 21.0371	$ 0.82	2,184.0	$ 1,784.12
969	200	REG OT 1.5	4	1	$ 30.3304	$ 31.5557	$ 1.23	380.0	$ 465.64
969	500	HOLIDAY	4	1	$ 4,080.00	$ 4,243.20	$ 163.20	1.0	$ 163.20
1180	100	REG	5	5	$ 33.2036	$ 34.5448	$ 1.34	1,953.0	$ 2,619.35
1180	100	REG	5	5	$ 33.2036	$ 34.5448	$ 1.34	231.0	$ 309.82
1180	200	REG OT 1.5	5	5	$ 51.4537	$ 53.4655	$ 2.01	246.0	$ 494.90
1180	200	REG OT 1.5	5	5	$ 51.4537	$ 53.4655	$ 2.01	41.0	$ 82.48
1180	205	REG OT AMB	5	5	$ 51.4537	$ 53.4655	$ 2.01	4.0	$ 8.05
1180	500	HOLIDAY	5	5	$ 7,034.08	$ 7,315.45	$ 281.36	1.0	$ 281.36
1668	100	REG	5	3	$ 30.7171	$ 31.9581	$ 1.24	2,184.0	$ 2,710.24
1668	200	REG OT 1.5	5	3	$ 47.4493	$ 49.3108	$ 1.86	229.8	$ 427.66
1668	500	HOLIDAY	5	3	$ 6,743.13	$ 7,012.85	$ 269.73	1.0	$ 269.73
1668	540	EDUC INCENTIVE	5	3	$ 30.7171	$ 31.9581	$ 1.24	21.0	$ 26.06
1790	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	399.0	$ 353.11
1790	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	1,785.0	$ 1,579.73
1790	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	38.0	$ 50.44
1790	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	183.5	$ 243.60
1790	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	32.0	$ 42.48
1790	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	126.0	$ 167.26
1790	500	HOLIDAY	4	3	$ 4,775.48	$ 4,966.50	$ 191.02	1.0	$ 191.02
2147	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	693.0	$ 613.30
2147	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	1,491.0	$ 1,319.54
2147	200	REG OT 1.5	4	3	$ 34.5091	$ 35.8366	$ 1.33	182.0	$ 241.60
2147	200	REG OT 1.5	4	3	$ 34.5091	$ 35.8366	$ 1.33	274.0	$ 363.73
2147	205	REG OT AMB	4	3	$ 34.5091	$ 35.8366	$ 1.33	82.5	$ 109.52
2147	205	REG OT AMB	4	3	$ 34.5091	$ 35.8366	$ 1.33	172.5	$ 228.99
2147	500	HOLIDAY	4	3	$ 4,741.82	$ 4,931.49	$ 189.67	1.0	$ 189.67
2735	100	REG	4	5	$ 23.6740	$ 24.6307	$ 0.96	2,184.0	$ 2,089.36
2735	200	REG OT 1.5	4	5	$ 35.6484	$ 37.0834	$ 1.44	158.0	$ 226.73
2735	500	HOLIDAY	4	5	$ 5,197.01	$ 5,404.89	$ 207.88	1.0	$ 207.88
2735	530	OUT OF GRADE	4	5	$ 12.0800	$ 12.56	$ 0.48	1.0	$ 0.48
2805	100	REG	4	5	$ 23.6740	$ 24.6307	$ 0.96	2,184.0	$ 2,089.36
2805	200	REG OT 1.5	4	5	$ 35.7858	$ 37.2208	$ 1.44	1,454.3	$ 2,086.85
2805	205	REG OT AMB	4	5	$ 35.7858	$ 37.2208	$ 1.44	55.0	$ 78.93

Emp #	Pay	Desc	Grade	Step	Old Rate	New Rate	Diff	Hrs	Amount
2805	500	HOLIDAY	4	5	$ 5,197.01	$ 5,404.89	$ 207.88	1.0	$ 207.88
2805	522	TRAINOR STIPH	4	5	$ 35.7858	$ 37.2208	$ 1.44	3.0	$ 4.31
2805	530	OUT OF GRADE	4	5	$ 95.73	$ 99.56	$ 3.83	1.0	$ 3.83
2805	540	EDUC INCENTIVE	4	5	$ 35.7858	$ 37.2208	$ 1.44	4.0	$ 5.74
2805	725	COLLATERAL	4	5	$ 35.7858	$ 37.2208	$ 1.44	497.8	$ 714.27
2807	100	REG	4	4	$ 22.7824	$ 23.7029	$ 0.92	2,184.0	$ 2,010.32
2807	200	REG OT 1.5	4	4	$ 35.8219	$ 37.2026	$ 1.38	364.0	$ 502.58
2807	205	REG OT AMB	4	4	$ 35.8219	$ 37.2026	$ 1.38	106.0	$ 146.36
2807	500	HOLIDAY	4	4	$ 5,001.27	$ 5,201.33	$ 200.05	1.0	$ 200.05
2807	530	OUT OF GRADE	4	4	$ 446.89	$ 464.77	$ 17.88	1.0	$ 17.88
2807	725	COLLATERAL	4	4	$ 35.8219	$ 37.2026	$ 1.38	44.0	$ 60.75
2815	100	REG	4	5	$ 23.6740	$ 24.6307	$ 0.96	2,184.0	$ 2,089.36
2815	200	REG OT 1.5	4	5	$ 35.7858	$ 37.2208	$ 1.44	447.0	$ 641.45
2815	205	REG OT AMB	4	5	$ 35.7858	$ 37.2208	$ 1.44	3.0	$ 4.31
2815	500	HOLIDAY	4	5	$ 5,197.01	$ 5,404.89	$ 207.88	1.0	$ 207.88
2815	530	OUT OF GRADE	4	5	$ 1,193.58	$ 1,253.26	$ 59.68	1.0	$ 59.68
2815	725	COLLATERAL	4	5	$ 35.7858	$ 37.2208	$ 1.44	34.0	$ 48.79
2834	100	REG	4	4	$ 23.6740	$ 24.6307	$ 0.96	2,184.0	$ 2,089.36
2834	200	REG OT 1.5	4	4	$ 35.7858	$ 37.2208	$ 1.44	240.0	$ 344.40
2834	205	REG OT AMB	4	4	$ 35.7858	$ 37.2208	$ 1.44	27.0	$ 38.75
2834	500	HOLIDAY	4	4	$ 5,001.27	$ 5,201.33	$ 200.05	1.0	$ 200.05
2834	530	OUT OF GRADE	4	4	$ 65.75	$ 68.38	$ 2.63	1.0	$ 2.63
2875	100	REG	4	5	$ 23.6740	$ 24.6307	$ 0.96	2,184.0	$ 2,089.36
2875	200	REG OT 1.5	4	5	$ 35.7858	$ 37.2208	$ 1.44	223.8	$ 321.08
2875	500	HOLIDAY	4	5	$ 5,197.01	$ 5,404.89	$ 207.88	1.0	$ 207.88
2875	530	OUT OF GRADE	4	5	$ 95.73	$ 99.56	$ 3.83	1.0	$ 3.83
2911	100	REG	4	4	$ 22.7824	$ 23.7029	$ 0.92	2,184.0	$ 2,010.32
2911	200	REG OT 1.5	4	4	$ 35.8219	$ 37.2026	$ 1.38	52.0	$ 71.80
2911	500	HOLIDAY	4	4	$ 5,001.27	$ 5,201.33	$ 200.05	1.0	$ 200.05
2911	530	OUT OF GRADE	4	4	$ 65.75	$ 68.38	$ 2.63	1.0	$ 2.63
2911	540	EDUC INCENTIVE	4	4	$ 22.7824	$ 23.7029	$ 0.92	161.5	$ 148.66
2911	725	COLLATERAL	4	4	$ 35.8219	$ 37.2026	$ 1.38	153.0	$ 211.25
2922	100	REG	5	2	$ 29.5545	$ 30.7486	$ 1.19	2,184.0	$ 2,607.80
2922	200	REG OT 1.5	5	2	$ 45.9801	$ 47.7712	$ 1.79	174.5	$ 312.54
2922	205	REG OT AMB	5	2	$ 45.9801	$ 47.7712	$ 1.79	28.0	$ 50.15
2922	500	HOLIDAY	5	2	$ 6,487.89	$ 6,747.41	$ 259.52	1.0	$ 259.52
2922	540	EDUC INCENTIVE	5	2	$ 29.5545	$ 30.7486	$ 1.19	12.5	$ 14.93
2922	725	COLLATERAL	5	2	$ 45.9801	$ 47.7712	$ 1.79	393.0	$ 703.89
2923	100	REG	4	4	$ 22.7824	$ 23.7029	$ 0.92	1,008.0	$ 927.84
2923	100	REG	4	4	$ 22.7824	$ 23.7029	$ 0.92	1,176.0	$ 1,082.48
2923	200	REG OT 1.5	4	4	$ 37.1955	$ 38.5763	$ 1.38	150.0	$ 207.11
2923	200	REG OT 1.5	4	4	$ 37.1955	$ 38.5763	$ 1.38	226.5	$ 312.73
2923	205	REG OT AMB	4	4	$ 37.1955	$ 38.5763	$ 1.38	41.0	$ 56.61
2923	205	REG OT AMB	4	4	$ 37.1955	$ 38.5763	$ 1.38	42.0	$ 57.99
2923	500	HOLIDAY	4	4	$ 4,896.47	$ 5,092.33	$ 195.86	1.0	$ 195.86
2924	100	REG	4	4	$ 22.7824	$ 23.7029	$ 0.92	1,008.0	$ 927.84
2924	100	REG	4	4	$ 22.7824	$ 23.7029	$ 0.92	1,166.0	$ 1,073.28
2924	200	REG OT 1.5	4	4	$ 34.4483	$ 35.8290	$ 1.38	208.5	$ 287.88
2924	200	REG OT 1.5	4	4	$ 34.4483	$ 35.8290	$ 1.38	59.0	$ 81.46
2924	205	REG OT AMB	4	4	$ 34.4483	$ 35.8290	$ 1.38	39.0	$ 53.85
2924	205	REG OT AMB	4	4	$ 34.4483	$ 35.8290	$ 1.38	58.0	$ 80.08
2924	500	HOLIDAY	4	4	$ 4,896.47	$ 5,092.33	$ 195.86	1.0	$ 195.86
3125	100	REG	4	5	$ 23.6740	$ 24.6307	$ 0.96	2,184.0	$ 2,089.36

Emp #	Pay	Desc	Grade	Step	Old Rate	New Rate	Diff	Hrs	Amount
3125	200	REG OT 1.5	4	5	$ 37.1594	38.5944	$ 1.44	184.0	$ 264.04
3125	205	REG OT AMB	4	5	$ 37.1594	38.5944	$ 1.44	106.0	$ 152.11
3125	500	HOLIDAY	4	5	$ 5,197.01	$ 5,404.89	$ 207.88	1.0	$ 207.88
3125	509	OUT OF GRADE	4	5	$ 211.98	$ 220.46	$ 8.48	1.0	$ 8.48
3170	100	REG	6	5	$ 35.9293	$ 37.3807	$ 1.45	2,184.0	$ 3,169.92
3170	200	REG OT 1.5	6	5	$ 56.6412	$ 58.8183	$ 2.18	79.5	$ 173.08
3170	500	HOLIDAY	6	5	$ 7,886.82	$ 8,202.30	$ 315.47	1.0	$ 315.47
3170	530	OUT OF GRADE	6	5	$ 1,121.24	$ 1,166.09	$ 44.85	1.0	$ 44.85
3170	600	SICK INCENTIVE	6	5	$ 1,342.99	$ 1,396.71	$ 53.72	1.0	$ 53.72
3360	100	REG	5	4	$ 33.2036	$ 34.5448	$ 1.34	2,184.0	$ 2,929.16
3360	200	REG OT 1.5	5	4	$ 49.8054	$ 51.8171	$ 2.01	390.5	$ 785.60
3360	205	REG OT AMB	5	4	$ 49.8054	$ 51.8171	$ 2.01	5.5	$ 11.06
3360	500	HOLIDAY	5	4	$ 7,008.59	$ 7,288.94	$ 280.34	1.0	$ 280.34
3360	540	EDUC INCENTIVE	5	4	$ 33.2036	$ 34.5448	$ 1.34	60.5	$ 81.14
3360	725	COLLATERAL	5	4	$ 49.8054	$ 51.8171	$ 2.01	75.0	$ 150.88
3444	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	2,184.0	$ 1,932.84
3444	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	213.8	$ 283.75
3444	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	19.0	$ 25.22
3444	500	HOLIDAY	4	3	$ 4,809.14	$ 5,001.50	$ 192.37	1.0	$ 192.37
3444	725	COLLATERAL	4	3	$ 33.1354	$ 34.4629	$ 1.33	266.5	$ 353.78
3446	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	2,101.0	$ 1,859.39
3446	150	INJ PAY	4	3	$ 21.9071	$ 22.7921	$ 0.88	20.0	$ 17.70
3446	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	160.0	$ 212.40
3446	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	18.0	$ 23.89
3446	500	HOLIDAY	4	3	$ 4,809.14	$ 5,001.50	$ 192.37	1.0	$ 192.37
3449	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	2,184.0	$ 1,932.84
3449	200	REG OT 1.5	4	3	$ 32.9981	$ 34.3256	$ 1.33	387.0	$ 513.74
3449	205	REG OT AMB	4	3	$ 32.9981	$ 34.3256	$ 1.33	84.0	$ 111.51
3449	500	HOLIDAY	4	3	$ 4,809.14	$ 5,001.50	$ 192.37	1.0	$ 192.37
3449	522	TRAINOR STIPH	4	3	$ 32.9981	$ 34.3256	$ 1.33	10.0	$ 13.28
3640	100	REG	5	4	$ 31.9264	$ 33.2162	$ 1.29	2,184.0	$ 2,816.84
3640	200	REG OT 1.5	5	4	$ 49.5380	$ 51.4726	$ 1.93	66.0	$ 127.69
3640	500	HOLIDAY	5	4	$ 6,743.13	$ 7,012.85	$ 269.73	1.0	$ 269.73
3640	725	COLLATERAL	5	4	$ 49.5380	$ 51.4726	$ 1.93	669.0	$ 1,294.28
3645	100	REG	5	4	$ 31.9264	$ 33.2162	$ 1.29	2,184.0	$ 2,816.84
3645	200	REG OT 1.5	5	4	$ 49.5380	$ 51.4726	$ 1.93	365.0	$ 706.14
3645	205	REG OT AMB	5	4	$ 49.5380	$ 51.4726	$ 1.93	31.0	$ 59.97
3645	500	HOLIDAY	5	4	$ 6,743.13	$ 7,012.85	$ 269.73	1.0	$ 269.73
4786	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	399.0	$ 353.11
4786	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	1,785.0	$ 1,579.73
4786	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	10.0	$ 13.27
4786	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	44.0	$ 58.41
4786	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	14.0	$ 18.58
4786	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	14.0	$ 18.58
4786	500	HOLIDAY	4	3	$ 4,775.48	$ 4,966.50	$ 191.02	1.0	$ 191.02
5992	105	REG AMB	4	1	$ 18.72	$ 19.48	$ 0.76	1,680.0	$ 1,270.80
5992	205	REG OT AMB	4	1	$ 28.08	$ 29.22	$ 1.13	180.0	$ 204.24
5992	500	HOLIDAY	4	1	$ 3,509.20	$ 3,649.57	$ 140.37	1.0	$ 140.37
6774	105	REG AMB	4	1	$ 18.72	$ 19.48	$ 0.76	1,680.0	$ 1,270.80
6774	205	REG OT AMB	4	1	$ 28.08	$ 29.22	$ 1.13	100.0	$ 113.46
6774	500	HOLIDAY	4	1	$ 3,509.20	$ 3,649.57	$ 140.37	1.0	$ 140.37
7600	100	REG	4	6	$ 24.6019	$ 25.5957	$ 0.99	2,184.0	$ 2,170.48
7600	200	REG OT 1.5	4	6	$ 37.1776	$ 38.6683	$ 1.49	400.5	$ 597.03

Emp #	Pay	Desc	Grade	Step	Old Rate	New Rate	Diff	Hrs	Amount
7600	205	REG OT AMB	4	6	$ 37.1776	$ 38.6683	$ 1.49	14.0	$ 20.87
7600	500	HOLIDAY	4	6	$ 5,400.68	$ 5,616.70	$ 216.03	1.0	$ 216.03
7600	530	OUT OF GRADE	4	6	$ 993.48	$ 1,033.22	$ 39.74	1.0	$ 39.74
8096	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	399.0	$ 353.11
8096	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	1,785.0	$ 1,579.73
8096	200	REG OT 1.5	4	3	$ 32.0407	$ 32.9981	$ 0.96	104.5	$ 100.04
8096	205	REG OT AMB	4	3	$ 32.0407	$ 32.9981	$ 0.96	25.5	$ 24.41
8096	500	HOLIDAY	4	3	$ 4,775.48	$ 4,966.50	$ 191.02	1.0	$ 191.02
8096	540	EDUC INCENTIVE	4	3	$ 21.9071	$ 22.7921	$ 0.88	5.0	$ 4.42
8096	540	EDUC INCENTIVE	4	3	$ 21.9071	$ 22.7921	$ 0.88	33.5	$ 29.65
8096	725	COLLATERAL	4	3	$ 32.0407	$ 32.9981	$ 0.96	74.0	$ 70.84
8306	105	REG AMB	4	2	$ 20.2202	$ 21.0371	$ 0.82	2,184.0	$ 1,784.12
8306	200	REG OT 1.5	4	2	$ 30.4677	$ 31.6931	$ 1.23	100.0	$ 122.54
8306	500	HOLIDAY	4	2	$ 3,509.20	$ 3,649.57	$ 140.37	1.0	$ 140.37
8306	540	EDUC INCENTIVE	4	2	$ 20.2202	$ 21.0371	$ 0.82	16.0	$ 13.07
							ESTIMATE FY20 FIREFIGHTS RETO PAY		
							TOTAL		**$ 113,159.74**

2-1 & 2-2
(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

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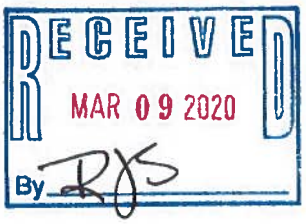
Telephone (978) 632-7948
Fax (978) 630-3703

Writer's Email:

March 2, 2020

VIA HAND DELIVERY

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



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

10250-10251

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:

April 27, 2020

RECEIVED
2020 APR 27 AM 11:01
CITY CLERK'S OFFICE
GARDNER, MA

VIA ELECTRONIC MAIL
AND HAND DELIVERY

Elizabeth Kazinskas, Acting Mayor
City of Gardner
95 Pleasant Street
Gardner, MA 01440

Re: Firefighter Contract

Dear Acting Mayor Kazinskas:

I am writing to provide you with an update regarding the status of the Collective Bargaining Agreement (the "CBA") with the City of Gardner Firefighters, Local 2215. As you know, former Acting Mayor Walsh submitted a money order to the City Council seeking an appropriation to fund the CBA between the Firefighters and the City. At the time he submitted the funding, the CBA had not been signed by the Mayor or Acting Mayor. However, the City had entered into a memorandum of agreement (the "MOA") with the Firefighters on December 16, 2019 prior to Mayor Hawke's resignation. This MOA had been approved by Mayor Hawke and was signed by me as the duly authorized bargaining agent for the City.

Due, in part, to the timing of the execution of the MOA, which occurred on the same day as the last City Council meeting of 2019, and before the swearing in of the new City Council on January 6, 2020, the City did not seek an appropriation to fund the MOA prior to Mayor Hawke's resignation on January 21, 2020. As a result, the Firefighters filed an Unfair Labor Practice (the "ULP") charge against the City with the Commonwealth of Massachusetts Labor Relations Commission. The basis of the ULP is that the City is in violation of M.G.L. c. 150E, § 7 in that if failed to seek an appropriation within thirty days of the execution of the MOA. I am scheduled to appear at an investigative conference on May 28, 2020. In addition, at the direction of Active Mayor Walsh, the Law Department filed a Complaint in Superior Court seeking a declaratory judgment. The question presented in the Complaint for Declaratory Judgment concerns the authority of an active mayor to sign a collective bargaining agreement, specifically the CBA between the City and the Firefighters. I must stress that this is not a lawsuit against the City's Firefighters. The Firefighters union was named as an interested party as the question presented concerns their CBA. Therefore, they are an interested party.

It is my understanding that the Council has not yet voted on the appropriation pending the outcome of the Declaratory Judgment action. The Law Department and the Union's legal counsel

have continued to discuss this situation as any resolution to the Declaratory Judgment action may be months, if not years away. To that end, the Union requested that the City obtain an outside legal opinion regarding the authority of the acting mayor to sign the CBA.

As we discussed, the Law Department sought an outside legal opinion from Attorney Kim Rozak at Mirick O'Connell. I have enclosed a copy of her opinion for your review. I am also awaiting a letter from former Mayor Mark Hawke providing the Council with additional information regarding the authorizations he gave to myself and Debra Pond, the City's Human Resources Director to conduct negotiations with the Firefighters through the end of 2019. I will provide a copy of that letter once it has been provided to me by former Mayor Hawke.

Based on the enclosed, and prior information provided to the Council by the Law Department, the Law Department recommends that you, as Acting Mayor, sign the CBA and that the Council proceed with its vote on the requested appropriation to fund the CBA so as to bring this matter to close.

Thank you for your attention to this matter. Please let me know if you have any additional questions.

Very truly yours,

John M. Flick
City Solicitor

Enc.

Cc: Debra Pond, Dir. Human Resources

10250-10251

MIRICK O'CONNELL

ATTORNEYS AT LAW

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RECEIVED
2020 APR 27 AM 11:01
CITY CLERK'S OFFICE
GARDNER, MA

April 20, 2020

VIA E-MAIL

John M. Flick, Esq., City Solicitor
City of Gardner
144 Central Street, Suite 201
Gardner, MA 01440

Re: Authority of Acting Mayor to Sign Firefighters Collective Bargaining Agreement

Dear Attorney Flick:

This letter is in response to your request for an opinion regarding the powers of the Acting Mayor. Specifically, you requested our opinion as to whether the Acting Mayor has the authority to sign the July 1, 2018 – June 30, 2021 integrated Collective Bargaining Agreement between the City of Gardner and the Gardner Firefighters Local 2215 ("integrated CBA").

The issue of whether the Acting Mayor has the authority to sign the integrated CBA depends on whether or not the City Council will hold to its longstanding past practice requiring that an integrated collective bargaining agreement be signed and that document be submitted to the City Council as the basis for a vote to determine whether the City Council will appropriate (or not) funding for the successor CBA.

On December 16, 2019, the City of Gardner ("City") reached an agreement with the Gardner Firefighters Local 2215 ("Union") on the terms of a successor collective bargaining agreement for the period of July 1, 2018 – June 30, 2021, and executed a Memorandum of Agreement ("MOA") memorializing those terms. The Union ratified the MOA on or about December 20, 2019.[1]

The City's Director of Human Resources prepared the integrated CBA, a draft of which was provided to the Union on January 17, 2020, and finalized on February 12, 2020.

On January 21, 2020, Mayor Mark Hawke resigned from office. The resignation occurred during the first eighteen months of his two-year term. The City has had an Acting

[1] For purposes of this opinion letter, I understand that you were designated by Mayor Hawke to act as the City's representative pursuant to M.G.L. c.150E, section 1, for purposes of dealing with the fire union at the time the terms of a successor agreement were reached on December 16, 2019.

Mayor since that time and will continue to have an Acting Mayor until the new Mayor is elected in June 2020.

The relevant language in Section 32 of the City's Charter bestows the following powers upon the Acting Mayor:

> If the Mayor is absent or unable from any cause temporarily to perform his duties, or if his office is vacant during the first eighteen months of his term, his duties shall be performed by the president of the city council. The person upon whom such duties shall devolve shall be called 'acting mayor', and he shall possess the powers of mayor only in matters not admitting of delay, but shall have no power to make permanent appointments.

With respect to all documents examined by us, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies or forms, and the legal capacity of all natural persons.

We have made such examination of Massachusetts laws as we have deemed relevant for purposes of this opinion letter, and we have not considered and express no opinion on the laws of any other state or jurisdiction. Our opinions are expressed only with respect to Massachusetts laws which are presently in effect.

Based upon the foregoing, we are of the opinion that:

1. <u>If the City Council holds to its longstanding past practice requiring that an integrated collective bargaining agreement be signed and submitted to the City Council as the basis for a vote to determine whether the City Council will appropriate (or not) funding for the CBA, then the Acting Mayor would have the authority to execute the integrated CBA based on the following analysis.</u>

Section 7(b) of Chapter 150E of the Massachusetts General Laws states, in relevant part, "The employer … shall submit to the appropriate legislative body within thirty days after the date on which the agreement is executed by the parties, a request for an appropriation necessary to fund the cost items contained therein …." Pursuant to Section 5 of the City Charter, the City Council is the legislative body.

Under Chapter 150E, employers and unions have a duty to bargain in good faith over the terms and conditions of collectively bargained agreements. Subsequent to reaching an agreement, the duty to bargain in good faith includes submitting it to the legislative body for funding within thirty (30) days of the execution of the agreement. Failure to bargain in good faith constitutes an unfair labor practice for which the public union in Massachusetts may

institute legal proceedings against the employer at the Massachusetts Department of Labor Relations.

There are numerous examples of conduct that violates the obligation to bargain in good faith. In the context of the City's current landscape relative to the fire union labor contract, where the City Council has not acted on the appropriation order before it because the integrated CBA is not signed by the City, the failure of the Acting Mayor to execute the negotiated collective bargaining agreement would likely constitute a violation of c.150E. Similarly, the City's apparent unwillingness to execute the negotiated collective bargaining agreement (even if due to concern over the Acting Mayor's authority to sign the document), and delay in doing so for several more months until a new Mayor is elected, compounds the c. 150E violation. To be clear, the fire union has already filed a charge of prohibited practice against the City, so legal proceedings are underway. However, taking immediate action to hold an appropriation vote may render the charge moot or otherwise serve as grounds for a request by the City for dismissal of the Union's charge.

Because the City is required by law to bargain in good faith with the fire union and because of the City's longstanding past practice that a signed, integrated CBA be submitted to support a request for appropriation, the Acting Mayor's execution of the CBA would constitute a matter not admitting of delay, which would allow the City Council to vote to determine if it will appropriate (or not) funding for the CBA. Thus, if the City Council maintains its past practice relative to voting on funding for a collectively bargained agreement, the Acting Mayor would have the authority to sign the CBA to permit a vote to take place.

2. Alternatively, if the City Council does not hold to its longstanding past practice requiring that an integrated collective bargaining agreement be signed and submitted to the City Council to support a vote to determine if it will appropriate (or not) funding for the CBA, then the Acting Mayor would not have the authority to execute the CBA based on the following analysis.

Without prejudice to the City's longstanding past practice, a signed, integrated collective bargaining agreement is not required before a legislative body can vote on whether to appropriate funds for a collectively bargained contract. The Massachusetts Department of Labor Relations ("DLR"), which is the state agency that enforces, in the first instance, the funding requirements under Section 7 of Chapter 150E, interprets the word "agreement" as used in that section to consist of the terms and conditions of the existing collective bargaining agreement as amended by the memorandum of agreement (MOA) reached through negotiations. While it is universally advisable to integrate the terms of the MOA into one document, i.e. the successor collective bargaining agreement, that step is not required to have a binding agreement between the parties.

The binding nature of the MOA is often evidenced by including language, similar to the language found in the current MOA between the City and fire union in this matter:

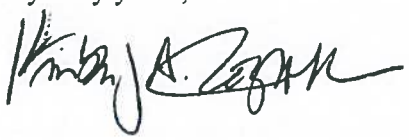
> By execution of this Agreement, the City of Gardner (the "City") and the Gardner Firefighters Local 2215 (the "Union") agree that all terms and conditions of the Union and City July 1, 2017 through June 30, 2018 Collective Bargaining Agreement as amended by the following shall remain in full effect for the duration as provided in both Paragraph one below and in Article XXXIV of the Collective Bargaining Agreement.

As a result, the requirement to submit an "agreement" for appropriation within thirty days of execution under Section 7(b) of Chapter 150E refers to the date the memorandum of agreement is signed by the parties. In other words, the MOA must be submitted to the appropriate legislative body within thirty days after the date on which it is signed by the parties. Thus, if the City Council is willing to forego its longstanding past practice requiring that an integrated CBA be signed and submitted to the City Council to support a vote and instead relies on the MOA for the basis for an appropriation vote, the Acting Mayor would have no authority to sign the CBA, because the MOA has already been fully executed by the City and the Union. Simply put, there would be no urgent or necessitous reason for the Acting Mayor to sign the integrated CBA, and thus no matter "admitting of delay" requiring any action on the part of the Acting Mayor. And more importantly, there would be no need for the integrated CBA to be signed at this time.

3. Conclusion

In the end, whether the Acting Mayor has the authority to sign the integrated CBA depends on whether the City Council will vote on the appropriation order to fund (or not) the successor contract based solely on the signed MOA.

Very truly yours,



Kimberly A. Rozak

SFM/KAR

10250-10257

Alan Agnelli

RECEIVED
2020 APR 27 AM 11: 12
CITY CLERK'S OFFICE
GARDNER, MA

From: John Flick <jflick@flicklawgroup.com>
Sent: Monday, April 27, 2020 11:11 AM
To: Elizabeth Kazinskas; Alan Agnelli
Cc: Debra Pond
Subject: GF Firefighters
Attachments: GFD Authority.pdf

Acting Mayor Kazinskas,

Attached is the letter from Mark Hawke which I just received. I also wanted to advise you that I am in active discussions with the Union's legal counsel regarding a mutual withdrawal of both pending matter, the ULP and the Declaratory Judgment complaint should the requested appropriation be cleared for a vote. I will let you know of any developments.

Regards,
John

****

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
****

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10250-10251

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2020 APR 27 AM 11: 12

CITY CLERK'S OFFICE
GARDNER, MA

April 27, 2020

Elizabeth Kazinskas, Acting Mayor
City of Gardner
95 Pleasant Street
Gardner, MA 01440

Dear Acting Mayor Kazinskas:

I have been asked to provide information related to any authorization I gave to certain employees of the City of Gardner to complete negotiations with the Gardner Firefighters for the FY 2018 to FY 21 collective bargaining agreement (CBA). In July 2019, contract negotiations between the City and the Firefighters had come to an impasse. Throughout the negotiations leading up to that point, and as I had done on various previous negotiations, I had authorized Debra Pond, Director of Human Resources, to negotiate the terms and conditions of the CBA with the Firefighters while the ultimate approval authority still remained with myself.

The Firefighters filed with the Commonwealth of Massachusetts Joint Labor Management Commission (JLMC) due to the impasses reached in negotiations. At that time, I contacted the City Solicitor, John Flick, to assist in the JLMC process. The JLMC scheduled several mediation sessions to attempt to resolve the impasses reached in negotiations. I was present during most, but not all the mediation sessions. In my absence, Debra Pond, and Attorney Flick were authorized to negotiate on behalf of the City and would report to me what progress, if any, had been made in reaching a resolution.

A final mediation session was scheduled for December 16, 2019 outside of Gardner. I instructed Debra Pond and Attorney Flick to appear and negotiate on behalf of the City. I was unable to attend but was available to speak with the City's negotiating team by phone. During that mediation I spoke to Attorney Flick on several occasions and ultimately approved the resolution that had been reached as a result of the December 16, 2019 mediation.

All the best,

Mark Hawke