



City of Gardner, Massachusetts  
Office of the City Council

CALENDAR FOR THE MEETING

of

MONDAY, OCTOBER 5, 2020

REMOTELY\*

7:30 P.M.

RECEIVED

2020 OCT -1 PM 3:16

CITY CLERK'S OFFICE  
GARDNER, MA

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 September 21, 2020 Regular Meeting.

- VII. PUBLIC HEARINGS
- VIII. COMMUNICATIONS FROM THE MAYOR

APPOINTMENTS

10336—A Measure Confirming the Mayor's Appointment of Kristen Salerno to the position of Senior Animal Control Officer for term expiring September 25, 2021 (*Finance Committee*).

10337—A Measure Confirming the Mayor's Appointment of Cheryl Slack to the position of Animal Control Officer for term expiring September 25, 2021 (*Finance Committee*).

ORDERS

10338—An Order Appropriating \$8,000.00 from Free Cash to City Misc. Capital Project – Land Purchase Expense (*Finance Committee*).

10339—An Order Appropriating \$36,000.00 from Free Cash to Animal Control Department New Vehicles Expense (*Finance Committee*).

- IX. PETITIONS, APPLICATIONS, COMMUNICATIONS, ETC.

10340—An Order Relative to the November 3, 2020 State Election (*Finance Committee*).

## **IX. PETITIONS, APPLICATIONS, COMMUNICATIONS, ETC.**

**10341** – A Measure Authorizing a Purchase and Sale Agreement between the City of Gardner and Massachusetts Electric Company for a parcel of land located on Pearl Street (*Finance Committee*).

**10342** – A Measure Declaring Surplus for Purpose of Disposition a parcel of land off Woodland Avenue (Parcel R27-2-8B) (*Finance Committee*).

**10343** – A Measure Authorizing the Mayor to lift the Deed Restrictions to land deeded to Henry Heywood Hospital recorded on March 26, 1998 (*Finance Committee*).

## **X. REPORTS OF STANDING COMMITTEES**

### **PUBLIC SERVICE COMMITTEE**

**10327** – An Ordinance to Amend the Code of the City of Gardner by adding a New Chapter 565, to be Entitled “Stormwater Management.” (*Calendar #10328 “Illicit Connections and Discharges to the Storm Drain System” consolidated with #10327 (In City Council and Referred to Public Service Committee, 9/8/2020).*

### **PUBLIC SAFETY COMMITTEE**

**10331** – A Communication from the Traffic Commission relative to Nutting Street Parking (*In City Council and Referred to Public Safety Committee, 9/8/2020*).

### **PUBLIC WELFARE COMMITTEE**

**10305** – 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 Public Welfare Committee, 8/3/2020*).

### **FINANCE COMMITTEE**

**10326** – An Order Appropriating \$75,000.00 from Free Cash to Pool Filtration System (*In City Council and Referred to Finance, 9/8/2020*).

## **XI. UNFINISHED BUSINESS AND MATTERS FOR RECONSIDERATION**

**10305** – 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 Planning Board for Recommendation, 8/3/2020; Planning Board Recommendation Received, 9/8/2020; Joint Public Hearing 10/5/2020*).

## **XII. NEW BUSINESS**

## **XIII. CLOSING PRAYER**

## **XIV. ADJOURNMENT**

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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**, and on the **City's YouTube Channel**. 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.

**REGULAR MEETING OF SEPTEMBER 21, 2020**

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Regular Meeting of the City Council was held remotely on Monday evening, September 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 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.

**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, and on the City's YouTube Channel. 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 September 8, 2020 Regular Meeting, as printed.

REGULAR MEETING OF SEPTEMBER 21, 2020

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COMMUNICATIONS FROM THE MAYORORDERS**#10333**

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that the Committee voted favorably to recommend the Order. He said that the Loan would pay to paint and make repairs to the elevated water storage tank off Route 140 and that the hope is to pay off the loan within 5 to 7 years. He added that the cost has been factored into the existing water rates.

Councillor Graves informed the Council that he believes that the DPW Director said that the [Water] Enterprise Fund would cover the costs and that what isn't expended from the Loan could be used for another purpose.

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, 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 adopt the following Order:

ORDERED: That the City of Gardner appropriates the sum of Two Hundred Fifty Thousand Dollars (\$250,000) to pay costs of repairing and repainting the elevated water storage tank located off of Route 140, including the payment of all costs incidental and related thereto; that to meet said appropriation the Treasurer, with the approval of the Mayor, is authorized to borrow said sum under M.G.L. c. 44, §8(7A), or any other enabling authority, and to issue bonds or notes of the City therefor. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

Presented to the Mayor for Approval – September 22, 2020

Approved – September 22, 2020

MICHAEL J. NICHOLSON, Mayor

**#10334**

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that the Committee voted favorably to recommend the Order and that there is a sole provider for the pall filters. He added that the filters have a life expectancy of 10 years and that the existing filters were replaced 12 years ago.



## REGULAR MEETING OF SEPTEMBER 21, 2020

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, 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 adopt the following Order:

ORDERED: That the City of Gardner appropriates the sum of Four Hundred Fifty Thousand Dollars (\$450,000) to pay costs of replacing the Pall filters at the Crystal Lake Water Treatment Facility, including the payment of all costs incidental and related thereto; that to meet said appropriation the Treasurer, with the approval of the Mayor, is authorized to borrow said sum under M.G.L. c. 44, §8(7A), or any other enabling authority, and to issue bonds or notes of the City therefor. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

Presented to the Mayor for Approval – September 22, 2020

Approved – September 22, 2020

MICHAEL J. NICHOLSON, Mayor

PETITIONS, APPLICATIONS, COMMUNICATIONS, ETC.

**#10335**

Reporting for the Finance Committee, Councillor James Walsh informed the Council that the Committee voted favorably to recommend the Order. He said that the Easement is located along the egress to Gardner High School and that the prior Easement is to be abandoned. He added that the Easement was reviewed by the Law Department.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on recommendation of the Finance Committee, it was voted on call of the roll, 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 adopt the following Measure:

**GRANT OF EASEMENT**

**CITY OF GARDNER**, a municipal corporation having a mailing address of 95 Pleasant Street, Gardner, Massachusetts 01440, (hereinafter referred to as the Grantor), for consideration of One (\$1.00) dollar, grants to **MASSACHUSETTS ELECTRIC COMPANY**, a Massachusetts corporation with its usual place of business at 40 Sylvan Road, Waltham, Massachusetts 02451 (hereinafter referred to as the Grantee) with quitclaim covenants, the perpetual right and easement to install, construct, reconstruct, repair, replace, add to, maintain and operate for the transmission of high and low voltage electric current and for the transmission of intelligence, lines to consist of, but not limited to, three (3) poles and one (1) anchor, (which may be erected at different times) with



## REGULAR MEETING OF SEPTEMBER 21, 2020

wires and cables strung upon and from the same and all necessary anchors, guys, and appurtenances (hereinafter referred to as the "OVERHEAD SYSTEM") and "UNDERGROUND ELECTRIC DISTRIBUTION SYSTEM" (hereinafter referred to as the "UNDERGROUND SYSTEM") located in Gardner, Worcester South County, Massachusetts, consisting of lines of buried wires and cables and lines of wires and cables installed in underground conduits, together with all equipment and appurtenances thereto for the transmission of intelligence and for the furnishing of electric service to the herein described premises and others, and without limiting the generality of the foregoing, but specifically including the following equipment, namely: manholes, manhole openings, bollards, handholes, junction boxes, transformers, transformer vaults, padmounts, padmount transformers and all housings, connectors, switches, conduits, cables and wires all located within the easement area of the hereinafter described property.

Said "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" are located in, through, under, over, across and upon a certain parcel of land situated off the easterly side of Blanchard Street, being more particularly shown as "PARCEL 2" shown on a Plan of Land recorded with the Worcester South County Registry of Deeds in Plan Book 399, Plan 67.

Said "OVERHEAD SYSTEM" is to be installed on Grantor's property, which is located off the easterly side of Blanchard Street, to consist of Pole p9-5, Pole p9-42, Pole P9-41, Pole p9-4 and an anchor to be affixed to Pole p9.

And further, said "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" (locations of the electrical equipment and other facilities on the hereinbefore referred to premises of the Grantor) are approximately shown on a sketch entitled: "Exhibit "A" Not Drawn To Scale; The exact location of said facilities to be established by and upon the installation and erection of the facilities thereof.; Easement Sketch For New Poles, Anchors & Overhead Wires At 200 Catherine St, Gardner, Ma (Gardner High School); Date: 05/21/2020; Designer: S.W. Soucy; Work Req# 28733033; nationalgrid," a reduced copy of said sketch is attached hereto as "Exhibit A", copies of which are in the possession of the Grantor and Grantee herein, but the final definitive locations of said "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" shall become established by and upon the installation and erection thereof by the Grantee.

Also with the further perpetual right and easement from time to time without further payment therefore to pass and repass over, across and upon said land of the Grantor as is reasonable and necessary in order to renew, replace, repair, remove, add to, maintain, operate, patrol and otherwise change said "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" and each and every part thereof and to make such other excavation or excavations as may be reasonably necessary in the opinion and judgment of the Grantee, its successors and assigns, and to clear and keep cleared the portions and areas of the premises wherein the "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" are specifically located, as shown on the sketch herein referred to, of such trees, shrubs, bushes, above ground and below ground structures, objects and surfaces, as may, in the opinion and judgment of the Grantee, interfere with the efficient and safe operation and maintenance of the "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" and other related electrical equipment. However, said Grantee, its successors and assigns, will properly backfill said excavation or excavations and restore the



## REGULAR MEETING OF SEPTEMBER 21, 2020

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surface of the land to as reasonably good condition as said surface was in immediately prior to the excavation or excavations thereof.

If said herein referred to locations as approximately shown on the sketch herein also referred to are unsuitable for the purposes of the Grantee, its successors and assigns, then said locations may be changed to areas mutually satisfactory to both the Grantor and the Grantee herein; and further, said newly agreed to locations shall be indicated and shown on the sketch above referred to by proper amendment or amendments thereto. The Grantor, for itself, its successors and assigns, covenant and agrees with the Grantee, for itself, its successors and assigns, that this Grant of Easement and the location of the Overhead System and Underground System may not be changed or modified without the written consent of the Grantee, its successors and assigns, which consent may be withheld by the Grantee in its sole discretion.

It is the intention of the Grantor to grant to the Grantee, its successors and assigns, all the rights and easements aforesaid and any and all additional and/or incidental rights needed to install, erect, maintain and operate within the Grantor's land an "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" for the transmission of intelligence and for the purpose of supplying electric service for the building, buildings or proposed buildings shown on the last herein referred to sketch or amended sketch and the right to service others from said "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM".

It is agreed that the "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" shall remain the property of the Grantee, its successors and assigns, and that the Grantee, its successors and assigns, shall pay all taxes assessed thereon. Grantor agrees that the rights and easement herein granted are for the purpose of providing service to Grantor's property and the further right to service others from said "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM".

For Grantor's title, see an Order of Taking by the City of Gardner dated June 4, 1974, recorded with the Worcester South District Registry of Deeds Book 5534, Page 255.

Presented to the Mayor for Approval – September 22, 2020

Approved – September 22, 2020

MICHAEL J. NICHOLSON, Mayor

### REPORTS OF STANDING COMMITTEES

#### PUBLIC SERVICE COMMITTEE

**#10327**

There being no objections, the Public Service Committee was granted more time to report on *An Ordinance Relative to Stormwater and Erosion Control*.

**#10328**

There being no objections, the Public Service Committee was granted more time to report on *An Ordinance Relative to Illicit Connections and Discharges to the Storm Drain System*.



## REGULAR MEETING OF SEPTEMBER 21, 2020

PUBLIC SAFETY COMMITTEE

#10331

There being no objections, the Public Safety Committee was granted more time to report on *A Communication from the Traffic Commission relative to Nutting Street Parking*.

PUBLIC WELFARE COMMITTEE

#10305

There being no objections, the Public Welfare Committee was granted more time to 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*. A joint Public Hearing with the Planning Board is scheduled for October 5, 2020 at 6:00 p.m.

FINANCE COMMITTEE

#10326

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

AN ORDER APPROPRIATING A SUM OF MONEY FROM FREE CASH TO POOL FILTRATION SYSTEM ACCOUNT.

ORDER: That there be and is hereby appropriated the sum of Seventy-Five Thousand Dollars and No Cents (\$75,000.00) from Free Cash to the Pool Filtration System Account.

#10329

Reporting for the Finance Committee, Councillor James Walsh informed the Council that Heywood Hospital is committed to paying all legal and related costs associated with the two legal matters (including #10330).

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on recommendation of the Finance Committee, it was voted on call of the roll, 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 adopt the following Measure:

EIGHTH AMENDMENT TO LEASE

THIS EIGHTH AMENDMENT TO LEASE made this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the CITY OF GARDNER, a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, acting by and through its Mayor and as successor to the rights, privileges, duties and liabilities of the CITY OF GARDNER'S former Public Works Board and its Director of Public Works (the "City" or "Lessor") and HENRY HEYWOOD MEMORIAL HOSPITAL, a charitable corporation organized under the laws of the Commonwealth of Massachusetts and having a principal office at 242 Green Street, Gardner, Massachusetts 01440 (the "Hospital" or "Lessee").



## REGULAR MEETING OF SEPTEMBER 21, 2020

Recitals

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

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

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

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

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

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

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

WHEREAS the Parties now desire to resolve this pretermission;

REGULAR MEETING OF SEPTEMBER 21, 2020

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

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

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

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

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

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

THENCE Northerly over land of the City of Gardner along a curve concave to the east having a radius of eight hundred twelve and 50/100 (812.50') feet, an arc length of three hundred sixteen and 37/100 (316.37') feet to a point;

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

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

THENCE N85°21'45"E over land of the City of Gardner one hundred eighty and 00/100 (180.00') feet to a Worcester County highway bound on the westerly sideline of Green Street;

THENCE Southerly by the westerly sideline of Green Street along a curve concave to the west having a radius of one thousand nine hundred sixty-seven and 50/100 (1,967.50') feet, an arc length of two hundred sixty-two and 89/100 (262.89') feet to a Worcester County highway bound;

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

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

CONTAINING 3.13 Acres.



## REGULAR MEETING OF SEPTEMBER 21, 2020

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

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

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

Presented to the Mayor for Approval – September 22, 2020

Approved – September 22, 2020

MICHAEL J. NICHOLSON, Mayor

**#10330**

On a motion by Councillor James Walsh and seconded by Councillor Judy Mack, 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:

**EASEMENT RELOCATION AGREEMENT**

THIS EASEMENT RELOCATION AGREEMENT (this “Agreement”) is made as of the \_\_\_day of \_\_\_\_\_, 2020, by and between MASSACHUSETTS ELECTRIC COMPANY, a Massachusetts corporation, having an office at 40 Sylvan Road, Waltham, MA 02451 (“MEC”), and the CITY OF GARDNER, a municipal corporation with an address c/o City Hall, 95 Pleasant Street, Gardner, MA 01440 (the “City”).

## RECITALS:

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

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

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

**REGULAR MEETING OF SEPTEMBER 21, 2020**

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

WHEREAS, to resolve the interference with the Existing MEC Easement caused by the Project, MEC has agreed to relocate a portion of the Existing MEC Easement to another location on the Property, which relocation shall include the following (hereinafter collectively the "Easement Relocation"): (a) the grant by the City of a permanent 30' wide easement on the Property, free and clear of all encumbrances having priority over the easement, in the form attached hereto as Exhibit A and made a part hereof (hereinafter the "New Easement") for those locations shown as "PROPOSED 30' WIDE MASSACHUSETTS ELECTRIC COMPANY EASEMENT AREA "B" = 11,881 S.F." and "AREA "A" = 5,932 S.F." on that plan (the "Easement Relocation Plan") entitled: "EASEMENT PLAN OF LAND IN GARDNER, MASSACHUSETTS; SCALE 1" = 40'; DATE: MAR. 15, 2019," prepared by Hannigan Engineering, Inc. of Leominster, MA, a reduced copy of which Easement Relocation Plan is attached hereto as Exhibit B and made a part hereof, and which Easement Relocation Plan shall be recorded with the Registry on or before the recording of the New Easement; (b) delivery to MEC of any Authority Documents (both as hereinafter defined) in connection with said New Easement; and (c) upon the recording of the New Easement, Easement Relocation Plan and Authority Documents (collectively, the "Easement Relocation Documents"), MEC shall deliver a partial release of the Existing MEC Easement whereby MEC will release a portion of its right, title and interest in and to the Existing MEC Easement from that location shown shaded on the Easement Relocation Plan and labeled as "APPROXIMATE LOCATION OF 30' WIDE MASSACHUSETTS ELECTRIC COMPANY EASEMENT BK. 5396-226 PL. BK. 389-38 SEE ALSO BK. 5396-228 (TO BE EXTINGUISHED)" (the "Partial Release");

WHEREAS, in consideration for MEC's agreement to the Easement Relocation, the City of Gardner has agreed to pay to MEC the costs associated therewith, including, any and all costs associated with the development of Easement Relocation Plan and any and all recording fees; (the "Costs") and

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

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

**SECTION I - RELOCATION AGREEMENT**

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

**REGULAR MEETING OF SEPTEMBER 21, 2020**SECTION 2 - COSTS AND EXPENSES; PAYMENT

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

2.2 MEC estimates that the total cost of the work done by MEC hereunder is equal to One Thousand Six Hundred and Fifty Dollars (\$1,650.00) (the "Estimate"), and the City hereby acknowledges receipt of this Estimate. The City hereby acknowledges that (a) the Estimate is only a good faith estimate of the total costs that MEC will incur in connection with the Easement Relocation as of the date of the Estimate; (b) that the Estimate may not include all categories of expenses associated with the Easement Relocation; and (c) that the City is responsible for all categories of expenses associated with the Easement Relocation, regardless of whether such categories of expenses are included in the Estimate. Notwithstanding the foregoing, at this time, MEC does not anticipate the total costs to substantially exceed the Estimate. It is agreed and understood that the City's total financial responsibility for the Costs of this Easement Relocation Plan shall not exceed Two Thousand Five Hundred (\$2,500.00) Dollars.

2.3 Immediately upon the City's execution and delivery of these presents to MEC, the City shall deliver to MEC the following: (a) a certified check in an amount equal to the Estimate (the "Estimate Payment"). Upon the recording of all of the Easement Relocation Documents and the Partial Release, the City shall pay, on demand, any and all direct and indirect costs and expenses incurred by MEC in connection with the Easement Relocation to the extent said costs and expenses exceed the Estimate Payment, up to Two Thousand Five Hundred (\$2,500.00) Dollars.

SECTION 3 - CONDITIONS TO MEC'S OBLIGATIONS

3.1 MEC's obligations under this Agreement to deliver the Partial Release to the City are expressly contingent upon (a) the prompt payment to MEC by the City of any and all amounts required to be paid hereunder; (b) the execution, delivery, and recording of the New Easement and the Easement Relocation Plan; (c) MEC shall have received from the City, at the City's sole cost and expense, good, clear, record and marketable title to the New Easement, free and clear of all liens and encumbrances having priority over the New Easement; (d) receipt by MEC of all votes and authority documents ("Authority Documents") evidencing the City's and, (e) the City's compliance with all of the other terms and conditions of this Agreement.

SECTION 4 - PARTIAL RELEASE OF EASEMENT RIGHTS

4.1 Until such time as a Partial Release has been executed by MEC and recorded with the Registry, nothing in this Agreement shall be deemed or construed as an abandonment or release of any of the rights and easements of MEC, and MEC specifically reserves said rights and

**REGULAR MEETING OF SEPTEMBER 21, 2020**

easements, including without limitation the rights to clear and keep cleared the Existing MEC Easement of all vegetation and structures that may interfere with its easement, to pass and repass with vehicles and equipment, to reconstruct, maintain, operate, repair, renew, replace, add to and otherwise change any power lines, structures, guys, anchors or other facilities to meet the needs of its business, to construct towers, poles and lines of higher voltage thereon, and to relocate existing and/or future transmission structures, towers, poles and lines, at MEC's cost and expense.

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

**SECTION 5 - DEFAULT**

5.1 In the event the City shall at any time fail to make any payment due hereunder to MEC or fail to observe or perform any of the other covenants and agreements required to be performed and observed by the City and such default shall continue for a period of thirty (30) days for monetary obligations (for which no notice shall be necessary) or for a period of thirty (30) days after written notice to the City (or if such default is incapable of being cured in a reasonable manner within thirty (30) days, the City has not commenced to cure the same within said thirty (30) day period and diligently prosecuted the same to completion) and the City shall not cure such default, then subject to the provisions of this Section 5, MEC shall be entitled, at its election, to bring suit for the collection of such payments or other amounts for which the City may be in default, for the performance of any other City covenant or agreement hereunder, including specific performance, and for any damages incurred by MEC, all without terminating this Agreement. MEC shall also be entitled, at its election, to terminate this Agreement. In the event MEC terminates this Agreement, all obligations of MEC shall cease and terminate (except those that expressly survive the termination of this Agreement), except that MEC may sue for and collect all direct and related indirect costs of the Easement Relocation not previously paid by the City and other amounts due as a result of the City's default and all damages to MEC by reason of any such breach.

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

**SECTION 6-MISCELLANEOUS**

6.1 This Agreement shall not be assignable, in whole or in part, by the City to any other person or entity, and any such assignment in violation of this provision shall be null and void. It is agreed and understood that the City may be reimbursed and/or indemnified by HHH to the full extent of the Costs and liabilities under this Agreement and that such reimbursement and/or indemnification shall not be interpreted as a violation of this Section 6.1 of this Agreement.



## REGULAR MEETING OF SEPTEMBER 21, 2020

- 6.2 This Agreement and any amendment hereof may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original and all of which together shall constitute one instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.
- 6.3 The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors and/or assigns of the parties hereto.
- 6.4 All Exhibits referred to herein are intended to be and hereby are specifically made a part of this Agreement.
- 6.5 This Agreement, including the Exhibits, easements, documents, agreements, certificates and instruments referred to herein, embody the entire agreement and understanding of the parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. This Agreement supersedes all prior agreements and understandings between the parties with respect to the subject of this Agreement.
- 6.6 The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties hereto and shall not in any way affect the meaning or interpretation of this Agreement.
- 6.7 Subject to the terms and conditions of this Agreement, each of the parties hereto will use all reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws, rules and regulations to complete and make effective the Easement Relocation pursuant to this Agreement. From time to time after the date hereof, without further consideration but subject to the terms and conditions of this Agreement, the City will, at its own expense, execute and deliver such documents to MEC as MEC may reasonably request in order more effectively to complete the Easement Relocation. From time to time after the date hereof, without further consideration but subject to the terms and conditions of this Agreement, MEC will, at the City's sole cost and expense, execute and deliver such documents to the City as the City may reasonably request in order more effectively to complete the Project.
- 6.8 Each of the parties hereto hereby represents and warrants to the other party hereto that (a) such party has the power and authority to execute, deliver and perform its respective obligations under this Agreement, and (b) the person(s) executing and delivering this Agreement on behalf of such party are duly authorized to so execute and deliver this Agreement. The City hereby represents and warrants to MEC that the City is the record owner of the Property.
- 6.9 The City hereby acknowledges that MEC would not undertake the Easement Relocation but for the following, as set forth in this Agreement: (a) the City's agreement to pay for all of the direct and related indirect costs incurred by MEC in connection with the Easement Relocation; and (b) the City's agreement to obtain the Easement Relocation Documents.



## REGULAR MEETING OF SEPTEMBER 21, 2020

6.10 This Agreement shall automatically terminate, be of no further force and effect and without recourse to either party except for those provisions contained herein that expressly survive the termination of this Agreement upon the earlier of (a) completion of the Easement Relocation; or (b) December 31, 2021 The City understands and agrees that, regardless of whether this Agreement is terminated for any reason, including without limitation the City's default hereunder, the City shall be solely responsible and liable for and hereby agrees to pay the entire Cost of the Easement Relocation Plan, not to exceed Two Thousand Five Hundred (\$2,500.00) Dollars.

Presented to the Mayor for Approval – September 22, 2020

Approved – September 22, 2020

MICHAEL J. NICHOLSON, Mayor

**GRANT OF EASEMENT**

**THE CITY OF GARDNER**, a municipal corporation with an address c/o City Hall, 95 Pleasant Street, Gardner, MA 01440, acting by and through its Department of Public Works (the "Grantor"), for and in consideration of One Dollar (\$1.00) and other valuable consideration paid, grants to **MASSACHUSETTS ELECTRIC COMPANY**, a Massachusetts corporation with an address of 40 Sylvan Road, Waltham, Massachusetts 02451 (the "Grantee"), with Quitclaim Covenants, the perpetual right and easement to construct, reconstruct, install, repair, replace, maintain, operate, use, inspect and patrol for the transmission and distribution of high and low voltage electric energy and for the transmission of intelligence, by any means, whether now existing or hereafter devised a single line of poles (any of which may be erected and/or constructed at the same or different times) with wires and cables strung upon and from the same, together with all guy wires, foundations, anchors, antennae, braces, fittings, buried ground wires and any other equipment or appurtenances reasonably required (collectively hereinafter referred to as the "Facilities"), including without limitation such footbridges, causeways, and ways of access, if any, as may be necessary for the convenient construction, reconstruction, installation, repair, replacement, maintenance, operation, use, inspection and patrolling of said Facilities over, under, through, across and upon a strip of land located on the Grantor's Land (as hereinafter defined) in Gardner, Worcester County, Massachusetts, approximately thirty (30') feet in width, and shown as "PROPOSED 30' WIDE MASSACHUSETTS ELECTRIC COMPANY EASEMENT AREA "B" = 11,881 S.F." and "AREA "A" = 5,932 S.F." (collectively, the "Easement Area") on that plan entitled: "EASEMENT PLAN OF LAND IN GARDNER, MASSACHUSETTS; SCALE 1" = 40'; DATE: MAR. 15, 2019" prepared by Hannigan Engineering, Inc. of Leominster, MA, to be recorded with the Registry (as hereinafter defined), and a reduced copy of which Plan is attached hereto as Exhibit A.

As used herein, the "Grantor's Land" is described in that deed from Heywood Farm, Inc., to the Grantor dated July 29, 1937 and recorded with the Worcester District Registry of Deeds (the "Registry") in Book 2701, Page 9.

Also the perpetual right and easement from time to time, without further payment therefor, to clear and keep cleared by physical, chemical or other means, the Easement Area of trees, underbrush and above and below ground buildings, structures or objects (the first clearing may



## REGULAR MEETING OF SEPTEMBER 21, 2020

be for less than the full width and may be widened from time to time to the full width) provided, however, that when chemical means of clearing are to be used, the Grantee will use only such chemicals as are approved in writing by the Public Works Board or the Director of Public Works of the City of Gardner; the perpetual exclusive right and easement to renew, replace, remove, add to, modify and otherwise change the Facilities and each and every part thereof and all appurtenances thereto and the locations thereof within the Easement Area; the perpetual right and easement to pass and repass on foot and with vehicles and equipment along the Easement Area to and from the adjoining lands and to pass and repass over the Grantor's Land to and from the Easement Area as reasonably required; and the right and easement to excavate, remove soils from, fill, and/or change the grade of the Easement Areas as is reasonable, necessary and proper in connection with the exercise of the foregoing rights and easements.

The Grantor for itself, its successors and assigns, hereby covenants and agrees with the Grantee, its successors and assigns, that (i) no acts will be permitted within the Easement Area which are inconsistent with the rights and easements hereby granted; (ii) no permanent or temporary buildings or structures, or replacements thereof or additions thereto, or obstructions will be erected or constructed above or below grade within the Easement Area; (iii) Grantor shall not excavate or fill or otherwise change or alter the present grade or ground level of the Easement Area; and (iv) Grantor shall have no right to change the location of or modify the dimensions of the Easement Area in any way or otherwise amend, supplement, change or modify this Grant of Easement, without the prior written consent of the Grantee.

It is agreed that the Facilities shall remain the property of the Grantee, its successors and assigns and that the Grantee, its successors and assigns shall pay all taxes assessed thereon.

It is the intention of the Grantor to grant to the Grantee, its successors and assigns, all the rights and easements aforesaid and any and all additional and/or incidental rights needed to construct, reconstruct, install, repair, maintain, operate, use, inspect, patrol, renew, replace, add to, and otherwise change, for the transmission and distribution of high and low voltage electric energy and the transmission of intelligence, the Facilities over, under, through, across, within, and upon the Easement Area, and the Grantor hereby agrees to execute, acknowledge, and deliver to the Grantee, its successors and assigns, such further deeds or instruments as may be necessary to secure to them the rights and easements intended to be herein granted.

This easement is a commercial easement in gross for the benefit of Grantee, its successors and assigns, and the parties agree that these provisions shall run with the Grantor's Land and shall inure to the benefit of and bind the respective heirs, legal representatives, successors and assigns of the parties hereto. It is the intention of the parties that the rights and easements granted herein shall be fully apportionable and fully assignable or transferable, all or in part, and in all respects, by the Grantee, its successors and assigns.

Presented to the Mayor for Approval – September 22, 2020

Approved – September 22, 2020

MICHAEL J. NICHOLSON, Mayor

REGULAR MEETING OF SEPTEMBER 21, 2020

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**PARTIAL RELEASE OF EASEMENT**

WHEREAS, **MASSACHUSETTS ELECTRIC COMPANY**, a Massachusetts corporation (hereinafter "MEC") with a place of business at 40 Sylvan Road, Massachusetts, is the owner of certain rights and easements over land located in the City of Gardner, Worcester County, Massachusetts, acquired under that certain easement deed from the City of Gardner to MEC dated October 2, 1973 and recorded with the Worcester District Registry of Deeds (the "Registry") in Book 5396, Page 226, and shown on that plan recorded with the Registry in Plan Book 389 as Plan 38 (hereinafter the "Easement");

WHEREAS, the **CITY OF GARDNER**, a municipal corporation with an address c/o City Hall, 95 Pleasant Street, Gardner, MA 01440 (hereinafter, the "City"), is the owner of that parcel of land in the City of Gardner, Worcester County, Massachusetts, more particularly described in that certain deed from Heywood Farm, Inc., to the City dated July 29, 1937 and recorded with the Registry in Book 2701, Page 9 (hereinafter the "Land"), which Land is subject, in part, to the Easement;

WHEREAS, the City has requested a partial release of the Easement on the Land, and MEC has agreed to such partial release as hereinafter set forth.

NOW THEREFORE, MEC, for consideration of One Dollar (\$1.00) and other good and valuable consideration paid, and for the other covenants and agreements described herein, the receipt and sufficiency of which are hereby acknowledged, hereby releases to the City and unto all persons claiming by, through and under the City, that portion of the Easement on the Land shown shaded and labeled as "APPROXIMATE LOCATION OF 30' WIDE MASSACHUSETTS ELECTRIC COMPANY EASEMENT BK. 5396-226 PL. BK. 389-38 SEE ALSO BK. 5396-228 (TO BE EXTINGUISHED)"(the "Released Portion") on a plan (the "Plan") entitled " EASEMENT PLAN OF LAND IN GARDNER, MASSACHUSETTS; SCALE 1" = 40'; DATE: MAR. 15, 2019," prepared by Hannigan Engineering, Inc., of Leominster, MA. Said Plan is recorded with the Registry in Plan Book\_\_\_\_, Plan\_\_.

It is the intention of MEC and the City that this instrument constitutes only a partial release of the Released Portion of the Easement located on the Land. For the avoidance of doubt, pursuant to this Partial Release, MEC hereby releases only the Released Portion of the Easement located on the Land; no other portions of the Easement on the Land or other title and interest in and to said other portions of the Easement are affected or released hereby. MEC further reserves for itself and its successors and assigns all remaining portions of the Easement not specifically described on Exhibit A attached hereto and made a part hereof and all other title and interest in and to said remaining portions of the Easement. In addition, to the extent that MEC or its predecessors in title may have acquired other rights and easements affecting the Land by or under any other deeds or instruments of record, this Partial Release of Easement shall also in no way affect or impair any such other rights and easements.

REGULAR MEETING OF SEPTEMBER 21, 2020

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**UNFINISHED BUSINESS AND MATTERS FOR RECONSIDERATION****#10305**

A joint Public Hearing with the Planning Board is scheduled for October 5, 2020 at 6:00 p.m. 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.

**NEW BUSINESS**

Councillor James Walsh commented on the upcoming public hearing concerning the proposed development off Parker Street, informing the project's representatives that he will have questions such as financing sources, tax credits, and whether the units will be market rate or low income.

**CLOSING PRAYER**

President Kazinskas led the Council in the Closing Prayer.

**ADJOURNMENT**

On a motion by Councillor Nathan Boudreau and seconded by Councillor Craig Cormier, 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 7:52 p.m.

Accepted by the City Council:

10336

RECEIVED

September 25, 2020

2020 SEP 25 PM 12:02

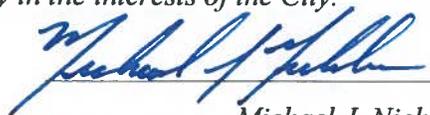
Commonwealth of Massachusetts

CITY CLERK'S OFFICE  
GARDNER, MA  
Worcester County

City of Gardner

CERTIFICATE OF APPOINTMENT

I appoint Kristen Salerno to the position of Senior Animal Control Officer, and I certify  
247 Sanders Street, Athol, MA  
that in my opinion he/she is a person specially fitted by education, training, or experience to perform the  
duties of said office, and that I make the appointment solely in the interests of the City.

 Mayor  
Michael J. Nicholson

Confirmed by City Council \_\_\_\_\_

\_\_\_\_\_  
City Clerk  
Alan L. Agnelli

Expires: September 25, 2021

Worcester, ss., \_\_\_\_\_

Then personally appeared the above named Kristen Salerno and made oath that he/she  
would faithfully and impartially perform the duties of the office of Senior Animal Control Officer  
according to law and the best of his/her abilities.

Before me,  
\_\_\_\_\_  
City Clerk

Chapter 303 Acts of 1975  
and  
Chapter 409 Acts of 1983

Received \_\_\_\_\_

RECEIVED

September 25, 2020

2020 SEP 25 PM 1:02

Commonwealth of Massachusetts

Worcester County  
CITY CLERK'S OFFICE  
GARDNER, MA

City of Gardner

CERTIFICATE OF APPOINTMENT

I appoint Cheryl Slack to the position of Animal Control Officer, and I certify  
25 Westford Street, Gardner, MA

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

 Mayor  
Michael J. Nicholson

Confirmed by City Council \_\_\_\_\_

\_\_\_\_\_  
Alan L. Agnelli  
City Clerk

Expires: September 25, 2021

Worcester, ss., \_\_\_\_\_

Then personally appeared the above named Cheryl Slack and made oath that he/she  
would faithfully and impartially perform the duties of the office of Animal Control Officer  
according to law and the best of his/her abilities.

Before me,  
\_\_\_\_\_  
City Clerk

Chapter 303 Acts of 1975  
and  
Chapter 409 Acts of 1983

Received \_\_\_\_\_



**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 September 30, 2020

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

These balances are as of September 28, 2020:

		<u>Money Order</u>	<u>Balance</u>
Free Cash	10000-35400		\$315,885.93
to Greenwood Pool for Pool Filtration System	16621-55161	\$ 75,000.00	\$240,885.93
to Animal Control Dept for New Vehicles Expense	12290-55090	36,000.00	\$204,885.93
to City Misc. Capital Proj for Land Purchase Expense	38140-58651	8,000.00	\$196,885.93
			\$196,885.93

The Snow & Ice account currently has available \$296,417.11  
14421-52210

Sincerely

John Richard  
City Auditor

copies: Mayor  
City Clerk

AN ORDER APPROPRIATING A SUM OF MONEY FROM FREE CASH TO CITY MISC. CAPITAL PROJECT FOR LAND PURCHASE EXPENSE ACCOUNT.

ORDERED:

That there be and is hereby appropriated the sum of Eight Thousand Dollars and No Cents (\$8,000.00) from Free Cash to the City Misc. Capital Project for Land Purchase Expense Account.

10338

City of Gardner, *Executive Department* RECEIVED



Michael J. Nicholson, Mayor

2020 SEP 28 AM 11:46  
CITY CLERK'S OFFICE  
GARDNER, MA

September 28, 2020

The Hon. Elizabeth J. Kazinskas, President  
And City Councilors  
Gardner City Hall, Rm 121  
95 Pleasant St.  
Gardner, MA 01440

RE: Approval of Purchase

Dear President Kazinskas and Councilors,

As you may be aware, for some time now, the City has been in negotiations with National Grid to purchase property off of Pearl Street for the construction of the new school building.

As the negotiations have been completed, I am asking the City Council to approve the purchase of the property and to appropriate the necessary \$8,000.00 for the purchase.

A copy of the purchase and sale agreement is attached for informational purposes.

Respectfully,

Michael J. Nicholson  
Mayor, City of Gardner

10339

AN ORDER APPROPRIATING FROM FREE CASH TO THE ANIMAL CONTROL DEPARTMENT NEW VEHICLES ACCOUNT.

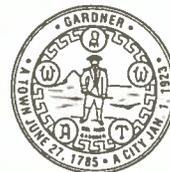
ORDERED:

That there be and is hereby appropriated the sum of Thirty Six Thousand Dollars and No Cents (\$36,000.00) from Free Cash to the Animal Control Department New Vehicles Account.

10339

City of Gardner, *Executive Department*

RECEIVED



Michael J. Nicholson, Mayor

2020 SEP 28 AM 11:47

CITY CLERK'S OFFICE  
GARDNER, MA

September 28, 2020

The Hon. Elizabeth J. Kazinskas, President  
And City Councilors  
Gardner City Hall, Rm 121  
95 Pleasant St.  
Gardner, MA 01440

RE: Appropriation for Animal Control Vehicle

Dear President Kazinskas and Councilors,

Attached please find an appropriation request to purchase a new vehicle for the Animal Control Department. Our current vehicle is at the end of its useful life and is being taken out of service due to safety concerns with the vehicle.

Respectfully,

Michael J. Nicholson  
Mayor, City of Gardner

10339



**CITY OF GARDNER POLICE DEPARTMENT**



**Richard A. Braks**  
Chief of Police

**200 Main Street**  
**Gardner, Massachusetts 01440**

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

September 28, 2020

Michael J. Nicholson, Mayor  
City Hall – City of Gardner  
95 Pleasant Street  
Gardner, MA 01440

Mayor Nicholson,

I respectfully request an appropriation from free-cash in the amount of \$36,000.00 dollars to be approved for the Animal Control Vehicle account 12290-55090.

This appropriation request will replace the existing 2007 Ford Econoline van VIN#1FTNE14W87DB4007 which has exceeded its operational lifecycle and has been evaluated by our DPW maintenance personnel to be beyond further repair. During the vans last scheduled service many recognized deficiencies were identified, recorded and later individually presented to me. As a result of this scheduled maintenance appointment on September 8, 2020, the van was hesitantly returned to service and acknowledged to be beyond additional repair and in dire need of replacement.

This funding request will purchase a 2020 cargo van on state bid. The vehicle purchase includes necessary barriers, graphics, radio installation and lighting.

Respectfully,

Richard A. Braks  
Chief of Police

cc. file

10339

Vehicle: [Fleet] 2020 Ford Transit Cargo Van (E2Y) T-150 130" Low Rf 8670 GVWR AWD (✓ Complete)

**Selected Model and Options**

**MODEL**

CODE	MODEL	MSRP
E2Y	2020 Ford Transit Cargo Van T-150 130" Low Rf 8670 GVWR AWD	\$39,205.00

**\$ 29,350**

**COLORS**

CODE	DESCRIPTION
YZ	Oxford White

**3% OFF MSRP**

**ENGINE**

CODE	DESCRIPTION	MSRP
998	Engine: 3.5L PFDI V6 Flex-Fuel -inc: port injection (STD)	\$0.00

**TRANSMISSION**

CODE	DESCRIPTION	MSRP
44U	Transmission: 10-Spd Automatic w/OD & SelectShift -inc: auxiliary transmission oil cooler (STD)	\$0.00

**OPTION PACKAGE**

CODE	DESCRIPTION	MSRP
101A	Order Code 101A	\$0.00

**AXLE RATIO**

CODE	DESCRIPTION	MSRP
X7L	3.73 Limited-Slip Axle Ratio (STD)	\$0.00

**PRIMARY PAINT**

CODE	DESCRIPTION	MSRP
YZ	Oxford White	\$0.00

**SEAT TYPE**

CODE	DESCRIPTION	MSRP
VK	Dark Palazzo, Vinyl Front Bucket Seats	\$0.00

**SEATING ARRANGEMENT**

CODE	DESCRIPTION	MSRP
21G	Dark Palazzo Gray Vinyl Bucket Seats -inc: 2-way manual driver seat, 2-way manual passenger seat and driver armrest (STD)	\$0.00

Prices, specifications, and availability are subject to change without notice, and do not include certain fees, taxes and charges that may be required by law or vary by manufacturer or region. Performance figures are guidelines only, and actual performance may vary. Photos may not represent actual vehicles or exact configurations. Content based on report preparer's input is subject to the accuracy of the input provided. Data Version: 11970, Data updated Sep 27, 2020 11:40:00 PM PDT

Vehicle: [Fleet] 2020 Ford Transit Cargo Van (E2Y) T-150 130" Low Rf 8670 GVWR AWD (✔ Complete)

**ADDITIONAL EQUIPMENT - EXTERIOR**

CODE	DESCRIPTION	MSRP
153	Front License Plate Bracket	\$0.00
545	Short-Arm Manual-Folding Heated Pwr Adjusting Mirrors -inc: turn signals	\$160.00
59A	60/40 Hinged Passenger-Side Door	\$0.00
68H	Running Boards -inc: Covers the B-C pillar passenger-side	\$310.00
85D	Dual-Note Horn	\$20.00

**ADDITIONAL EQUIPMENT - INTERIOR**

CODE	DESCRIPTION	MSRP
16E	Front & Rear Vinyl Floor Covering -inc: wheel well liners	\$245.00
43B	Back Up Alarm -inc: 102 dB(A) warning capability	\$125.00
43R	Reverse Sensing System	\$295.00
86F	2 Additional Keys (4 Total) -inc: key fobs	\$75.00
<b>Options Total</b>		<b>\$1,230.00</b>

Handwritten calculations in red ink:

$$\begin{array}{r}
 \$ 1230 \\
 .03 \\
 \hline
 36.90
 \end{array}$$

$$\begin{array}{r}
 \$ 1230 \\
 - 36.90 \\
 \hline
 1193.10
 \end{array}$$

$$\begin{array}{r}
 \$ 29,350 \\
 - 1,193 \text{ OPTIONS} \\
 - 1,000 \text{ CAGE} \\
 \hline
 \$ 31,543
 \end{array}$$

Prices, specifications, and availability are subject to change without notice, and do not include certain fees, taxes and charges that may be required by law or vary by manufacturer or region. Performance figures are guidelines only, and actual performance may vary. Photos may not represent actual vehicles or exact configurations. Content based on report preparer's input is subject to the accuracy of the input provided. Data Version: 11970, Data updated Sep 27, 2020 11:40:00 PM PDT

Vehicle # 29,350

OPTIONS  
(37% OFF LIST) 1,193

CARGO  
BARRIER  
ESTIMATE 1,000

Front VISOR LED 1,050

Remote Siren  
SWITCHING 650

Siren SPEAKER 230

WIG WAGS 110

GRILLE LED 350

SIDE LED REAR 350

REAR GLASS LED 350

REAR MIDEWAYS 300

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# 34,933

+ 600

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# 35,533

GRAPHICS ?  
\$ 500-600

Vehicle: [Fleet] 2020 Ford Transit Cargo Van (E2Y) T-150 130" Low Rf 8670 GVWR AWD (✔ Complete)

## Standard Equipment

### Mechanical

Engine: 3.5L PFDI V6 Flex-Fuel -inc: port injection (STD)  
Transmission: 10-Spd Automatic w/OD & SelectShift -Inc: auxiliary transmission oil cooler (STD)  
3.73 Limited-Slip Axle Ratio (STD)  
50-State Emissions System  
Automatic Full-Time All-Wheel  
70-Amp/Hr Maintenance-Free Battery w/Run Down Protection  
250 Amp Alternator  
3400# Maximum Payload  
GVWR: 8,670 lbs  
Front Anti-Roll Bar  
Electric Power-Assist Steering  
25.1 Gal. Fuel Tank  
Single Stainless Steel Exhaust  
Permanent Locking Hubs  
Strut Front Suspension w/Coil Springs  
Leaf Rear Suspension w/Leaf Springs  
4-Wheel Disc Brakes w/4-Wheel ABS, Front Vented Discs, Brake Assist and Hill Hold Control

### Exterior

Wheels: 16" Silver Steel w/Exposed Lug Nuts  
Tires: 235/65R16C 121/119 R AS BSW  
Steel Spare Wheel  
Full-Size Spare Tire Stored Underbody w/Crankdown  
Clearcoat Paint  
Black Front Bumper  
Black Rear Bumper w/1 Tow Hook  
Black Bodyside Cladding and Black Wheel Well Trim  
Black Side Windows Trim and Black Front Windshield Trim  
Black Door Handles  
Black Side Mirrors w/Convex Spotter and Manual Folding  
Short-Arm Manual-Folding Power Adjust Mirrors  
Light Tinted Glass

Prices, specifications, and availability are subject to change without notice, and do not include certain fees, taxes and charges that may be required by law or vary by manufacturer or region. Performance figures are guidelines only, and actual performance may vary. Photos may not represent actual vehicles or exact configurations. Content based on report preparer's input is subject to the accuracy of the input provided. Data Version: 11970, Data updated Sep 27, 2020 11:40:00 PM PDT

Vehicle: [Fleet] 2020 Ford Transit Cargo Van (E2Y) T-150 130" Low Rf 8670 GVWR AWD (✔ Complete)

### Exterior

Variable Intermittent Wipers  
Fully Galvanized Steel Panels  
Black Grille  
Front License Plate Bracket  
Sliding Rear Passenger Side Door  
Split Swing-Out Rear Cargo Access  
Tailgate/Rear Door Lock Included w/Power Door Locks  
Fully Automatic Aero-Composite Halogen Auto High-Beam Headlamps  
Laminated Glass

### Entertainment

Radio w/Seek-Scan, Clock, Aux Audio Input Jack, Steering Wheel Controls and External Memory Control  
Radio: AM/FM Stereo -inc: Bluetooth, dual USB ports, a 4.0" multi-function display and 4 speakers (front)  
Streaming Audio  
Fixed Antenna  
Bluetooth Wireless Phone Connectivity  
1 LCD Monitor In The Front

### Interior

Dark Palazzo Gray Vinyl Bucket Seats -inc: 2-way manual driver seat, 2-way manual passenger seat and driver armrest (STD)  
4-Way Driver Seat  
4-Way Passenger Seat  
Manual Tilt/Telescoping Steering Column  
Gauges -inc: Speedometer, Odometer, Engine Coolant Temp, Tachometer and Trip Odometer  
FordPass Connect 4G Mobile Hotspot Internet Access  
Front Cupholder  
Remote Keyless Entry w/Integrated Key Transmitter, Illuminated Entry and Panic Button  
Manual Air Conditioning  
Locking Glove Box  
Driver Foot Rest  
Interior Trim -inc: Metal-Look Instrument Panel Insert  
Front Cloth Headliner  
Urethane Gear Shifter Material  
Vinyl Front Bucket Seats

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Vehicle: [Fleet] 2020 Ford Transit Cargo Van (E2Y) T-150 130" Low Rf 8670 GVWR AWD (✔ Complete)

**Interior**

Partial Floor Console w/Storage and 2 12V DC Power Outlets  
Front Map Lights  
Fade-To-Off Interior Lighting  
Front Only Vinyl/Rubber Floor Covering  
Cargo Space Lights  
Instrument Panel Bin, Driver And Passenger Door Bins  
Power 1st Row Windows w/Driver 1-Touch Down  
Power Door Locks w/Autolock Feature  
Analog Display  
Manual Adjustable Front Head Restraints  
Securilock Anti-Theft Ignition (pats) Engine Immobilizer  
2 12V DC Power Outlets

**Safety-Mechanical**

Ford Co-Pilot360 w/Side Wind Stabilization Electronic Stability Control (ESC) And Roll Stability Control (RSC)  
ABS And Driveline Traction Control

**Safety-Exterior**

Side Impact Beams

**Safety-Interior**

Dual Stage Driver And Passenger Seat-Mounted Side Airbags  
Emergency Sos  
Ford Co-Pilot360 - Pre-Collision Assist with Automatic Emergency Braking (AEB)  
Ford Co-Pilot360 - Lane-Keeping Assist Lane Departure Warning  
Low Tire Pressure Warning  
Dual Stage Driver And Passenger Front Airbags w/Passenger Off Switch  
Safety Canopy System Curtain 1st Row Airbags  
Airbag Occupancy Sensor  
Outboard Front Lap And Shoulder Safety Belts -inc: Height Adjusters and Pretensioners  
Back-Up Camera

Vehicle: [Fleet] 2020 Ford Transit Cargo Van (E2Y) T-150 130" Low Rf 8670 GVWR AWD (✔ Complete)

**WARRANTY**

Basic Years: 3  
Basic Miles/km: 36,000  
Drivetrain Years: 5  
Drivetrain Miles/km: 60,000  
Corrosion Years: 5  
Corrosion Miles/km: Unlimited  
Roadside Assistance Years: 5  
Roadside Assistance Miles/km: 60,000

Prices, specifications, and availability are subject to change without notice, and do not include certain fees, taxes and charges that may be required by law or vary by manufacturer or region. Performance figures are guidelines only, and actual performance may vary. Photos may not represent actual vehicles or exact configurations. Content based on report preparer's input is subject to the accuracy of the input provided. Data Version: 11970, Data updated Sep 27, 2020 11:40:00 PM PDT

CITY OF GARDNER, MASSACHUSETTS

NOVEMBER 3, 2020 STATE ELECTION ORDER

VOTED: That meetings of the citizens of this City qualified to vote in the State Election shall be held on TUESDAY, THE THIRD DAY OF NOVEMBER, 2020, from 7:00 A.M. to 8:00 P.M. for the following purpose:

To cast their votes in the State Election for the candidates for the following offices and questions:

- ELECTORS OF PRESIDENT AND VICE PRESIDENT..... FOR THIS COMMONWEALTH SENATOR IN CONGRESS..... FOR THIS COMMONWEALTH REPRESENTATIVE IN CONGRESS.....THIRD DISTRICT COUNCILLOR.....SEVENTH DISTRICT SENATOR IN GENERAL COURT.....WORCESTER & MIDDLESEX DISTRICT REPRESENTATIVE IN GENERAL COURT.....SECOND WORCESTER DISTRICT REGISTER OF PROBATE..... WORCESTER COUNTY

QUESTION 1: LAW PROPOSED BY INITIATIVE PETITION

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives on or before May 5, 2020?

SUMMARY

This proposed law would require that motor vehicle owners and independent repair facilities be provided with expanded access to mechanical data related to vehicle maintenance and repair.

Starting with model year 2022, the proposed law would require manufacturers of motor vehicles sold in Massachusetts to equip any such vehicles that use telematics systems — systems that collect and wirelessly transmit mechanical data to a remote server — with a standardized open access data platform. Owners of motor vehicles with telematics systems would get access to mechanical data through a mobile device application. With vehicle owner authorization, independent repair facilities (those not affiliated with a manufacturer) and independent dealerships would be able to retrieve mechanical data from, and send commands to, the vehicle for repair, maintenance, and diagnostic testing.

Under the proposed law, manufacturers would not be allowed to require authorization before owners or repair facilities could access mechanical data stored in a motor vehicle’s on-board diagnostic system, except through an authorization process standardized across all makes and models and administered by an entity unaffiliated with the manufacturer.

The proposed law would require the Attorney General to prepare a notice for prospective motor vehicle owners and lessees explaining telematics systems and the proposed law’s requirements concerning access to the vehicle’s mechanical data. Under the proposed law, dealers would have to provide prospective owners with, and prospective owners would have to acknowledge receipt of, the notice before buying or leasing a vehicle. Failure to comply with these notice requirements would subject motor vehicle dealers to sanctions by the applicable licensing authority.

Motor vehicle owners and independent repair facilities could enforce this law through state consumer protection laws and recover civil penalties of the greater of treble damages or \$10,000 per violation.

A YES VOTE would provide motor vehicle owners and independent repair facilities with expanded access to wirelessly transmitted mechanical data related to their vehicles’ maintenance and repair.

A NO VOTE would make no change in the law governing access to vehicles’ wirelessly transmitted mechanical data.

# CITY OF GARDNER, MASSACHUSETTS

NOVEMBER 3, 2020 STATE ELECTION ORDER

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## QUESTION 2: Law Proposed by Initiative Petition

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives on or before May 5, 2020?

### SUMMARY

This proposed law would implement a voting system known as “ranked-choice voting,” in which voters rank one or more candidates by order of preference. Ranked-choice voting would be used in primary and general elections for all Massachusetts statewide offices, state legislative offices, federal congressional offices, and certain other offices beginning in 2022. Ranked-choice voting would not be used in elections for president, county commissioner, or regional district school committee member.

Under the proposed law, votes would be counted in a series of rounds. In the first round, if one candidate received more than 50 percent of the first-place votes, that candidate would be declared the winner and no other rounds would be necessary. If no candidate received more than 50 percent of the first-place votes, then the candidate or candidates who received the fewest first-place votes would be eliminated and, in the next round, each vote for an eliminated candidate would instead be counted toward the next highest-ranked candidate on that voter’s ballot. Depending on the number of candidates, additional rounds of counting could occur, with the last-place candidate or candidates in each round being eliminated and the votes for an eliminated candidate going to the voter’s next choice out of the remaining candidates. A tie for last place in any round would be broken by comparing the tied candidates’ support in earlier rounds. Ultimately, the candidate who was, out of the remaining candidates, the preference of a majority of voters would be declared the winner.

Ranked-choice voting would be used only in races where a single candidate is to be declared the winner and not in races where more than one person is to be elected.

Under the proposed law, if no candidate received more than 50 percent of first-place votes in the first round, the rounds of ballot-counting necessary for ranked-choice voting would be conducted at a central tabulation facility. At the facility, voters’ rankings would be entered into a computer, which would then be used to calculate the results of each round of the counting process. The proposed law provides that candidates in a statewide or district election would have at least three days to request a recount.

The Secretary of State would be required to issue regulations to implement the proposed law and conduct a voter education campaign about the ranked-choice voting process. The proposed law would take effect on January 1, 2022.

**A YES VOTE** would create a system of ranked-choice voting in which voters would have the option to rank candidates in order of preference and votes would be counted in rounds, eliminating candidates with the lowest votes until one candidate has received a majority.

**A NO VOTE** would make no change in the laws governing voting and how votes are counted.

# CITY OF GARDNER, MASSACHUSETTS

NOVEMBER 3, 2020 STATE ELECTION ORDER

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It is further ordered that the following polling places are designated by the City Council:

WARD 1, PRECINCT A – Elk's Home, 31 Park Street  
WARD 1, PRECINCT B – Elk's Home, 31 Park Street  
WARD 2, PRECINCT A – Levi Heywood Memorial Library, 55 West Lynde Street  
WARD 2, PRECINCT B – Levi Heywood Memorial Library, 55 West Lynde Street  
WARD 3, PRECINCT A – Acadien Social Club, 193 Parker Street  
WARD 3, PRECINCT B – Acadien Social Club, 193 Parker Street  
WARD 4, PRECINCT A – Police Headquarters, 200 Main Street  
WARD 4, PRECINCT B – Police Headquarters, 200 Main Street  
WARD 5, PRECINCT A – National Guard Armory, 323 West Broadway  
WARD 5, PRECINCT B – National Guard Armory, 323 West Broadway

BY ORDER OF THE CITY COUNCIL

**PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between **MASSACHUSETTS ELECTRIC COMPANY**, a Massachusetts corporation, having a usual place of business at 40 Sylvan Road, Waltham, Massachusetts 02451 ("Seller"), and **THE CITY OF GARDNER**, a municipal corporation with an address c/o City Hall, 95 Pleasant Street, Gardner, MA 01440 (hereinafter the "Buyer").

1. **PROPERTY.**

Upon and subject to the following terms and conditions, the Seller hereby agrees to sell and the Buyer hereby agrees to purchase a parcel of Seller's land located in Gardner, Worcester County, Massachusetts (the "Premises") conveyed by deed to Seller's predecessor, Gardner Electric Light Company, dated October 25, 1927, and recorded with the Worcester District Registry of Deeds (the "Registry") in Book 2454, Page 367, a copy of which deed is attached hereto as Exhibit A, and is shown on that plan recorded with the Registry in Plan Book 52 as Plan 56.

2. **TITLE; DEED.**

Said Premises to be conveyed by release deed running to the Buyer free and clear of all encumbrances except the following ("Permitted Encumbrances"):

- (a) Federal, state and local laws, ordinances, by-laws and rules regulating the use of land and particularly provisions of local building and zoning laws;
- (b) Such taxes for the then current year as are not due and payable on the date of the delivery of the deed;
- (c) Any liens for municipal betterments assessed after the date of this Agreement; and
- (d) Easements or claims of easements not shown by public records, boundary-line disputes, overlaps, encroachments, title to filled lands (if any) and any matters not of record which would be disclosed by an accurate survey and inspection of the Premises.

3. **PURCHASE PRICE.**

The agreed purchase price for the Premises shall be an amount equal to Eight Thousand One Hundred Dollars (\$8,000.00) (hereinafter the "Purchase Price"). Simultaneously with the execution of this Agreement, a deposit in the amount of Eight Hundred Dollars (\$800.00) (hereinafter the "Deposit"), will be delivered to Flick Law Group, P.C. (the "Escrow Agent") in good funds, either certified bank check or cashier's check, to be held in a non-interest bearing attorney's IOLTA account. The Deposit and the balance of the Purchase Price, subject to adjustments, credits, prorrations

and other terms of this Agreement, shall be paid by certified check(s) or bank check(s) or by wire transfer payable directly to the Seller upon delivery of the deed. The Deposit and balance of the purchase price checks should be made out to "Massachusetts Electric Company."

If this Agreement is terminated, or if either party fails to perform any of its agreements hereunder, the Deposit shall be disposed of in the manner hereinafter provided under this Agreement. If any dispute arising under this Agreement with respect to the disposition of the Deposit or the entitlement of any party to the Deposit or the obligations of the Escrow Agent with respect thereto, the Escrow Agent shall not be required to determine the resolution of any such dispute and shall not be obligated to make any delivery of the Deposit; but in such event, the Escrow Agent may hold the Deposit until receipt by the Escrow Agent of an authorization in writing signed by Buyer and Seller directing the disposition of same, or in the absence of such authorization, the Escrow Agent may hold the Deposit until the final determination of the rights of Buyer and Seller in an appropriate proceeding. If such written authorization is not given, or if proceedings for such determination are not promptly commenced and diligently continued to a resolution, the Escrow Agent shall bring an appropriate action or proceeding for leave to deposit the Deposit in the registry of the applicable United States District Court pending such determination and to submit such resolution of such dispute to such court by action of interpleader. The Escrow Agent shall not be responsible hereunder for any acts or omissions unless willfully done or done in a grossly negligent manner, and upon delivery of the Deposit in accordance with the terms of this Agreement, the Escrow Agent shall have no further liability to the parties hereunder or in connection herewith.

The Escrow Agent has executed this Agreement for the purposes of evidencing its receipt of the Deposit and its agreement to comply with and perform its obligations as Escrow Agent hereunder.

4. CLOSING.

Such deed is to be delivered at the offices of the Seller, 40 Sylvan Road, Waltham, Massachusetts, or at such other place as the parties shall agree to in writing at 11:00 a.m. (local time at the Property), on the thirtieth (30<sup>th</sup>) day after the date of this Agreement (the "Closing Date"), or such other date as is mutually acceptable to the Buyer and the Seller. If the date for delivery of the deed falls on a Saturday, Sunday or holiday, the deed shall be delivered on the next full business day thereafter when the Registry is open for business.

5. POSSESSION AND CONDITION.

Full possession of the Premises, in the same condition they are now (reasonable use and wear excepted), is to be delivered to the Buyer at the time of the delivery of the deed, the Premises to be then:

- (a) Not in violation of said local zoning; and
- (b) In compliance with provisions of any instrument referred to in Paragraph 2 of this Agreement.

The Buyer shall be entitled to an inspection of the Premises at least forty-eight (48) hours prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this Paragraph.

6. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM.

If the Seller shall be unable to give title to, or to make conveyance of, or to deliver possession of the Premises, all as herein stipulated, or at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then any payments made under this Agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease, and this Agreement shall be void without recourse to the parties hereto, unless Seller elects, at no cost to Seller, to use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof, as the case may be, in which event the Seller shall give written notice thereof to Buyer at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days. Notwithstanding the foregoing, Buyer may at any time after receiving said notice from Seller elect to terminate this Agreement, in which event the Deposit, together with any accrued interest thereon, shall be returned to the Buyer and all other obligations of the parties hereto shall cease without recourse to the parties hereto, except for those provisions that expressly survive the termination of this Agreement.

7. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM.

If, at the expiration of the extended time, the Seller shall have failed to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, as set forth in Seller's written notice, then at Buyer's option, all obligations of the parties hereto shall cease, the Deposit, together with any accrued interest thereon, shall be returned to the Buyer, and this Agreement shall be void and without recourse to the parties hereto, except with respect to those provisions that expressly survive the termination of this Agreement.

8. BUYER'S ELECTION TO ACCEPT TITLE.

The Buyer shall have the election, at either the original or any extended time for performance, to take title and possession of the Premises in such condition, as Seller is able to deliver in its then condition and to pay therefore the Purchase Price without deduction or offset, in which case Seller shall convey title. Seller shall not be required to expend any money or provide a credit to Buyer regarding the same.

9. INDEMNITY; DISCLAIMER OF WARRANTIES.

(a) Buyer acknowledges that Buyer has not been influenced to enter into this transaction and that it has not relied upon any warranties or representations not set forth in this Agreement. Buyer acknowledges and agrees that (i) Buyer is purchasing the Premises "AS IS", "WHERE IS" and "WITH ALL FAULTS," without representations and warranties, express or implied, except as set forth herein and (ii) Buyer shall have had the opportunity to inspect fully and completely the Premises and become satisfied with the condition of the Premises, including without limitation, the environmental condition of the Premises.

(b) At the closing, Buyer shall accept the Premises "AS IS," "WHERE IS" and "WITH ALL FAULTS," in its present condition. Buyer, for itself and on behalf of its predecessors, successors, assigns, affiliates, and subsidiaries, and all officers, directors, shareholders, trustees, beneficiaries, partners, members, managers, employees, and agents of any of them, hereby fully and unconditionally releases, remises and forever discharges Seller and its successors, assigns, affiliates, and subsidiaries, and all officers, directors, shareholders, employees, and agents of any of them, of and from any and all actions, suits, claims, demands, or judgments of whatever description (collectively "Claims"), which Claims Buyer may now have or may have in the future that arise from or relate in any way to (i) any oil, pollutant, hazardous or toxic material, waste, or substance, or contamination that causes or contributes to the contamination of and/or damage to the environment and/or natural resources, as those terms are defined by any applicable law, rule or regulation, including, without limitation, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et seq. ("CERCLA"), and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq. ("RCRA") (herein collectively referred to as "Hazardous Materials") that are on, in, under, or emitting from the Premises, except to the extent caused by the Seller, or (ii) any other defect or condition on the Premises not related to Hazardous Materials.

(c) The Buyer does hereby, for itself and its successors and assigns, and to the extent permitted by law, covenant and agree with the Seller unconditionally and absolutely to defend (with counsel reasonably satisfactory to the Seller, its affiliates, successors, and assigns) and unconditionally and absolutely to pay, protect, indemnify, and hold forever harmless the Seller, its affiliates, successors, and assigns from and against any and all past, present, and future liabilities, damages, costs, expenses (including any and all legal, accounting, consulting, engineering, environmental services and other fees and expenses of the Seller, its affiliates, successors, and assigns), sums of money, claims for contribution or indemnification, actions, causes of action, suits, claims, losses, injunctive relief, orders, debts, demands, judgments, awards, accounts, covenants, contracts, agreements, obligations, and any other rights, demands, claims, suits or liabilities of any kind or nature whatsoever, under statutory or common law (including but not limited to

the CERCLA, RCRA, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act., M.G.L. Chapter 21E, and all applicable rules and regulations promulgated thereunder), whether or not heretofore known or suspected, that may hereafter at any time be made or brought against the Seller, its affiliates, successors, and assigns, by any person or entity arising out of or relating to: (1) Any and all existing Hazardous Materials at or from the Premises as of Closing Date (“Existing Contamination”); (2) the discharge, release or threatened release at or from the Premises, facilities and/or equipment of any Hazardous Materials that causes or contributes to the contamination of and/or damage to the environment and/or natural resources; (3) the disposal, storage, transportation, discharge, release, recycling, or the arrangement for any of such activities, of Hazardous Materials that were generated, used or otherwise handled at the Premises; (4) the noncompliance or alleged noncompliance of the Premises with any federal, state or local environmental laws, regulations or ordinances; and/or (5) the negligence or willful misconduct of the Buyer, its employees, agents and contractors; provided, however, that this indemnity and hold harmless provision shall not apply to any contamination of and/or damage to the environment and/or natural resources that is caused directly by a discharge or release from any of Seller's electric or gas facilities located on the Premises and/or which is or was caused directly by the gross negligence and/or willful misconduct of the Seller, its affiliates, successors, and assigns.

(d) Buyer, for itself and on behalf of its predecessors, successors, assigns, affiliates, and subsidiaries, and all officers, directors, shareholders, employees, and agents of any of them, hereby covenants not to sue regarding or assert, directly or indirectly, personally or through any affiliated entity or representative, any Claims released in Paragraph 9(b) above against Seller and/or any of its predecessors, successors, assigns, affiliates, and subsidiaries, and/or any of their respective officers, directors, shareholders, employees, and/or agents of any of them.

(e) BUYER HEREBY WAIVES AND SELLER HEREBY DISCLAIMS ALL WARRANTIES OF ANY TYPE OR ANY KIND WHATSOEVER AS TO THE PREMISES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THOSE OF FITNESS FOR A PARTICULAR PURPOSE, TENANTABILITY, HABITABILITY, AND USE, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH HEREIN.

(f) The provisions of Paragraph 9 shall survive the delivery of the deed or the earlier termination of this Agreement.

10. APPORTIONMENTS.

Real estate taxes for the then current fiscal year shall be apportioned as of the day of Closing Date and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable at the time of delivery of the deed. If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon

as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties hereto, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed. The provisions of this Paragraph shall survive the delivery of the deed.

11. INSURANCE.

The Premises shall, until delivery of the deed to the Buyer, be kept insured by Seller as presently insured.

12. BENEFITS AND OBLIGATIONS; NO THIRD PARTY BENEFICIARIES.

No party other than the parties hereto or their respective successors and assigns shall have any right or benefit herein, including without limitation, the right to insist upon or enforce against Seller or Buyer the performance of any or all of their respective obligations hereunder, and no such third party shall be deemed to have received any benefits as a result of this Agreement.

13. DEFAULT; DAMAGES.

If the Buyer shall fail to fulfill the Buyer's covenants and agreements herein, the Deposit, with interest accrued hereon, shall be retained by Seller, which shall constitute full and complete liquidated damages, and Seller shall have no further recourse or remedy at law or in equity for any breach by Buyer hereunder (except for Buyer's indemnity obligations hereunder, which shall not be subject to any limitation on liquidated damages). The parties agree that if Buyer defaults, the damages which Seller will suffer will be difficult, if not impossible, to determine with precision. Therefore, the parties acknowledge that those installments of the Deposit that have been agreed upon, after negotiation, are the parties' reasonable estimate of Seller's damages and are Seller's exclusive remedy against Buyer in the event that the closing does not occur as a result of a default on the part of the Buyer. If Seller defaults in the performance of its duties under this Agreement, all of the conditions precedent having been met, and all of the conditions to be met by Buyer having been satisfied, then Buyer may rescind this Agreement and receive the return of the Deposit and neither Seller nor Buyer will have any further rights or duties under this Agreement, except with respect to those provisions that survive termination of the Agreement, or Buyer may seek to enforce the Agreement pursuant to an action for specific performance.

Neither party shall have any liability or responsibility whatsoever for any consequential or indirect damages, whether proximately or remotely related to breach or default by the other party except that the foregoing shall not apply in the case of an intentional or willful breach or default by either party hereto.

The provisions of this Paragraph 13 shall survive the delivery of the deed or the earlier termination of this Agreement.

14. ACCEPTANCE OF DEED.

The acceptance of the deed by the Buyer shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed in this Agreement and all other attached and incorporated documents, except provisions which are, by the terms hereof, to be performed after the delivery of said deed, and such as are otherwise expressly stated to survive said delivery.

15. CONSTRUCTION OF AGREEMENT.

This Agreement, executed in duplicate, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument and sets forth the entire agreement and understanding between the parties with respect to the sale of the Premises to the Buyer by the Seller, is binding upon and inures to the benefit of the parties hereto and their respective legal representatives, successors and assigns, and may be canceled, assigned, modified or amended only by a written instrument executed by both the Seller and the Buyer. If two or more persons are named herein as Buyer, their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it.

16. LIABILITY OF A SHAREHOLDER, TRUSTEE OR BENEFICIARY.

If a party hereto is a corporation, no shareholder, or if a party hereto is a trust, no trustee or beneficiary of the trust shall be personally liable for any obligation, express or implied hereunder. If Seller or Buyer discloses in its execution of this Agreement that it is acting in a representative or fiduciary capacity, only the principal or estate represented shall be bound. If more than one person is named herein as Buyer or Seller this obligation hereunder are joint and several.

17. ACCESS; INSPECTION.

The Buyer and its agents, independent contractors and invitees shall have, at Buyer's sole cost, expense, and risk, the right to enter upon the Premises for a period of fifteen (15) days from the date of this Agreement (the "Inspection Period") upon reasonable advance notice to the Seller for the purpose of inspecting the Premises and conducting any title examination, zoning review, soil borings, surveys, measurements, engineering studies, suitability of the Premises for Buyer's intended use, inspection of the physical and conditions of the Premises (the "Inspection"); provided, however, that the Buyer shall not perform any invasive subsurface tests or inspections of the Premises for the presence of hazardous materials or waste without Seller's prior written consent and upon delivery and approval by Seller of such documentation as Seller may reasonably require including,

without limitation, a scope of work and accompanying plans. Seller's prior written consent to any invasive testing may be subject to any terms and conditions imposed by Seller in its sole discretion, including without limitation the prompt restoration of the Premises to substantially its condition prior to any such inspections or tests, at Buyer's sole cost and expense. Seller reserves the right to have a representative present at any time Buyer accesses the Premises. Before entering upon the Premises, the Buyer shall furnish to the Seller evidence of general liability insurance coverage in such amounts and insuring against such risks as Seller may reasonably require. Within ten (10) days of receipt thereof, Buyer shall deliver to Seller copies of the results of any tests and inspections performed with respect to the Premises.

Buyer hereby agrees that any information about the Premises that it obtains as a result of the Inspection, other than information of public record, shall be kept strictly confidential by Buyer and its agents, consultants and employees, except to the extent it is necessary to divulge such information as required by applicable law.

18. TITLE.

Any title matter which is the subject of a title standard or practice standard of the Real Estate Bar Association for Massachusetts at the time for delivery of the deed shall be governed by said title or practice standard to the extent applicable or except as otherwise expressly set forth herein.

19. NOTICE.

Any notice required or permitted to be given hereunder shall be in writing and delivered by hand, mailed postage prepaid by registered or certified mail, return receipt requested, or sent by recognized overnight courier capable of providing a written receipt, addressed to the parties at the addresses set forth below. Any such notice shall be deemed properly served and delivered for all purposes hereunder (a) if sent to the attorney for such party as specified below; and/or (b) at the time such notice is delivered, if hand-delivered, or at the time indicated as stamped by any post office regularly maintained by the United States Postal Authority or recognized overnight courier, if so mailed or sent.

If to Buyer:                   The City of Gardner  
  City Hall  
  95 Pleasant Street  
  Gardner, MA 01440

with a copy to:               Flick Law Group, P.C.  
  144 Central Street  
  Gardner, MA 01440  
  Attention: John M. Flick, Esq.

If to Seller:                   Massachusetts Electric Company

40 Sylvan Road  
Waltham, MA 02451  
Attention: Christopher Parella, Senior Real Estate Representative

with a copy to: National Grid USA Service Company, Inc.  
40 Sylvan Road  
Waltham, MA 02451  
Attention: Megan F.S. Tipper, Legal Dept.

20. BROKERAGE.

Seller and Buyer represent to each other that no broker, finder, or salesperson has been responsible for the consummation of the execution of this Agreement and shall indemnify and hold each other harmless from any claim for commissions or fees. The provisions contained in this Paragraph shall survive the delivery and acceptance of the deed or the cancellation and termination of this Agreement.

21. CLOSING COSTS.

The Buyer shall be responsible for the payment of the closing costs associated with the transfer of the Premises including, without limitation, the deed excise taxes and the costs to record the deed and any other documents necessary to document the transfer.

22. REPRESENTATIONS AND WARRANTIES.

(a) Seller's Representations and Warranties.

Seller hereby represents and warrants to Buyer that:

- (i) Seller has the full power, right and authority to enter into, execute, deliver, and perform the terms and conditions of this Agreement.
- (ii) This Agreement, and the documents to be executed and delivered by Seller in connection with the consummation of the transaction contemplated by this Agreement, are and will be valid, binding, and enforceable upon Seller in accordance with their respective terms and conditions.
- (iii) Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code of 1986, as amended, and Income Tax Regulations) for purposes of United States income taxation. The Seller agrees to deliver, at the time for delivery of the deed, a suitable "non-foreign certificate" if such shall be required by the Buyer or any mortgagee.

(iv) The person executing and delivering this Agreement on behalf of such party is duly authorized to so execute and deliver this Agreement.

(v) All requisite corporate action has been taken by Seller in connection with the entering into and delivery of this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby.

(b) Buyer's Representations and Warranties.

Buyer hereby represents and warrants to Seller that:

(i) Buyer has the full power, right and authority to enter into, execute, deliver, and perform the terms and conditions of this Agreement.

(ii) This Agreement and the documents to be executed and delivered by Buyer in connection with the consummation of the transaction contemplated by this Agreement, are and will be valid, binding, and enforceable upon Buyer in accordance with their respective terms and conditions.

(iii) All requisite action has been taken by Buyer in connection with the entering into and delivery of this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby.

(iv) The person executing and delivering this Agreement on behalf of the Buyer is duly authorized to so execute and deliver this Agreement.

23. NO ASSIGNMENT.

Buyer shall not have the right to assign this Agreement without Seller's prior written consent, which consent shall not be unreasonably withheld, and, at Seller's sole option, any such assignment without the prior written consent of Seller shall be invalid, shall not be binding upon Seller, and shall not relieve the Buyer of Buyer's obligations under this Agreement. Any permitted assignee of Buyer shall be entitled to all of the rights and powers of Buyer hereunder. If Buyer assigns this Agreement to a permitted assignee, the permitted assignee shall assume all responsibilities for any obligations of Buyer hereunder. Any permitted assignment shall not release Buyer from its obligations hereunder. Prior to any permitted assignment, Buyer shall deliver a copy of the proposed assignment and assumption agreement to Seller, which agreement shall satisfy the provisions of this Paragraph 23 and shall be reasonably acceptable to Seller.

24. NO RECORDING.

This Agreement shall not be recorded and any recording of this Agreement in violation of this Paragraph shall terminate this Agreement and render this Agreement null and void, in which case the parties shall have no further obligations to each other, except for those provisions which are expressly stated to survive termination of this Agreement.

25. NO OFFER.

The submission of a draft of this Agreement or a summary of some or all of its provisions does not constitute an offer to buy or sell the Premises. Neither the Buyer nor the Seller shall be legally obligated with respect to a purchase or sale of the Premises unless and until this Agreement has been executed by both the Buyer and the Seller and fully executed copies have been delivered to each.

26. TIME OF THE ESSENCE.

Time is of the essence of each of the provisions of this Agreement.

[Signature Page Follows]

EXECUTED as a sealed instrument on the day and year first written above.

SELLER:

MASSACHUSETTS ELECTRIC COMPANY

By: \_\_\_\_\_

Name:

Title:

BUYER:

CITY OF GARDNER

By: \_\_\_\_\_

Name:

Title:

ESCROW AGENT:

FLICK LAW GROUP, P.C.

By: \_\_\_\_\_

Name: John M. Flick, Esq.

**EXHIBIT A**

DEED

23521

City of Gardner

to

Gardner Electric Light  
Company

120

WARRANTY DEED.

See Plan Book 52, Plan 56.

Worcester, ss NOV. 25, 1927  
at 8:30 m. AM. Received and entered with  
Worcester District Deeds Book 2454 Page 367

*Christie R. Davis*  
Registrar.

*Wm. G. Power Co.*

79

From the Office of  
WILLIAM A. LOUGHLIN  
Gardner, Mass.

RECEIVED  
AT 8:30 A. M.  
NOV 25 1927  
WORCESTER DISTRICT  
REGISTRY OF DEEDS  
BOOK 2454 PAGE 367

APPROVED *WPC*

RECORDED BY *R.A.H.*  
COMPLETED

City of Gardner, a municipal corporation, of Gardner, Worcester County, Massachusetts, for consideration paid, grants to Gardner Electric Light Company, a corporation duly organized by law, of said Gardner, with WARRANTY COVENANTS a certain tract of land, located in said Gardner, bounded and described as follows, to wit:

Beginning at the northeast corner thereof at other land of the grantor; thence South 20° East by land of one Taavitsainen, a distance of 60 feet to other land of the grantor; thence South 70° 35' West by other land of the Grantor 1375 feet to land of one Blake; thence North 33° 30' West by said Blake land, 61.48 feet; thence North 70° 35' East by other land of the grantor a distance of 1389 feet to the place of beginning.

Reserving to the Grantor, its successors and assigns, the right to pass and repass, for any and all purposes, over the granted premises to and from the premises of the grantor immediately adjoining the granted premises herein on the north.

Said granted premises are shown on plan marked "Plan Of A. Conveyance From The City Of Gardner To The Gardner Electric Light Company. Sept. 28, 1927. Stanley G. Kendall, City Engineer" to be recorded herewith.

IN WITNESS WHEREOF the City of Gardner has caused these presents to be signed and sealed in its name and behalf by Albert H. Stone, its Mayor, this *28<sup>th</sup>* day of October 1927.

City of Gardner.

By

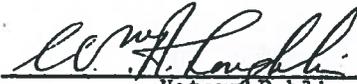
  
\_\_\_\_\_  
Mayor

COMMONWEALTH OF MASSACHUSETTS.

Worcester, ss.

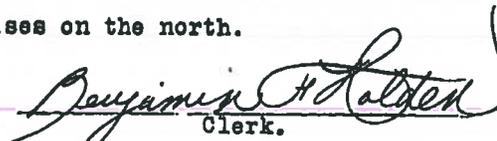
Gardner, Mass., October 26 1927.

Personally appeared the above-named Albert H. Stone and acknowledged the foregoing instrument to be the free act and deed of the City of Gardner, before me

  
Notary Public.  
*By Commission Expires Mar 8 1929*

I, Benjamin F. Holden, Clerk of the City Council of the City of Gardner certify that at a regular meeting of the City Council held September 6, 1927 the following Vote was passed:

That the sale of a portion of the land owned by the City on Pearl Street to the Gardner Electric Light Co. be authorized, said portion being shown on plan marked "Gardner Electric Light Co. Plan Showing Location of the Ashburnham Pole Line Crossing Land owned by the City of Gardner. Scale 1" = 200 feet. August 10, 1927", and being approximately sixty (60) feet in width and fourteen hundred (1400) feet in length and running from the property of Herbert W. Blake to the property of Albin Taavitsainen, and that the Mayor be and he is hereby authorized and instructed to sign, seal, acknowledge and deliver in the name and on behalf of the City a deed of said property to the Gardner Electric Light Co. upon the payment of the sum of Two Hundred Eighty (\$280.00) Dollars, said deed to reserve to the City, its Successors and Assigns, the right to pass and repass, for any and all purposes, over the granted premises to and from the premises of the City immediately adjoining the granted premises on the north.

  
Clerk.

PID: W27-1-11

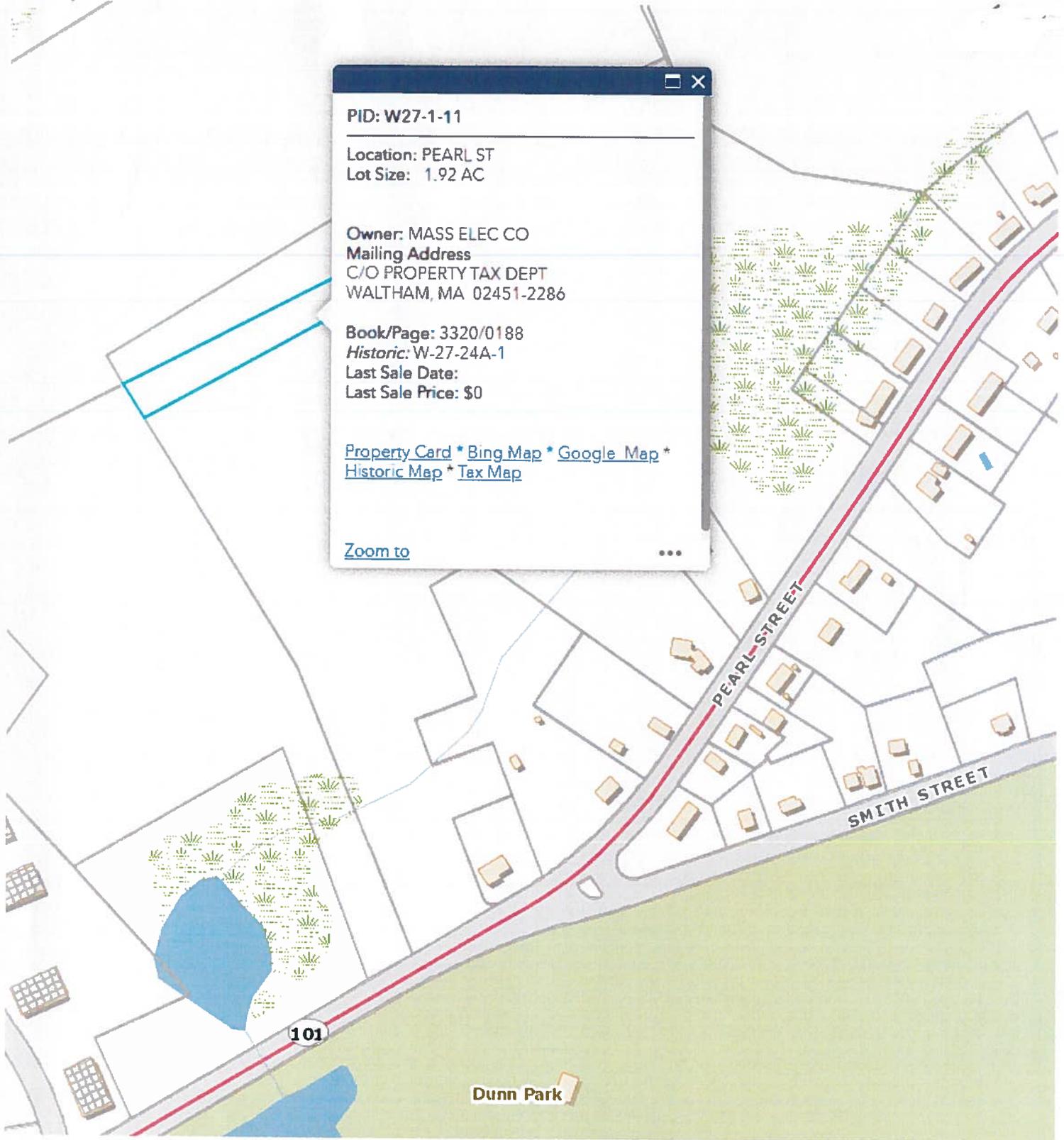
Location: PEARL ST  
Lot Size: 1.92 AC

Owner: MASS ELEC CO  
Mailing Address  
C/O PROPERTY TAX DEPT  
WALTHAM, MA 02451-2286

Book/Page: 3320/0188  
Historic: W-27-24A-1  
Last Sale Date:  
Last Sale Price: \$0

[Property Card](#) \* [Bing Map](#) \* [Google Map](#) \*  
[Historic Map](#) \* [Tax Map](#)

[Zoom to](#) ...





City Owned

Land to Be Purchased

<b>CURRENT OWNER</b>	<b>TOPO</b>	<b>UTILITIES</b>	<b>STRT/ROAD</b>	<b>LOCATION</b>	<b>CURRENT ASSESSMENT</b>
MASS ELEC CO					Code: 1320, Appraised: 3,800, Assessed: 3,800
C/O PROPERTY TAX DEPT	<b>SUPPLEMENTAL DATA</b>				
40 SYLVAN RD	Alt Prcl ID	Assoc Pld#			
WALTHAM MA 02451-2286	Sub-Div				
	Photo				
	Ward				
	Prec.				
	GIS ID: M_161226_926089				

<b>RECORD OF OWNERSHIP</b>	<b>BK-VOL/PAGE</b>	<b>SALE DATE</b>	<b>QU</b>	<b>VI</b>	<b>SALE PRICE</b>	<b>VC</b>	<b>PREVIOUS ASSESSMENTS (HISTORY)</b>
MASS ELEC CO	03320 0188		Q	V	0 00		Year: 2019, Code: 3900, Assessed: 74,800, Year: 2018, Code: 3900, Assessed: 74,800, Year: 2017, Code: 3900, Assessed: 71,200
	Total						Total: 74800, Total: 74800, Total: 71200

<b>EXEMPTIONS</b>				<b>OTHER ASSESSMENTS</b>			
Year	Code	Description	Amount	Code	Description	Number	Amount
			0.00				

<b>ASSESSING NEIGHBORHOOD</b>			
Nbhd	Nbhd Name	Tracing	Batch
0001	B		

<b>NOTES</b>			
Appraised Bldg. Value (Card) 0			
Appraised Xf (B) Value (Bldg) 0			
Appraised Ob (B) Value (Bldg) 0			
Appraised Land Value (Bldg) 3,800			
Special Land Value 0			
Total Appraised Parcel Value 3,800			

<b>BUILDING PERMIT RECORD</b>				<b>VISIT / CHANGE HISTORY</b>			
Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp
					04-08-1981		

<b>LAND LINE VALUATION SECTION</b>										
B Use Code	Description	Zone	Land Type	Land Units	Unit Price	Size Adj.	Site Index	Cond.	Nbhd.	Nbhd. Adj.
1 1320	Vacant Land Unb	R2		1.917 AC	4,000.00	1.000000	0	0.50	1.000	narrow strip
Total Card Land Units				1.917 AC	Parcel Total Land Area:		1.9174	Total Land Value		
								3,800		

This signature acknowledges a visit by a Data Collector or Assessor



10342-10343

City of Gardner, *Executive Department* RECEIVED

Michael J. Nicholson, Mayor

2020 SEP 30 PM 2: 52



September 30, 2020

CITY CLERK'S OFFICE  
GARDNER, MA

The Hon. Elizabeth J. Kazinskas, President  
And City Councilors  
Gardner City Hall, Rm 121  
95 Pleasant St.  
Gardner, MA 01440

RE: Declaration of Surplus and Lifting of Deed Restriction Agenda items

Dear President Kazinskas and Councilors,

Thank you for scheduling an informal meeting to review the recently submitted proposals from Heywood Hospital.

As you are aware, this is a very large, complicated project and one that will require a great amount of due diligence. Representatives from Heywood Hospital began meeting with the different City Department Heads about the project in early January of 2020 to determine what specifications the City would require of them.

My goal is to ensure the members of the City Council have all pertinent information in order to review the hospital's request. If there is any additional data that you feel would help with this endeavor, following Thursday or Monday's meeting, please let me know.

I believe that this project would greatly enhance our hospital and our community as a whole. I fully appreciate the Council's vital role in this process and hope to assist with any questions or concerns prior to the Council taking any votes on the project, whenever that may take place.

Respectfully,

Michael J. Nicholson  
Mayor, City of Gardner

**DECLARING SURPLUS FOR PURPOSE OF DISPOSAL  
LAND OFF WOODLAND AVENUE**

**VOTED:** To declare land available for the disposition for the purpose of a lease to be negotiated between the Mayor and Heywood Hospital, in accordance with prevailing General Laws, the land off Woodland Avenue, further identified on the City of Gardner Assessor's Map as R27-2-8B, and upon such other terms as the mayor shall consider proper in accordance with this Vote.

10342

# City of Gardner, *Executive Department*

Michael J. Nicholson, Mayor

September 24, 2020

The Honorable Elizabeth J. Kazinskas, President  
And City Councilors  
Gardner City Hall  
95 Pleasant St., Rm 121  
Gardner, MA 01440

RECEIVED  
2020 SEP 28 AM 11:15  
CITY CLERK'S OFFICE  
GARDNER, MA



RE: Request for Declaration of Land Available for Disposition

Dear President Kazinskas and Councilors,

As part of Heywood Hospital's long term planning, the Hospital is exploring a potential expansion to add a new surgical and perioperative wing onto their existing building. In order to accomplish this, Heywood Hospital would have to lease a portion of land currently owned by the City.

President Brown and other members of the Heywood Administration have met with several of our department heads to present their plan and go over what needs to be done to ensure that their proposal meets all of the legal and environmental requirements that need to be followed.

Chapter 30B of the General Laws state, "if a governmental body duly authorized by general or special law to engage in such transaction determines that it shall rent, convey, or otherwise dispose of real property, the governmental body shall declare the property available for disposition and shall specify the restrictions, if any, that it will place on the subsequent use of the property." Per the guidance issued by the Inspector General's office. This declaration must be made prior to the City entering into any negotiations for the lease of the property.

The current Covid-19 Pandemic has truly highlighted how blessed we are as a City to have Heywood Hospital located here. The services they offer to our residents, the partnerships they create with our community organizations, and their commitment to improving the quality of life in our City are invaluable. I am very happy to see that they are interested in continuing to invest in our City and make it so that services that currently require patients to travel to Boston or Worcester could now be done here in Gardner.

As such, I kindly ask the Council to declare the requested parcel of land as available for disposition in order to allow my office to begin lease negotiations with the administration of Heywood Hospital as the first step toward their expected expansion. Following successful negotiations, the Hospital would then enter into conversations with the Conservation Commission, Planning Board, Zoning Board of Appeals and all other relevant state and local boards and commissions, but those discussions cannot be held until they have title to the land through a lease.

Respectfully Submitted,

Michael J. Nicholson  
Mayor, City of Gardner

10342



**Heywood Hospital**  
*Member of the Heywood Healthcare Family*

September 23, 2020

Michael J. Nicholson, Mayor  
City of Gardner  
95 Pleasant Street  
Gardner, MA 01440

Dear Mayor Nicholson,

Heywood Hospital respectfully requests to enter into a lease agreement for land identified as Parcel H, a certain parcel of land situated west of Woodland Avenue, in Gardner Worcester County Massachusetts, and shown on the attached Exhibit Plan.

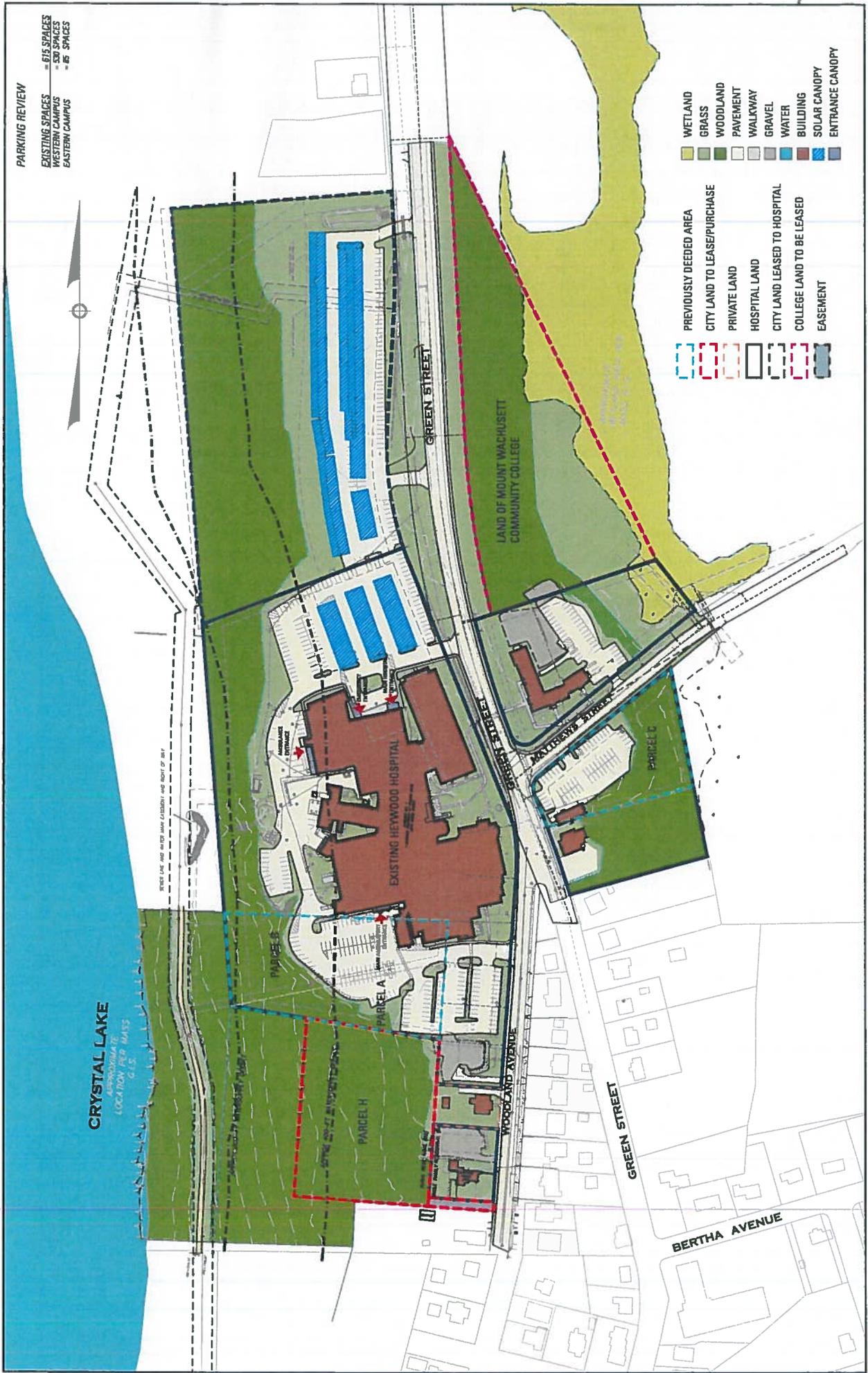
See attachment – Exhibit Plan.

Respectfully Submitted,

A handwritten signature in black ink that reads "Win Brown". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Win Brown, President and CEO  
Heywood Healthcare

11342



HEYWOOD HOSPITAL EXISTING CONDITIONS SITE PLAN



10342

CONSTRUCTION DETAIL		CONSTRUCTION DETAIL (CONTINUED)								
Element	Cd	Element	Cd							
Style: 99	Vacant Land									
Model: 00	Vacant									
Grade:										
Stories:										
Occupancy:										
Exterior Wall 1										
Exterior Wall 2										
Roof Structure:										
Interior Wall 1										
Interior Wall 2										
Interior Fir 1										
Interior Fir 2										
Heat Fuel:										
Heat Type:										
AC Type:										
Total Bedrooms:										
Total Bthrms:										
Total Half Baths:										
Total Xtra Fixtrs:										
Total Rooms:										
Bath Style:										
Kitchen Style:										
		<p>RCN</p> <p>Year Built: 0</p> <p>Effective Year Built: 0</p> <p>Depreciation Code: 0</p> <p>Remodel Rating: 0</p> <p>Year Remodeled: 0</p> <p>Depreciation %: 0</p> <p>Functional Obsol: 0</p> <p>Economic Obsol: 0</p> <p>Trend Factor: 1</p> <p>Condition: 0</p> <p>Condition %: 0</p> <p>Percent Good: 0</p> <p>RCNILD: 0</p> <p>Dep % Ovr: 0</p> <p>Dep Ovr Comment:</p> <p>Misc Imp Ovr:</p> <p>Misc Imp Ovr Comment:</p> <p>Cost to Cure Ovr:</p> <p>Cost to Cure Ovr Comment:</p>								
		<p>Code: 9550</p> <p>Description: Hospital V</p> <p>Percentage: 100</p> <p>0</p> <p>0</p>								
		<p><b>COST / MARKET VALUATION</b></p>								
		<p><b>OB - OUTBUILDING &amp; YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)</b></p>								
Code	Description	L/B	Units	Unit Price	Yr Bilt	Cond. Cd	% Gd	Grade	Grade Adj.	Appr. Value
<p><b>BUILDING SUB-AREA SUMMARY SECTION</b></p>										
Code	Description	Living Area	Floor Area	Eif Area	Unit Cost	Undeprec Value				
		Ttl Gross Liv / Lease Area	0	0	0	0				

No Sketch

AUTHORIZE LIFTING DEED RESTRICTION

VOTED: To authorize the Mayor to lift the deed restrictions to land deeded by the City of Gardner to Henry Heywood Hospital, as shown in deed recorded on March 26, 1998, with the Worcester District Registry of Deeds, in Book 1950, Page 160, with regards to Parcels A, B and C and the limitation to vehicular parking, loading areas and access driveway, and that the Mayor is authorized to take any other action necessary or convenient to carry out this vote.

11343

City of Gardner, *Executive Department*

RECEIVED



Michael J. Nicholson, Mayor

2020 SEP 28 AM 11:46

CITY CLERK'S OFFICE  
GARDNER, MA

September 24, 2020

The Honorable Elizabeth J. Kazinskas, President  
And City Councilors

Gardner City Hall  
95 Pleasant St., Rm 121  
Gardner, MA 01440

RE: Request from Heywood Hospital to Lift Deed Restriction

Dear President Kazinskas and Councilors,

As a part of their long term planning process, Heywood Hospital has reached out to my office to request that a deed restriction listed on land that the City deeded to the Hospital on January 26, 1998, limiting the use of the property to vehicular parking, loading area, and access driveways.

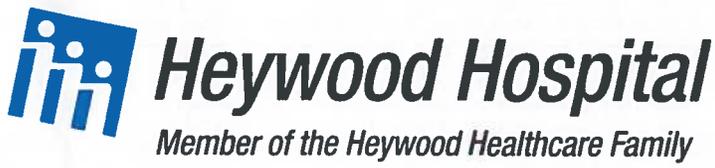
A copy of their request, as well as a copy of the deed are attached to this letter.

Heywood Hospital is a vital resource to our community and I am happy to see that they are looking to continue to invest in our City.

Respectfully Submitted,

Michael J. Nicholson  
Mayor, City of Gardner

10343



September 24, 2020

Michael J. Nicholson, Mayor  
City of Gardner  
95 Pleasant Street  
Gardner, MA 01440

Dear Mayor Nicholson,

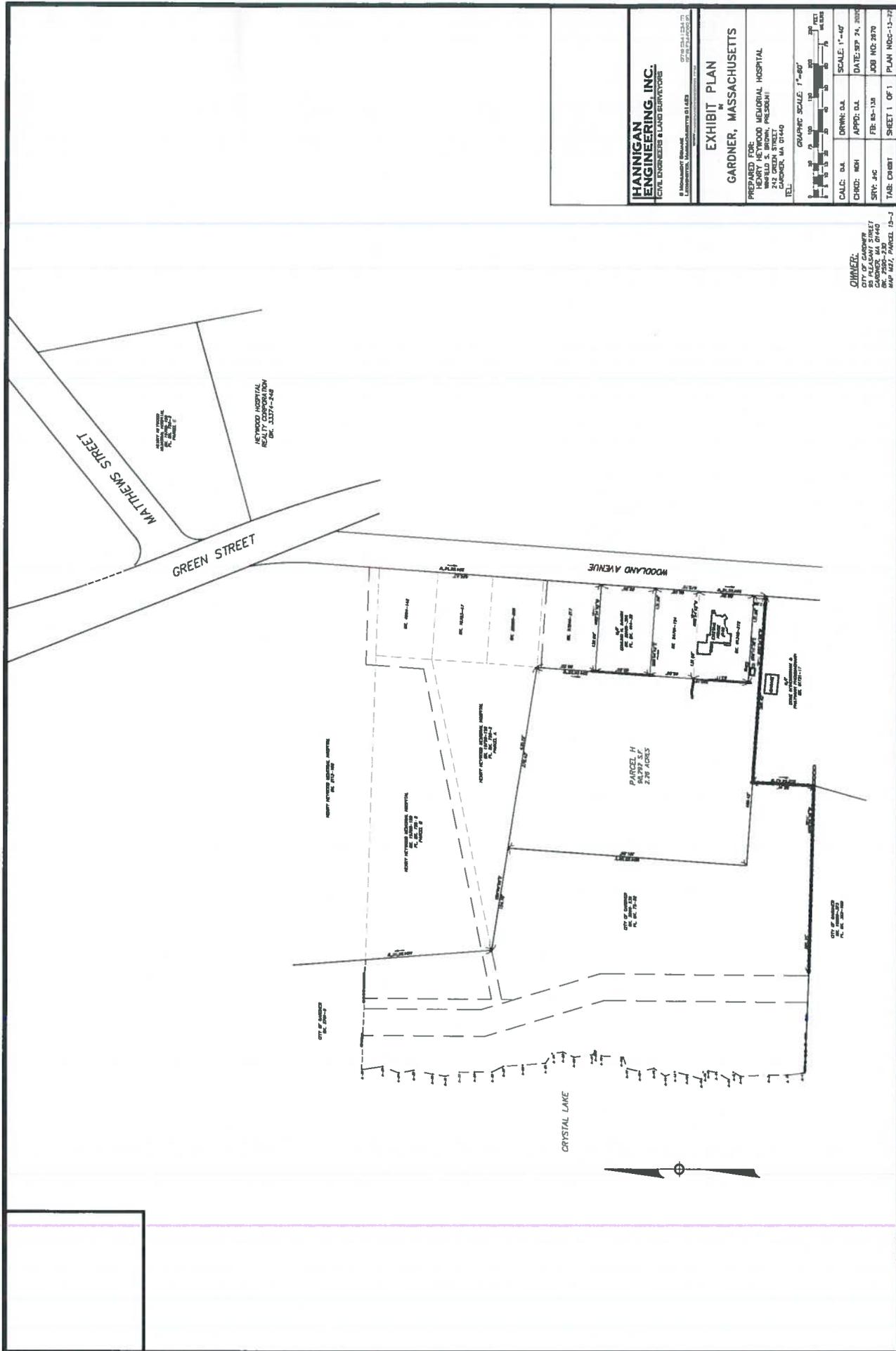
Heywood Hospital respectfully requests removal of deed restrictions to land deeded by the City of Gardner to Henry Heywood Hospital, on January 26, 1998, as shown in Book 1950, page 160. Heywood Hospital requests removal of restrictions on Parcels A, B, and C, which are currently limited to vehicular parking, loading areas and access driveways.

See attached, exhibit A.

Respectfully Submitted,

Win Brown, President and CEO  
Heywood Healthcare

10343



**HANNIGAN ENGINEERING, INC.**  
 CIVIL ENGINEERS & LAND SURVEYORS  
 100 Massachusetts Street  
 Boston, Massachusetts 02114  
 TEL: 617-552-1111

**EXHIBIT PLAN**  
**GARDNER, MASSACHUSETTS**

PREPARED FOR:  
 GARDNER MEMORIAL HOSPITAL  
 212 GREEN STREET  
 BROOKLINE, MA 02140  
 TEL: 617-552-1111

CALL: DA	DRWG: DA	SCALE: 1"=40'
CHRD: BSH	APPD: DA	DATE: SEP 24, 2000
SRV: JAC	FE: 60-138	JOB NO: 8970
TAB: CRIBT	SHEET 1 OF 1	PLAN NO: 13-17

**CORRECTION:**  
 CITY OF GARDNER  
 212 GREEN STREET  
 GARDNER, MA 01940  
 MAP 1027, PARCEL 13-J

38125

35/20  
pmb

Property Address: Land off Woodland Avenue; Green Street & Matthews Street; Gardner, Massachusetts

The INHABITANTS of the CITY OF GARDNER, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts;

for consideration paid, and in full consideration of TWENTY FOUR THOUSAND FIVE HUNDRED (\$24,500.00) DOLLARS,

grant to HENRY HEYWOOD MEMORIAL HOSPITAL of 242 Green Street; Gardner, Worcester County, Massachusetts,

with Quitclaim Covenants, the land in the City of Gardner, County of Worcester, Commonwealth of Massachusetts, bounded and described as follows:

Parcel A

A certain parcel of land situated off the westerly side of Woodland Avenue, in Gardner, Worcester County, Massachusetts, bounded and described as follows:

BEGINNING at the northeasterly corner thereof, at a drill hole at the end of a stone wall at land of Henry Heywood Memorial Hospital, and at the southeasterly corner of other land of the City of Gardner, being shown as Parcel "B" on a plan hereinafter referred to, said drill hole being located North 85° 54' 42" West, along a line that divides two parcels of said Hospital land, a distance of 132.00 feet from an iron pin in the westerly line of Woodland Avenue;

THENCE South 03° 45' 46" West, by said Hospital land 82.48 feet to a drill hole at a corner of land of David H. Gill;

THENCE South 04° 26' 23" West, by said Gill land 76.50 feet to a corner of other land of the City of Gardner, the preceding two courses being by a stone wall;

THENCE North 80° 49' 58" West, by said city land 430.19 feet to an iron pin at a corner of land of the first mentioned City of Gardner and Parcel "B" on said plan;

THENCE North 78° 19' 58" East, by said City land and Parcel "B" 445.23 feet to a drill hole at land of the first mentioned Henry Heywood Memorial Hospital and the point of beginning.

Containing 0.782 acres or 34,098 square feet.

No Right of Way is herein granted, nor is any by necessity to be implied. The grantee herein has access to a public road over other adjoining land owned by them.

Being shown as Parcel "A" on a plan entitled: Plan of Parcels Prepared For the City of Gardner, Gardner, MA, Scale: 1 inch = 60 feet, July 16, 1997, Szoc Surveyors, 32 Pleasant St., Gardner, MA, Tel. (508) 632-0233, to be recorded herewith in Worcester District Registry of Deeds, Plan Book 726 plan 2

Being a portion of the premises granted to the City of Gardner by deed of Henry E. Heywood et al dated September 6, 1933 and recorded in Worcester District Registry of Deeds, Book 2590, Page 230.

Parcel B

A certain parcel of land situated off the westerly side of Woodland Avenue, in Gardner, Worcester County, Massachusetts, bounded and described as follows:

BEGINNING at the southeasterly corner thereof, at a drill hole at the end of a stone wall at land of Henry Heywood Memorial Hospital, and at the northeasterly corner of other land of the City of Gardner, being shown as Parcel "A" on a plan hereinafter referred to, said drill hole being located North 85° 54' 42" West, by a line that divides two parcels of said Hospital land, a distance of 132.00 feet from an iron pin in the westerly line of Woodland Avenue;

THENCE South 78° 19' 58" West, by said City land and Parcel "A", 445.23 feet to an iron pin at a corner of other land of the City of Gardner;

THENCE North 04° 22' 10" West, by said City land 190.00 feet to a drill hole in a stone wall at a corner of land of Henry Heywood Memorial Hospital;

98 MAR 26 AM 9:41

Property Address: Land off Woodland Avenue; Green Street 7 Matthews Street; Gardner, Massachusetts

THENCE South 88° 03' 32" East, partly by a stone wall, 456.77 feet;  
THENCE South 04° 05' 18" West, 84.15 feet to a drill hole at the northeasterly corner of the aforementioned Parcel "A", and the point of BEGINNING, the preceding two courses being by said hospital land.  
Containing 1.404 acres or 61,159 square feet.

No Right of Way is herein granted, nor is any by necessity to be implied. The grantee herein has access to a public road over other adjoining land owned by them.

Being shown as Parcel "B" on a plan entitled: Plan of Parcels Prepared For the City of Gardner, Gardner, MA, Scale: 1 inch = 60 feet, July 16, 1997, Szoc Surveyors, 32 Pleasant St., Gardner, MA, Tel (508) 632-0233, to be recorded herewith in Worcester District Registry of Deeds.

Being a portion of the premises granted to the City of Gardner by deed of Henry E. Heywood et al dated September 6, 1933 and recorded in Worcester District Registry of Deeds, Book 2590, Page 230.

Parcel C

A certain parcel of land situated at the southeasterly intersection of the easterly line of Green Street with the southerly line of Matthews Street, in Gardner, Worcester County, Massachusetts, bounded and described as follows:

BEGINNING at the southwesterly corner thereof, at a point in the easterly line of Green Street, at a corner of land of Ann H. Damon;

THENCE northerly by a curve to the left having a radius of 1934.86 feet, an arc length of 40.46 feet to a point of tangency;

THENCE North 21° 51' 05" West, 29.76 feet to a bound at a point of curvature of a curve that rounds the southeasterly intersection of the easterly line of Green

Street with the southerly line of Matthews Street, the preceding two courses being by the said line of Green Street;

THENCE northerly and northeasterly by a curve to the right, having a radius of 35.00 feet, an arc length of 44.41 feet to a point of tangency in the southerly line of Matthews Street;

THENCE North 50° 50' 25" East, by said street line 345.12 feet to a corner of other land of the City of Gardner, the grantor herein;

THENCE South 10° 54' 46" East, partly by a stone wall 245.14 feet to a drill hole at a corner of stone walls at a corner of land of the first mentioned Ann H. Damon;

THENCE South 74° 31' 03" West, by said Damon land and partly by a stone wall 309.90 feet to the easterly line of Green Street and the point of beginning.  
Containing 1.255 acres or 54,692 square feet.

Being shown as Parcel "C" on a plan entitled: Plan of Parcels Prepared For The City of Gardner, Gardner, MA, Scale: 1 inch = 60 feet, July 16, 1997, Szoc Surveyors, 32 Pleasant St., Gardner, MA, Tel (508) 632-0233, to be recorded herewith in Worcester District Registry of Deeds.

Being a portion of the premises granted to the City of Gardner by deed of Heywood Farm, Inc. dated July 29, 1937 and recorded in Worcester District Registry of Deeds, Book 2701, Page 9.

This grant is made with the restriction that the use of the above described Parcels A, B and C shall be limited to vehicular parking, loading area and access driveways.

This conveyance complies with Massachusetts General Laws Chapter 44 Section 63A.

Please Return To:  
John F. Bohman, Esq.  
P.O. Box 429  
Gardner, MA 01440

Witness my hand and seal this 26th day of January, 1998

CITY OF GARDNER

By Charles J. Manca  
Mayor

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

January 26, 1998

Then personally appeared the above named Charles J. Manca, Mayor of the City of Gardner, and acknowledged the foregoing instrument to be the free act and deed of the Inhabitants of the City of Gardner and his own free act and deed, before me

Mindy Longelis  
Notary Public

My Commission Expires: 8-3-01

*plu*

Property Address: Land off Woodland Avenue; Green Street & Matthews Street in Gardner, Massachusetts

~~RECORDED  
JAN 26 1998  
GARDNER  
MA  
111-72  
111-72  
3/26/98~~

Please Return To:  
John F. Bohman, Esq.  
P.O. Box 429  
Gardner, MA 01440

ATTEST: WORC. Anthony J. Vigliotti, Register

# ORDINANCE

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AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER BY ADDING A NEW CHAPTER 565, TO BE ENTITLED "STORMWATER MANAGEMENT," WHICH CHAPTER PROVIDES FOR STORMWATER AND EROSION CONTROL MEASURES, ILLICIT CONNECTIONS AND DISCHARGES TO THE STORMWATER DRAIN SYSTEM, ENFORCEMENT, AND PENALTIES FOR VIOLATION OF THE CHAPTER.

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

Section 1.

The Code of the City of Gardner is hereby amended by adding thereto a new chapter, to be Chapter 565, Stormwater Management, to read as follows:

ARTICLE I  
**Stormwater and Erosion Control**

**§ 565-1. - Purpose and intent.**

(A) The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare of the city by establishing minimum requirements and procedures to control the adverse effects of soil erosion and sedimentation, construction site runoff, increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment. It has been determined that proper management of stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, protect water and aquatic resources, protect and enhance wildlife habitat, and promote groundwater recharge to protect surface and groundwater drinking supplies. This ordinance seeks to meet that purpose through the following objectives:

- (1) Establish a mechanism by which the municipality can monitor and ensure compliance with requirements of Phase II of the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate

# ORDINANCE

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Storm Sewer Systems (MS4) and other applicable State and Federal mandates. Under the Phase II stormwater permit, the U.S. Environmental Protection Agency (EPA) required regulated municipalities to reduce the discharge of pollutants in stormwater to the maximum extent practicable and to adopt ordinances to address the control of sources of pollutants entering the municipal storm drain system.

- (2) Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources.
- (3) Require that new development, redevelopment and other land alteration activities maintain the after-development runoff characteristics as equal to or better than the pre-development runoff characteristics where appropriate in order to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats.
- (4) Establish minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality; establish minimum design criteria for the protection of properties and aquatic resources downstream from land development and land conversion activities from damages due to alterations in volume, velocity, frequency, duration, and peak flow rate of storm water runoff; establish minimum design criteria for measures to eliminate or minimize to the extent feasible nonpoint source pollution from stormwater runoff which would otherwise degrade water quality.
- (5) Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet or exceed the minimum post-development stormwater management standards.
- (6) Encourage the use of nonstructural stormwater management, environmentally sensitive site design practices, and low-impact development practices, such as reducing impervious cover, increasing site-wide infiltration, and preserving open space and other natural areas, to the maximum extent practicable.

# ORDINANCE

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- (7) Establish provisions that require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities.
  - (8) Establish provisions to ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained.
  - (9) Establish provisions for the long-term operation and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety or the environment.
  - (10) Establish certain administrative procedures for the submission, review, approval or disapproval of stormwater management plans, erosion and sediment controls, the inspection of construction sites and approved active projects, and long-term monitoring.
  - (11) Ensure that construction and waste materials, toxic materials, hazardous materials, and other pollutants are prevented from mixing with stormwater runoff, which would degrade water quality.
  - (12) Establish the City of Gardner's legal authority and capacity to ensure compliance with the provisions of this ordinance through permitting, inspection, monitoring, and enforcement.
- (B) Nothing in this ordinance is intended to replace the requirements of the City of Gardner Zoning Ordinance, the Massachusetts Wetlands Protection Act, the City of Gardner General Ordinance, any other ordinance that may be adopted by the City of Gardner, or any rules and regulations adopted there under.

# ORDINANCE

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## **§ 565-2. - Purpose and intent.**

This ordinance is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

## **§ 565-3. - Definitions.**

The following definitions shall apply in the interpretation, implementation, and enforcement of this ordinance:

### **Alter**

Any activity that will measurably change the ability of a ground surface area to absorb water, will change existing surface drainage patterns, or will increase or decrease the rate or volume of flow from a site. Alter may be similarly represented as "alteration of drainage characteristics," and "conducting land-disturbing activities".

### **Applicant**

Any person, individual, partnership, association, organization, firm, company, trust, corporation, agency, authority, department, or political subdivision of the commonwealth or the federal government, to the extent permitted by law, any officer, employee, or agent of such person who has filed an application for a stormwater permit.

### **Development**

The modification of land to accommodate a new use, revised use, or expansion of use, usually involving construction.

### **Discharge of pollutants**

The addition of any pollutant or combination of pollutants into the MS4 or into the waters of the United States or the waters of the commonwealth, from any source.

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Environmentally sensitive site design: Design that incorporates low impact development techniques to prevent the generation of stormwater and nonpoint source pollution by reducing impervious surfaces, disconnecting stormwater sheet flow paths and treating stormwater at its source, maximizing open space, minimizing disturbance, protecting natural features and processes, and/or enhancing wildlife habitat, as defined in 310 CMR 10.

Impervious cover (IC) or impervious area (IA): Any material or structure on, above or below the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include, without limitation: roads, paved surfaces (parking lots, sidewalks, and driveways), concrete, brick, stone, and roof tops.

## **Infiltration**

The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a site.

## **Land disturbance**

Any action that causes removal of vegetation (including tree cutting) or that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material.

See also "alter."

## **Land-disturbing activity**

Any action that causes a change in the existing soil cover which includes the position or location of soil, sand, rock, gravel, or similar earth material. Land-disturbing activities include, but are not limited to, clearing, clearing of trees, grubbing, filling and excavation.

## **Low impact development (LID) techniques**

Innovative stormwater management systems that are modeled after natural hydrologic features. See 310 CMR 10 for further clarification.

## **Massachusetts Stormwater Management Standards**

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The latest version as may be amended from time to time of the stormwater management standards and accompanying Stormwater Handbook issued by the Massachusetts Department of Environmental Protection Agency pursuant to authority under the Wetlands Protection Act, M.G.L.A. c. 131, § 40, and the Massachusetts Clean Waters Act, M.G.L.A. c. 21, § 26-53. The Stormwater Management Standards are incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k) and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

**Municipal separate storm sewer system (MS4) or Municipal storm drain system:** The conveyance or system of conveyances designed or used for collecting or conveying stormwater, which is not a combined sewer, including any road with a drainage system, municipal street, catch basins, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, ditch, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of Gardner.

## **Nonpoint source**

Any source from which pollution is discharged which is not identified as a point source, including, but not limited to urban, agricultural, or silvicultural runoff. Nonpoint source pollution emanates from many diffuse sources caused by rainfall, snowmelt, or other methods of pollutant transport moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

## **Point source**

The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

## **Pollutant**

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Any element or property of sewage, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any storm drain system treatment works, ground water or surface water.

Pollutants shall include, without limitation:

- A. Paints, varnishes, and solvents;
- B. Oil and other automotive fluids;
- C. Non-hazardous liquid and solid wastes and yard wastes;
- D. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, accumulations and floatables;
- E. Pesticides, herbicides, and fertilizers;
- F. Hazardous materials and wastes; sewage, fecal coliform, and pathogens;
- G. Dissolved and particulate metals;
- H. Animal wastes;
- I. Rock, sand, salt, soils, with the exception of winter salting and sanding in quantities that will not clog or otherwise impair the performance of the MS4 and stormwater management systems;
- J. Construction wastes and residues; and
- K. Noxious or offensive matter of any kind.

## **Post-development**

The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity in accordance with approved plans on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

## **Pre-development**

The conditions that exist prior to the proposed disturbance activity. Where phased development or plan approval occurs (preliminary grading, roads, utilities, etc.) the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

## **Recharge**

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The replenishment of underground water reserves.

## **Reconstruction**

Any action causing complete removal and replacement of paved surfaces, such as driveways, parking areas and roads.

## **Redevelopment**

Any construction, alteration, improvement, repaving, or resurfacing on a previously-developed site.

## **Runoff**

Rainfall or snowmelt water flowing over the ground surface or other source that may result in transport of pollutants.

## **Site**

Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

## **Stockpiling**

The storage of unsecured material for future use, excluding the storage of materials ten cubic yards or less when secured utilizing erosion controls to prevent erosion of material.

## **Stormwater**

Stormwater runoff, snow melt runoff, and surface water runoff or drainage.

## **Stormwater best management practice (BMP)**

A structural or non-structural technique for managing stormwater to prevent or reduce nonpoint source pollutants from entering surface waters or ground waters, as defined in 310 CMR 10. A structural stormwater best management practice includes a basin, discharge outlet, swale, rain garden, filter, or other stormwater treatment practice or measure either alone or in combination including, without limitation, any overflow pipe, conduit, weir control structure that:

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- A. Is not naturally occurring;
- B. Is not designed as a wetland replication area; and
- C. Has been designated, constructed, and installed for the purpose of conveying, collecting, storing, discharging, recharging or treating stormwater.

Nonstructural stormwater best management practices include source control and pollution prevention measures.

## **Stormwater management permit (SMP)**

A permit issued by the stormwater authority, after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the city from the deleterious effects of uncontrolled and untreated stormwater runoff.

## **Surface waters**

All water other than groundwater within the jurisdiction of the commonwealth including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, and coastal waters, as defined in 310 CMR 10.00.

## **Toxic material or hazardous material or waste**

Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious, or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous material include any synthetic organic chemical, petroleum, product, heavy metal, radioactive or infectious waste, acid, and alkali, and any substance defined as toxic or hazardous under M.G.L.A. c. 21C and c. 21E, and the regulations at 310 CMR 30.300 and 310 CMR 40.0000.

## **§ 565-4. - Applicability.**

- (A) This ordinance shall be applicable to the following activities. Compliance with all provisions of this ordinance, to the maximum extent practicable as determined by the stormwater authority, shall be a requirement for issuance of a stormwater management permit.

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- (1) All subdivisions as defined in the Massachusetts Subdivision Control Law (M.G.L.A. c. 41 §§ 81K—81GG) requiring approval of a definitive subdivision plan;
- (2) Any activity that will result in a land disturbance of ten thousand square feet or greater within the City of Gardner.

(B) This ordinance shall apply to land or parcels of land that are held in common ownership (including ownership by related or jointly-controlled persons or entities) as of the effective date of this ordinance, if the total land-disturbing activities on said land or parcels, considered as a whole, would presently or ultimately exceed the minimum thresholds in this ordinance. A development shall not be segmented or phased in a manner to avoid compliance with this ordinance. The building department shall review all building permits to determine if a storm water management permit will be required, and, if required, will direct the applicant or potential applicant to the designated contact person at the department of public works.

(C) Coordination with other city permits.

- (1) No building permit, subdivision approval, special permit, variance, or finding shall constitute compliance with this ordinance. For a project or activity that meets the scope and applicability of this section of this ordinance, no work may commence until the site owner or his agent submits the required documentation, the stormwater authority issues a stormwater permit, and the site owner and responsible parties sign and certify that all land clearing, construction and development will be done pursuant to the approved plans and permit.
- (2) The ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence.

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- (3) In case of conflicting requirements, applicable state and or federal statutes and regulations shall be considered the more restrictive or more protective of human health and the environment, and shall take precedence over the City of Gardner's Stormwater and Erosion Control Ordinance and the rules and regulations promulgated thereunder. These state statutes and regulations include, but are not limited to the Massachusetts Wetlands Protection Act, the Massachusetts Rivers Act, the Massachusetts Watershed Protection Act, and the Massachusetts Stormwater Management Standards, as amended.
- (4) In no instances shall a stormwater management permit constitute authorization for alteration of wetland resources subject to the jurisdiction of the Wetlands Protection Act.

## **§ 565-5. - Exemptions.**

- (A) Exemptions from this ordinance apply to the following activities, provided that a project is solely comprised of any one of these activities:
  - (1) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.04 ("Agricultural"), M.G.L.A. c. 40A, § 3 and the conversion of additional land to agricultural use, when undertaken in such a manner as to prevent erosion and siltation through the use of best management practices recommended by the U.S. Department of Agriculture Natural Resources Conservation Service or the Massachusetts Department of Agricultural Resources.
  - (2) Any work or projects for which all necessary approvals and permits were issued before the effective date of this ordinance. All applicable and relevant regulations must be met; city, state and federal. (This exemption does not apply to amendments or extensions of approved projects that have not started construction. In these cases, the applicant may need to re-design the project to comply with these requirements.)

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- (3) Routine maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling. Routine maintenance includes activities that are regularly scheduled to maintain the health and condition of a landscaped area. Examples include removal of weeds or invasive species, pruning, mowing, raking, and other activities that are done at regular intervals within the course of a year.
- (4) Construction of any fence that will not alter existing terrain or drainage patterns.
- (5) Construction, reconstruction, operation and maintenance of utilities (including but not limited to gas, city stormwater, water, sanitary sewer, road maintenance, electric, telephone, or cable television) excluding the construction of new MS4, where the surface vegetation and contours of the area shall be substantially restored.
- (6) Emergency repairs to any existing utilities (gas, water, sanitary sewer, septic, electric, telephone, cable television, etc.) and emergency repairs to any stormwater management facility that poses a threat to public health or safety, as deemed necessary by the department of public works. All reasonable efforts must be made to use proper stormwater erosion controls in all emergency repairs.
- (7) Repair, replacement or expansion of septic systems. Note—Proper erosion controls must be used.

## **§ 565-6. – Administration and permitting process.**

(A) Stormwater Authority. The Department of Public Works is hereby designated as the stormwater authority. The stormwater authority, or his/her agent, shall administer, implement, and enforce this ordinance. The Department of Public Works may delegate in writing another city department, commission or board to act as his/her agent to review application submittals and for site inspections and enforcement of this ordinance.

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(B) Stormwater and Erosion Control Regulations ("Regulations"). The stormwater authority may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, delegation of authority, procedures and administration of this ordinance. Failure of the stormwater authority to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this ordinance.

(C) Stormwater Management Handbook. The stormwater authority will utilize the Massachusetts Stormwater Management Standards and the Massachusetts Stormwater Handbooks, as amended from time to time, for criteria and information including specifications and standards of the latest edition of the Massachusetts Stormwater Management Handbook for the execution of the provisions of this ordinance. These include a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. Unless specifically made more stringent in this ordinance and the rules and regulations promulgated hereunder, stormwater management practices that are designed, constructed, and maintained in accordance with the Massachusetts Stormwater Handbooks' design and sizing criteria shall be presumed by the stormwater authority to be protective of the Massachusetts Water Quality Standards.

(D) Stormwater Management Permit. The Stormwater Authority shall have the authority to issue a Stormwater Management Permit (SMP) for projects exceeding the thresholds defined in this Ordinance. Requirements of the SMP may be defined and included within the regulations promulgated pursuant to this Ordinance.

(E) Appeals of Actions by the Stormwater Authority. A decision by the stormwater authority made under this ordinance shall be final. Further relief shall be to the Superior Court in accordance with the provisions of M.G.L.A c. 249, § 4.

## **§ 565-7. – Enforcement.**

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(A) The stormwater authority, or an authorized agent of the stormwater authority, shall enforce this ordinance, and any regulations, permit orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for violations.

(B) If a person violates the provisions of this ordinance or its regulations, or a permit, notice or order issued there under, the stormwater authority may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or to compel the person to perform abatement or remediation of the violation.

(C) The stormwater authority, or an authorized agent of the stormwater authority, may issue a written order to enforce the provisions of this ordinance or the regulations, which may include requirements to:

- (1) Cease and desist from land-disturbing activity until there is compliance with the ordinance or provisions of an approved SMP;
- (2) Maintain, install or perform additional erosion and sediment control measures;
- (3) Perform monitoring, analyses, and reporting;
- (4) Remediate erosion and sedimentation resulting directly or indirectly from land-disturbing activity;
- (5) Comply with requirements in the SMP for operation and maintenance of stormwater management systems; and
- (6) Remediate adverse impacts resulting directly or indirectly from malfunction of the stormwater management systems. If the stormwater authority or its authorized agent determines that abatement or remediation is required, the order shall set forth a deadline by which such abatement or remediation must be completed.

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(D) Criminal Penalties. Any person who violates any provisions of this ordinance, regulation, order or permit issued hereunder, shall be punished by a fine of not more than three hundred dollars. Each day a violation exists shall constitute a new and separate violation.

(E) Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the stormwater authority may elect to utilize the non-criminal disposition procedure set forth in M.G.L.A c. 40, § 21D, in which case any police officer of the City of Gardner, the city engineer, and such other persons as are authorized by the stormwater authority shall be the enforcing person. If non-criminal disposition is used, any person who violates any provision of this ordinance, regulation, order or permit issued thereunder, shall be punished as follows:

- (1) First violation: Warning
- (2) Second violation: one hundred dollars
- (3) Third violation: two hundred dollars
- (4) Fourth and subsequent violations: three hundred dollars.

(5) Each day a violation exists shall constitute a separate violation. Each day of noncompliance shall constitute a new and separate violation. The conservation agent, DPW personnel and any other city employee designated in writing by the Stormwater Authority, may as an alternative to initiating criminal proceedings, seek the noncriminal disposition of violations of the Storm Water Ordinance, by following the procedure set forth in M.G.L.A. c. 40, § 21D. Any person, corporation, company, or partnership that violates any provision of this ordinance shall be subject to a penalty of one hundred dollars for the second offense, two hundred dollars for the third offense, and three hundred dollars for the fourth and each additional offense.

(F) Remedies Not Exclusive. The remedies listed in this ordinance are not exclusive of any other remedies available to the stormwater authority or the city under any applicable federal, state or local law.

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## § 565-8. – Severability.

(A) The invalidity of any section, provision, paragraph, sentence, or clause of this ordinance shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

# ORDINANCE

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## ARTICLE II Illicit Connections and Discharges to the Storm Drain System

### § 565-9. - Purpose and Authority.

(A) The purpose of this article is to regulate illicit connections and discharges to the storm drain system, which is necessary for the protection of Gardner's water bodies, groundwater, and to safeguard the public health, safety, welfare and the environment.

The objectives of this article are:

- (1) To prevent pollutants from entering Gardner's municipal separate storm sewer system (MS4).
- (2) To prohibit illicit connections and unauthorized discharges to the MS4.
- (3) To require the removal of all such illicit connections.
- (4) To comply with state and federal statutes and regulations relating to stormwater discharges.
- (5) To establish the legal authority to ensure compliance with the provisions of this article through inspection, monitoring and enforcement.
- (6) To prevent contamination of drinking water supplies.

(B) Authority. The Department of Public Works shall administer, implement and enforce this article.

### § 565-10. - Definitions.

For the purposes of this article, the following shall mean:

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## **Authorized enforcement agency**

The Department of Public Works, its employees or agents designated to enforce this article.

## **Best management practice (BMP)**

An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improved the quality of stormwater runoff.

## **Clean Water Act**

The Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.) as hereafter amended.

## **Discharge of pollutants**

The addition from any source of any pollutant or combination of pollutants into the storm drain system or into the waters of the United States or Commonwealth from any source.

## **Groundwater**

All water beneath the surface of the ground.

## **Illegal discharge**

Any direct or indirect nonstormwater discharge to the storm drain system, except as specifically exempted in sections 5(4) and 5(5). The term does not include a discharge in compliance with an NPDES stormwater discharge permit.

## **Illicit connection**

Any surface or subsurface drain or conveyance, which allows an illegal discharge into the storm drain system. Illicit connections include conveyances which allow a nonstormwater discharge to the storm drain system, including sewage, process wastewater or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether such connection was previously allowed, permitted, or approved before the effective date of this article.

## **Impervious surface**

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Any material or structure on or above the ground that prevents water from infiltrating the underlying soil.

## **Municipal separate storm sewer system (MS4) or municipal storm drain system**

The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system; street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of Gardner.

## **National pollutant discharge elimination system (NPDES) storm water discharge permit**

A permit issued by United States Environmental Protection Agency or jointly with the state that authorized the discharge of pollutants to waters of the United States.

## **Nonstormwater discharge**

Any discharge to the storm drain system, not composed entirely of stormwater.

## **Person**

Any individual, partnership, association, firm, company, trust, corporation, and, any agency, authority, department or political subdivision of the commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

## **Pollutant**

Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the commonwealth. Pollutants shall include:

- A. Paints, varnishes and solvents.
- B. Oil and other automotive fluids.
- C. Nonhazardous liquid and solid wastes and yard wastes.

# ORDINANCE

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- D. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, accumulations and floatables.
- E. Pesticides, herbicides and fertilizers.
- F. Hazardous materials and wastes; sewage, fecal coliform and pathogens.
- G. Dissolved and particulate metals.
- H. Animal wastes.
- I. Rock, sand, salt, soils, with the exception of winter salting and sanding in quantities that will not clog or otherwise impair the performance of the MS4 and stormwater management systems;
- J. Construction wastes and residues.
- K. Noxious or offensive matter of any kind.

## **Process wastewater**

Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

## **Recharge**

The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

## **Storm drain system**

The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system on public or private ways within the City of Gardner.

## **Stormwater**

Runoff from precipitation or snow melt.

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## **Toxic or hazardous material or waste**

Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as toxic or hazardous under G.L. chapters 21C and 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000.

## **Uncontaminated**

Water containing no pollutants.

## **Wastewater**

Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

## **Waters of the commonwealth**

All waters within the jurisdiction of the commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters and groundwater.

## **§ 565-11. - Applicability.**

This article shall apply to flows entering the storm drain system on public or private ways with the City of Gardner.

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## § 565-12. - Regulations.

The Department of Public Works may promulgate rules, regulations and a permitting process to effectuate the purposes of this article. Failure by the Department of Public Works to promulgate such rules and regulations shall not have the effect of suspending or invalidating this article.

## § 565-13. – Prohibited activities.

- (A) **Illegal Discharges.** No person shall dump, discharge, cause or allow to be discharged any pollutant or nonstormwater discharge into the storm drain system, watercourse, or into the waters of the commonwealth.
- (B) **Illicit Connections.** No person shall construct, use, allow, maintain or continue any illicit connection to the storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
- (C) **Obstruction of Storm Drain System.** No person shall obstruct or interfere with the normal flow of stormwater in or out of the storm drain system without prior approval from the Department of Public Works or its designated agent.
- (D) **Exemptions.** This section shall not apply to any of the following nonstormwater discharges or flows provided that the source is not a significant contributor of a pollutant to the storm drain system:
  - (1) Municipal waterline flushing.
  - (2) Discharges from landscape irrigation or lawn watering.
  - (3) Water from individual residential car washing and temporary fund-raising car wash events.

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- (4) Discharges from dechlorinated swimming pool water, provided it is allowed to stand for one week prior to draining, or tested for chlorine levels with a pool test kit prior to draining (less than one part per million chlorine), and the pool is drained in such a way as not to cause a nuisance.
  - (5) Discharges from street sweepers of minor amounts of water during operations.
  - (6) Discharges or flows resulting from fire fighting activities.
  - (7) Nonstormwater discharges permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations.
- (E) Exemptions with Permit from Department of Public Works. This section shall not apply to any of the following nonstormwater discharges or flows, provided that the source is not a significant contributor of a pollutant to the storm drain system, and provided that a permit is approved by the Department of Public Works:
- (1) Flows from potable water sources.
  - (2) Springs.
  - (3) Natural flows from riparian habitats and wetlands.
  - (4) Diverted stream flows.
  - (5) Rising groundwater.
  - (6) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater.

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(7) Uncontaminated groundwater discharge from a sump pump, with a permit from the Department of Public Works.

(8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems, such as dewatering excavations for foundation or pipelines), crawl space pumps, or air conditioning condensation.

(9) Dye testing, provided verbal notification is given to the Department of Public Works prior to the time of the test.

(10) Unforeseen sources, on a case by case basis

The Department of Public Works may develop criteria for issuing permits under this section, based on the need to maintain capacity of the storm drain system and to protect public health, safety, welfare of the environment.

## **§ 565-14. – Suspension of storm drain system access.**

(A) The Department of Public Works may suspend storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened illegal discharge that presents or may present imminent risk of harm to the public health, safety, welfare or the environment. In the event, any person fails to comply with an emergency suspension order, the authorized enforcement agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

(B) Any person in violation of this section may have their storm drain system access terminated, if such termination would abate or reduce an illicit discharge. The Department of Public Works will notify a violator of the proposed termination of storm drain system access. The violator may petition the Department of Public Works for reconsideration and hearing. Any person who reinstates storm drain system access to premises terminated pursuant to this section, without prior approval from the Department of Public Works, shall be deemed to have violated this article.

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## **§ 565-15. – Notification of spills.**

(A) Notwithstanding any other requirements of local, state, or federal law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials at that facility or operation which is resulting or may result in illegal discharge of pollutants that person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the Gardner Fire and Police departments. In the event of a release of nonhazardous material, such person shall notify the authorized enforcement agency not later than the next business day. Written confirmation of all telephone, facsimile or in person notifications shall be provided to the authorized enforcement agency within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

## **§ 565-16. - Enforcement.**

(A) Enforcement. The Department of Public Works or its authorized agent shall enforce this article, and the regulations promulgated thereunder, as well as the terms and conditions of all permits, notices, and orders, and may pursue all civil and criminal remedies for such violations.

(B) Civil Relief. If anyone violates the provisions of this article, regulations, permit, notice, or order issued thereunder, the Department of Public Works may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or compel the person to abate or remediate the violation.

(C) Orders. The Department of Public Works may issue a written order to enforce the provisions of this article or the regulations thereunder, which may include: (1) elimination of illicit connections or discharges to the storm drain system; (2) termination of access to the storm drainage

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system; (3) performance of monitoring, analyses, and reporting; (4) cessation of unlawful discharges, practices, or operations; and (5) remediation of contamination in connection therewith. If the Department of Public Works determines that abatement or remediation of contamination is required, the order shall set forth a deadline for completion of the abatement or remediation. Such order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the city may, at its option, undertake such work, and expenses thereof shall be charged to the violator or property owner.

Within thirty days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the city, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Department of Public Works within thirty days following a decision of the receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty days following a decision of the Department of Public Works affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of such costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. chapter 59, section 57 after the thirty-first day at which the costs first become due.

(D) **Criminal and Civil Penalties.** Any person who violates any provision of this article, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine not to exceed three hundred dollars for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the city in any court of competent jurisdiction.

(E) **Noncriminal Disposition.** As an alternative to criminal prosecution or civil action, the City of Gardner may elect to utilize the noncriminal disposition procedure set forth in G.L. chapter 40, section 21D. The Department of Public Works shall be the enforcing entity. The penalty for the 1st violation shall be one hundred dollars. The penalty for the 2nd violation shall be two hundred

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dollars. The penalty for the 3rd and subsequent violations shall be three hundred dollars. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

(F) Entry to Perform Duties under this Article. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Department of Public Works, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this article and regulations and may make or cause to be made such examinations, surveys or sampling as the Department of Public Works deems reasonably necessary.

(G) Appeals. The decisions or orders of the Department of Public Works shall be final. Further relief shall be to a court of competent jurisdiction.

(H) Remedies Not Exclusive. The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law.

## **§ 565-17. - Severability.**

(A) If any provision, paragraph, sentence, or clause, of this article shall be held invalid for any reason, all provisions shall continue in full force and effect.

# City of Gardner, *Executive Department*



Michael J. Nicholson, Mayor

2020 AUG 20 PM 2: 28

August 20, 2020

CITY CLERK'S OFFICE  
GARDNER, MA

The Honorable Elizabeth Kazinskas, President  
And Gardner City Councilors  
95 Pleasant St., Rm 121  
Gardner, MA 01440

RE: Proposed Stormwater Ordinances

Dear President Kazinskas and Councilors,

In 2017, the Federal Environmental Protection Agency ("EPA") issued new mandates for cities and towns across the United States to implement new regulations regarding Stormwater discharge as part of their respective ordinances. The initial mandate that was given for these ordinances was to have these items passed and codified into cities' ordinances by the end of the 2019 calendar year or the EPA would issue significant fines and penalties to those that did not comply.

Following the EPA issuing a compliance order to the City in December of 2019, the City received two (2) extensions from this deadline – once to be able to complete the review of the requirements in time, and the second as a result of the absence of having an elected mayor for six months in 2020. Our current extension expires on October 15, 2020. The City has also been informed that we will likely not be issued an additional extension. Failure to adopt ordinances by the October 15<sup>th</sup> deadline will likely result in the Federal Government issuing significant fines and penalties against the City.

The two (2) attached ordinance proposals have been worked on and reviewed by the City Engineer's Office, the City's Law Department, and officials from the EPA in order to ensure all of the mandated requirements are met.

Thank you for your attention to these matters.

Respectfully,

Michael J. Nicholson  
Mayor, City of Gardner

Enclosures:

- Stormwater and Erosion Control Proposed Ordinance
- Illicit Connections and Discharges to Storm Drain System Proposed Ordinance

XXXXXX - STORMWATER AND EROSION CONTROL

## Sec. XXXX. - Purpose and intent.

- (a) The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare of the city by establishing minimum requirements and procedures to control the adverse effects of soil erosion and sedimentation, construction site runoff, increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment. It has been determined that proper management of stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, protect water and aquatic resources, protect and enhance wildlife habitat, and promote groundwater recharge to protect surface and groundwater drinking supplies. This ordinance seeks to meet that purpose through the following objectives:
- (1) Establish a mechanism by which the municipality can monitor and ensure compliance with requirements of Phase II of the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and other applicable State and Federal mandates. Under the Phase II stormwater permit, the U.S. Environmental Protection Agency (EPA) required regulated municipalities to reduce the discharge of pollutants in stormwater to the maximum extent practicable and to adopt ordinances to address the control of sources of pollutants entering the municipal storm drain system.
  - (2) Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources.
  - (3) Require that new development, redevelopment and other land alteration activities maintain the after-development runoff characteristics as equal to or better than the pre-development runoff characteristics where appropriate in order to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats.
  - (4) Establish minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality; establish minimum design criteria for the protection of properties and aquatic resources downstream from land development and land conversion activities from damages due to alterations in volume, velocity, frequency, duration, and peak flow rate of storm water runoff; establish minimum design criteria for measures to eliminate or minimize to the extent feasible nonpoint source pollution from stormwater runoff which would otherwise degrade water quality.
  - (5) Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet or exceed the minimum post-development stormwater management standards.
  - (6) Encourage the use of nonstructural stormwater management, environmentally sensitive site design practices, and low-impact development practices, such as reducing impervious cover, increasing site-wide infiltration, and preserving open space and other natural areas, to the maximum extent practicable.
  - (7) Establish provisions that require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities.
  - (8) Establish provisions to ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained.
  - (9) Establish provisions for the long-term operation and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety or the environment.
  - (10) Establish certain administrative procedures for the submission, review, approval or disapproval of stormwater management plans, erosion and sediment controls, the inspection of construction sites and approved active projects, and long-term monitoring.

- (11) Ensure that construction and waste materials, toxic materials, hazardous materials, and other pollutants are prevented from mixing with stormwater runoff, which would degrade water quality.
  - (12) Establish the City of Gardner's legal authority and capacity to ensure compliance with the provisions of this ordinance through permitting, inspection, monitoring, and enforcement.
- (b) Nothing in this ordinance is intended to replace the requirements of the City of Gardner Zoning Ordinance, the Massachusetts Wetlands Protection Act, the City of Gardner General Ordinance, any other ordinance that may be adopted by the City of Gardner, or any rules and regulations adopted there under.

Sec. XXXX. - Authority.

This ordinance is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34., and as authorized by the residents of the City of Gardner at City Council Meeting dated XXXXXXXXXX.

Sec. XXXX. - Definitions.

The following definitions shall apply in the interpretation, implementation, and enforcement of this ordinance:

**Alter:** Any activity that will measurably change the ability of a ground surface area to absorb water, will change existing surface drainage patterns, or will increase or decrease the rate or volume of flow from a site. Alter may be similarly represented as "alteration of drainage characteristics," and "conducting land-disturbing activities".

**Applicant:** Any person, individual, partnership, association, organization, firm, company, trust, corporation, agency, authority, department, or political subdivision of the commonwealth or the federal government, to the extent permitted by law, any officer, employee, or agent of such person who has filed an application for a stormwater permit.

**Development:** The modification of land to accommodate a new use, revised use, or expansion of use, usually involving construction.

**Discharge of pollutants:** The addition of any pollutant or combination of pollutants into the MS4 or into the waters of the United States or the waters of the commonwealth, from any source.

**Environmentally sensitive site design:** Design that incorporates low impact development techniques to prevent the generation of stormwater and nonpoint source pollution by reducing impervious surfaces, disconnecting stormwater sheet flow paths and treating stormwater at its source, maximizing open space, minimizing disturbance, protecting natural features and processes, and/or enhancing wildlife habitat, as defined in 310 CMR 10.

**Impervious cover (IC) or impervious area (IA):** Any material or structure on, above or below the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include, without limitation: roads, paved surfaces (parking lots, sidewalks, and driveways), concrete, brick, stone, and roof tops.

**Infiltration:** The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a site.

**Land disturbance:** Any action that causes removal of vegetation (including tree cutting) or that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material. See also "alter."

**Land-disturbing activity:** Any action that causes a change in the existing soil cover which includes the position or location of soil, sand, rock, gravel, or similar earth material. Land-disturbing activities include, but are not limited to, clearing, clearing of trees, grubbing, filling and excavation.

**Low impact development (LID) techniques:** Innovative stormwater management systems that are modeled after natural hydrologic features. See 310 CMR 10 for further clarification.

Massachusetts Stormwater Management Standards: The latest version as may be amended from time to time of the stormwater management standards and accompanying Stormwater Handbook issued by the Massachusetts Department of Environmental Protection Agency pursuant to authority under the Wetlands Protection Act, M.G.L.A. c. 131, § 40, and the Massachusetts Clean Waters Act, M.G.L.A. c. 21, § 26-53. The Stormwater Management Standards are incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k) and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

Municipal separate storm sewer system (MS4) or Municipal storm drain system: The conveyance or system of conveyances designed or used for collecting or conveying stormwater, which is not a combined sewer, including any road with a drainage system, municipal street, catch basins, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, ditch, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of Gardner.

Nonpoint source: Any source from which pollution is discharged which is not identified as a point source, including, but not limited to urban, agricultural, or silvicultural runoff. Nonpoint source pollution emanates from many diffuse sources caused by rainfall, snowmelt, or other methods of pollutant transport moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

Point source: The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

Pollutant: Any element or property of sewage, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any storm drain system treatment works, ground water or surface water.

Pollutants shall include, without limitation:

- (1) Paints, varnishes, and solvents;
- (2) Oil and other automotive fluids;
- (3) Non-hazardous liquid and solid wastes and yard wastes;
- (4) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, accumulations and floatables;
- (5) Pesticides, herbicides, and fertilizers;
- (6) Hazardous materials and wastes; sewage, fecal coliform, and pathogens;
- (7) Dissolved and particulate metals;
- (8) Animal wastes;
- (9) Rock, sand, salt, soils, with the exception of winter salting and sanding in quantities that will not clog or otherwise impair the performance of the MS4 and stormwater management systems;
- (10) Construction wastes and residues; and
- (11) Noxious or offensive matter of any kind.

Post-development: The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity in accordance with approved plans on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

Pre-development: The conditions that exist prior to the proposed disturbance activity. Where phased development or plan approval occurs (preliminary grading, roads, utilities, etc.) the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

Recharge: The replenishment of underground water reserves.

Reconstruction: Any action causing complete removal and replacement of paved surfaces, such as driveways, parking areas and roads.

Redevelopment: Any construction, alteration, improvement, repaving, or resurfacing on a previously-developed site.

Runoff: Rainfall or snowmelt water flowing over the ground surface or other source that may result in transport of pollutants.

Site: Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

Stockpiling: The storage of unsecured material for future use, excluding the storage of materials ten cubic yards or less when secured utilizing erosion controls to prevent erosion of material.

Stormwater: Stormwater runoff, snow melt runoff, and surface water runoff or drainage.

Stormwater best management practice (BMP): A structural or non-structural technique for managing stormwater to prevent or reduce nonpoint source pollutants from entering surface waters or ground waters, as defined in 310 CMR 10. A structural stormwater best management practice includes a basin, discharge outlet, swale, rain garden, filter, or other stormwater treatment practice or measure either alone or in combination including, without limitation, any overflow pipe, conduit, weir control structure that:

- (1) Is not naturally occurring;
- (2) Is not designed as a wetland replication area; and
- (3) Has been designated, constructed, and installed for the purpose of conveying, collecting, storing, discharging, recharging or treating stormwater.

Nonstructural stormwater best management practices include source control and pollution prevention measures.

Stormwater management permit (SMP): A permit issued by the stormwater authority, after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the city from the deleterious effects of uncontrolled and untreated stormwater runoff.

Surface waters: All water other than groundwater within the jurisdiction of the commonwealth including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, and coastal waters, as defined in 310 CMR 10.00.

Toxic material or hazardous material or waste: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious, or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous material include any synthetic organic chemical, petroleum, product, heavy metal, radioactive or infectious waste, acid, and alkali, and any substance defined as toxic or hazardous under M.G.L.A. c. 21C and c. 21E, and the regulations at 310 CMR 30.300 and 310 CMR 40.0000.

Sec. XXXXX- Applicability.

(a) This ordinance shall be applicable to the following activities. Compliance with all provisions of this ordinance, to the maximum extent practicable as determined by the stormwater authority, shall be a requirement for issuance of a stormwater management permit.

- (1) All subdivisions as defined in the Massachusetts Subdivision Control Law (M.G.L.A. c. 41 §§ 81K—81GG) requiring approval of a definitive subdivision plan;
- (2) Any activity that will result in a land disturbance of ten thousand square feet or greater within the City of Gardner.

- (b) This ordinance shall apply to land or parcels of land that are held in common ownership (including ownership by related or jointly-controlled persons or entities) as of the effective date of this ordinance, if the total land-disturbing activities on said land or parcels, considered as a whole, would presently or ultimately exceed the minimum thresholds in this ordinance. A development shall not be segmented or phased in a manner to avoid compliance with this ordinance. The building department shall review all building permits to determine if a storm water management permit will be required, and, if required, will direct the applicant or potential applicant to the designated contact person at the department of public works.
- (c) Coordination with other city permits.
  - (1) No building permit, subdivision approval, special permit, variance, or finding shall constitute compliance with this ordinance. For a project or activity that meets the scope and applicability of this section of this ordinance, no work may commence until the site owner or his agent submits the required documentation, the stormwater authority issues a stormwater permit, and the site owner and responsible parties sign and certify that all land clearing, construction and development will be done pursuant to the approved plans and permit.
  - (2) The ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence.
  - (3) In case of conflicting requirements, applicable state and or federal statutes and regulations shall be considered the more restrictive or more protective of human health and the environment, and shall take precedence over the City of Gardner's Stormwater and Erosion Control Ordinance and the rules and regulations promulgated thereunder. These state statutes and regulations include, but are not limited to the Massachusetts Wetlands Protection Act, the Massachusetts Rivers Act, the Massachusetts Watershed Protection Act, and the Massachusetts Stormwater Management Standards, as amended.
  - (4) In no instances shall a stormwater management permit constitute authorization for alteration of wetland resources subject to the jurisdiction of the Wetlands Protection Act.

Sec. XXXXX. - Exemptions.

Exemptions from this ordinance apply to the following activities, provided that a project is solely comprised of any one of these activities:

- (a) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.04 ("Agricultural"), M.G.L.A. c. 40A, § 3 and the conversion of additional land to agricultural use, when undertaken in such a manner as to prevent erosion and siltation through the use of best management practices recommended by the U.S. Department of Agriculture Natural Resources Conservation Service or the Massachusetts Department of Agricultural Resources.
- (b) Any work or projects for which all necessary approvals and permits were issued before the effective date of this ordinance. All applicable and relevant regulations must be met; city, state and federal. (This exemption does not apply to amendments or extensions of approved projects that have not started construction. In these cases, the applicant may need to re-design the project to comply with these requirements.)
- (c) Routine maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling. Routine maintenance includes activities that are regularly scheduled to maintain the health and condition of a landscaped area. Examples include removal of weeds or invasive species, pruning, mowing, raking, and other activities that are done at regular intervals within the course of a year.
- (d) Construction of any fence that will not alter existing terrain or drainage patterns.

- (e) Construction, reconstruction, operation and maintenance of utilities (including but not limited to gas, city stormwater, water, sanitary sewer, road maintenance, electric, telephone, or cable television) excluding the construction of new MS4, where the surface vegetation and contours of the area shall be substantially restored.
- (f) Emergency repairs to any existing utilities (gas, water, sanitary sewer, septic, electric, telephone, cable television, etc.) and emergency repairs to any stormwater management facility that poses a threat to public health or safety, as deemed necessary by the department of public works. All reasonable efforts must be made to use proper stormwater erosion controls in all emergency repairs.
- (g) Repair, replacement or expansion of septic systems. Note—Proper erosion controls must be used.

Sec. XXXX - Administration and permitting process.

- (a) Stormwater Authority. The Department of Public Works is hereby designated as the stormwater authority. The stormwater authority, or his/her agent, shall administer, implement, and enforce this ordinance. The Department of Public Works may delegate in writing another city department, commission or board to act as his/her agent to review application submittals and for site inspections and enforcement of this ordinance.
- (b) Stormwater and Erosion Control Regulations ("Regulations"). The stormwater authority may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, delegation of authority, procedures and administration of this ordinance. Failure of the stormwater authority to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this ordinance.
- (c) Stormwater Management Handbook. The stormwater authority will utilize the Massachusetts Stormwater Management Policy and the Massachusetts Stormwater Handbooks Volumes 1, 2 and 3, as amended from time to time, for criteria and information including specifications and standards of the latest edition of the Massachusetts Stormwater Management Handbook for the execution of the provisions of this ordinance. These include a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. Unless specifically made more stringent in this ordinance and the rules and regulations promulgated hereunder, stormwater management practices that are designed, constructed, and maintained in accordance with the Massachusetts Stormwater Handbooks' design and sizing criteria shall be presumed by the stormwater authority to be protective of the Massachusetts Water Quality Standards.
- (d) Stormwater Management Permit. The Stormwater Authority shall have the authority to issue a Stormwater Management Permit (SMP) for projects exceeding the thresholds defined in this Ordinance. Requirements of the SMP may be defined and included within the regulations promulgated pursuant to this Ordinance.
- (e) Appeals of Actions by the Stormwater Authority. A decision by the stormwater authority made under this ordinance shall be final. Further relief shall be to the Superior Court in accordance with the provisions of M.G.L.A c. 249, § 4.

Sec. XXXXX - Enforcement.

- (a) The stormwater authority, or an authorized agent of the stormwater authority, shall enforce this ordinance, and any regulations, permit orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for violations.
- (b) If a person violates the provisions of this ordinance or its regulations, or a permit, notice or order issued there under, the stormwater authority may seek injunctive relief in a court of competent

jurisdiction to restrain the person from activities which would create further violations or to compel the person to perform abatement or remediation of the violation.

- (c) The stormwater authority, or an authorized agent of the stormwater authority, may issue a written order to enforce the provisions or this ordinance or the regulations, which may include requirements to:
- (1) Cease and desist from land-disturbing activity until there is compliance with the ordinance or provisions of an approved SMP;
  - (2) Maintain, install or perform additional erosion and sediment control measures;
  - (3) Perform monitoring, analyses, and reporting;
  - (4) Remediate erosion and sedimentation resulting directly or indirectly from land-disturbing activity;
  - (5) Comply with requirements in the SMP for operation and maintenance of stormwater management systems; and
  - (6) Remediate adverse impacts resulting directly or indirectly from malfunction of the stormwater management systems.

If the stormwater authority or its authorized agent determines that abatement or remediation is required, the order shall set forth a deadline by which such abatement or remediation must be completed.

- (d) **Criminal Penalties.** Any person who violates any provisions of this ordinance, regulation, order or permit issued hereunder, shall be punished by a fine of not more than three hundred dollars. Each day a violation exists shall constitute a new and separate violation.
- (e) **Non-Criminal Disposition.** As an alternative to criminal prosecution or civil action, the stormwater authority may elect to utilize the non-criminal disposition procedure set forth in M.G.L.A c. 40, § 21D, in which case any police officer of the City of Gardner, the city engineer, and such other persons as are authorized by the stormwater authority shall be the enforcing person. If non-criminal disposition is used, any person who violates any provision of this ordinance, regulation, order or permit issued thereunder, shall be punished as follows:
- (1) First violation: Warning
  - (2) Second violation: one hundred dollars
  - (3) Third violation: two hundred dollars
  - (4) Fourth and subsequent violations: three hundred dollars.
  - (5) Each day a violation exists shall constitute a separate violation. Each day of noncompliance shall constitute a new and separate violation.

The conservation agent, DPW personnel and any other city employee designated in writing by the Stormwater Authority, may as an alternative to initiating criminal proceedings, seek the noncriminal disposition of violations of the Storm Water Ordinance, by following the procedure set forth in M.G.L.A. c. 40, § 21D. Any person, corporation, company, or partnership that violates any provision of this ordinance shall be subject to a penalty of one hundred dollars for the second offense, two hundred dollars for the third offense, and three hundred dollars for the fourth and each additional offense.

- (f) **Remedies Not Exclusive.** The remedies listed in this ordinance are not exclusive of any other remedies available to the stormwater authority or the city under any applicable federal, state or local law.

Sec. XXXXX. - Severability.

The invalidity of any section, provision, paragraph, sentence, or clause of this ordinance shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

Sec. XXXXXX - Effective date.

This ordinance shall take effect on XXXXXXXXXX

DRAFT

**XXXXX** - ILLICIT CONNECTIONS AND DISCHARGES TO THE STORM DRAIN SYSTEM.

**XXXXX** - Purpose and authority.

(a) The purpose of this article is to regulate illicit connections and discharges to the storm drain system, which is necessary for the protection of Gardner's water bodies, groundwater, and to safeguard the public health, safety, welfare and the environment.

The objectives of this article are:

- (1) To prevent pollutants from entering Gardner's municipal separate storm sewer system (MS4).
- (2) To prohibit illicit connections and unauthorized discharges to the MS4.
- (3) To require the removal of all such illicit connections.
- (4) To comply with state and federal statutes and regulations relating to stormwater discharges.
- (5) To establish the legal authority to ensure compliance with the provisions of this article through inspection, monitoring and enforcement.
- (6) To prevent contamination of drinking water supplies.

(b) Authority. The Department of Public Works shall administer, implement and enforce this article.

**XXXXXX** - Definitions.

For the purposes of this article, the following shall mean:

"Authorized enforcement agency" means the Department of Public Works, its employees or agents designated to enforce this article.

"Best management practice (BMP)" means an activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improved the quality of stormwater runoff.

"Clean Water Act" means the Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.) as hereafter amended.

"Discharge of pollutants" means the addition from any source of any pollutant or combination of pollutants into the storm drain system or into the waters of the United States or Commonwealth from any source.

"Groundwater" means all water beneath the surface of the ground.

"Illegal discharge" means any direct or indirect nonstormwater discharge to the storm drain system, except as specifically exempted in sections 5(4) and 5(5). The term does not include a discharge in compliance with an NPDES stormwater discharge permit.

"Illicit connection" means any surface or subsurface drain or conveyance, which allows an illegal discharge into the storm drain system. Illicit connections include conveyances which allow a nonstormwater discharge to the storm drain system, including sewage, process wastewater or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether such connection was previously allowed, permitted, or approved before the effective date of this article.

"Impervious surface" means any material or structure on or above the ground that prevents water from infiltrating the underlying soil.

"Municipal separate storm sewer system (MS4) or municipal storm drain system" means the system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system; street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of Gardner.

"National pollutant discharge elimination system (NPDES) storm water discharge permit" means a permit issued by United States Environmental Protection Agency or jointly with the state that authorized the discharge of pollutants to waters of the United States.

"Nonstormwater discharge" means any discharge to the storm drain system, not composed entirely of stormwater.

"Person" means any individual, partnership, association, firm, company, trust, corporation, and, any agency, authority, department or political subdivision of the commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

"Pollutant" means any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the commonwealth. Pollutants shall include:

- (1) Paints, varnishes and solvents.
- (2) Oil and other automotive fluids.
- (3) Nonhazardous liquid and solid wastes and yard wastes.
- (4) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, accumulations and floatables.
- (5) Pesticides, herbicides and fertilizers.
- (6) Hazardous materials and wastes; sewage, fecal coliform and pathogens.
- (7) Dissolved and particulate metals.
- (8) Animal wastes.
- (9) Rock, sand, salt, soils, with the exception of winter salting and sanding in quantities that will not clog or otherwise impair the performance of the MS4 and stormwater management systems;
- (10) Construction wastes and residues.
- (11) Noxious or offensive matter of any kind.

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

"Recharge" means the process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

"Storm drain system" means the system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system on public or private ways within the City of Gardner.

"Stormwater" means runoff from precipitation or snow melt.

"Toxic or hazardous material or waste" means any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as toxic or hazardous under G.L. chapters 21C and 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000.

"Uncontaminated" means water containing no pollutants.

"Wastewater" means any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

"Waters of the commonwealth" mean all waters within the jurisdiction of the commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters and groundwater.

XXXXX. - Applicability.

This article shall apply to flows entering the storm drain system on public or private ways with the City of Gardner.

XXXXXX. - Regulations.

The Department of Public Works may promulgate rules, regulations and a permitting process to effectuate the purposes of this article. Failure by the Department of Public Works to promulgate such rules and regulations shall not have the effect of suspending or invalidating this article.

XXXXXX. - Prohibited activities.

- (a) **Illegal Discharges.** No person shall dump, discharge, cause or allow to be discharged any pollutant or nonstormwater discharge into the storm drain system, watercourse, or into the waters of the commonwealth.
- (b) **Illicit Connections.** No person shall construct, use, allow, maintain or continue any illicit connection to the storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
- (c) **Obstruction of Storm Drain System.** No person shall obstruct or interfere with the normal flow of stormwater in or out of the storm drain system without prior approval from the Department of Public Works or its designated agent.
- (d) **Exemptions.** This section shall not apply to any of the following nonstormwater discharges or flows provided that the source is not a significant contributor of a pollutant to the storm drain system:
  - (1) Municipal waterline flushing.
  - (2) Discharges from landscape irrigation or lawn watering.
  - (3) Water from individual residential car washing and temporary fund-raising car wash events.
  - (4) Discharges from dechlorinated swimming pool water, provided it is allowed to stand for one week prior to draining, or tested for chlorine levels with a pool test kit prior to draining (less than one part per million chlorine), and the pool is drained in such a way as not to cause a nuisance.
  - (5) Discharges from street sweepers of minor amounts of water during operations.
  - (6) Discharges or flows resulting from fire fighting activities.
  - (7) Nonstormwater discharges permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations.

(e) Exemptions with Permit from Department of Public Works. This section shall not apply to any of the following nonstormwater discharges or flows, provided that the source is not a significant contributor of a pollutant to the storm drain system, and provided that a permit is approved by the Department of Public Works:

- (1) Flows from potable water sources.
- (2) Springs.
- (3) Natural flows from riparian habitats and wetlands.
- (4) Diverted stream flows.
- (5) Rising groundwater.
- (6) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater.
- (7) Uncontaminated groundwater discharge from a sump pump, with a permit from the Department of Public Works.
- (8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems, such as dewatering excavations for foundation or pipelines), crawl space pumps, or air conditioning condensation.
- (9) Dye testing, provided verbal notification is given to the Department of Public Works prior to the time of the test.
- (10) Unforeseen sources, on a case by case basis

The Department of Public Works may develop criteria for issuing permits under this section, based on the need to maintain capacity of the storm drain system and to protect public health, safety, welfare of the environment.

XXXXX. - Suspension of storm drain system access.

- (a) The Department of Public Works may suspend storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened illegal discharge that presents or may present imminent risk of harm to the public health, safety, welfare or the environment. In the event, any person fails to comply with an emergency suspension order, the authorized enforcement agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.
- (b) Any person in violation of this section may have their storm drain system access terminated, if such termination would abate or reduce an illicit discharge. The Department of Public Works will notify a violator of the proposed termination of storm drain system access. The violator may petition the Department of Public Works for reconsideration and hearing. Any person who reinstates storm drain system access to premises terminated pursuant to this section, without prior approval from the Department of Public Works, shall be deemed to have violated this article.

XXXXXX. - Notification of spills.

Notwithstanding any other requirements of local, state, or federal law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials at that facility operation which is resulting or may result in illegal discharge of pollutants that person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the

person shall immediately notify the Gardner Fire and Police departments. In the event of a release of nonhazardous material, such person shall notify the authorized enforcement agency not later than the next business day. Written confirmation of all telephone, facsimile or in person notifications shall be provided to the authorized enforcement agency within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

XXXXXX. - Enforcement.

- (a) **Enforcement.** The Department of Public Works or its authorized agent shall enforce this article, and the regulations promulgated thereunder, as well as the terms and conditions of all permits, notices, and orders, and may pursue all civil and criminal remedies for such violations.
- (b) **Civil Relief.** If anyone violates the provisions of this article, regulations, permit, notice, or order issued thereunder, the Department of Public Works may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or compel the person to abate or remediate the violation.
- (c) **Orders.** The Department of Public Works may issue a written order to enforce the provisions of this article or the regulations thereunder, which may include: (1) elimination of illicit connections or discharges to the storm drain system; (2) termination of access to the storm drainage system; (3) performance of monitoring, analyses, and reporting; (4) cessation of unlawful discharges, practices, or operations; and (5) remediation of contamination in connection therewith. If the Department of Public Works determines that abatement or remediation of contamination is required, the order shall set forth a deadline for completion of the abatement or remediation. Such order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the city may, at its option, undertake such work, and expenses thereof shall be charged to the violator or property owner.

Within thirty days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the city, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Department of Public Works within thirty days following a decision of the receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty days following a decision of the Department of Public Works affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of such costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. chapter 59, section 57 after the thirty-first day at which the costs first become due.

- (d) **Criminal and Civil Penalties.** Any person who violates any provision of this article, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine not to exceed three hundred dollars for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the city in any court of competent jurisdiction.
- (e) **Noncriminal Disposition.** As an alternative to criminal prosecution or civil action, the City of Gardner may elect to utilize the noncriminal disposition procedure set forth in G.L. chapter 40, section 21D. The Department of Public Works shall be the enforcing entity. The penalty for the 1st violation shall be one hundred dollars. The penalty for the 2nd violation shall be two hundred dollars. The penalty for the 3rd and subsequent violations shall be three hundred dollars. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- (f) **Entry to Perform Duties under this Article.** To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Department of Public Works, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their

duties under this article and regulations and may make or cause to be made such examinations, surveys or sampling as the Department of Public Works deems reasonably necessary.

- (g) Appeals. The decisions or orders of the Department of Public Works shall be final. Further relief shall be to a court of competent jurisdiction.
- (h) Remedies Not Exclusive. The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law.

XXXXX. - Severability.

If any provision, paragraph, sentence, or clause, of this article shall be held invalid for any reason, all provisions shall continue in full force and effect.

DRAFT

10331



**RECEIVED CITY OF GARDNER POLICE DEPARTMENT**

200 Main Street, Suite 214  
Gardner, Massachusetts 01440

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



2020 AUG -5 PM 2:46

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

CLERK'S OFFICE  
GARDNER, MA

August 5<sup>th</sup>, 2020

Gardner City Council Members,

On March 10<sup>th</sup>, 2020 on behalf of the members of the Traffic Commission I submitted a letter to the council recommending the following ordinance amendment in Gardner City Code:

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

This recommendation was based on the facts that 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. A survey of Nutting Street had been conducted and it was discovered 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 May 4<sup>th</sup>, 2020 I met via a Zoom Meeting with the members of the Public Safety Committee and presented the Traffic Commissions recommendation to prohibit parking on Nutting Street which was supported by tangible facts, validated measurements and opinions for potential safety concerns within the area. In response of the communication within this meeting the members of the Public Safety Committee voted to return the recommended ordinance amendment in Gardner City Code back to Traffic Commission for further public comment.

On July 17<sup>th</sup>, 2020 at the quarterly Traffic Commission Meeting this topic along with direction from the Public Safety Committee was brought forward to the commission members for discussion. During our conversation the responsibilities of the Traffic Commission were deliberated and after examining the duties as defined in Gardner City Code 275-3, all members of the commission agreed that a survey for further public comment regarding recommendations on City Code amendments were not a function within the Traffic Commissions scope of assignments. As a result of the dialogue, with no disrespect intended to the Public Safety Committee the members of the Traffic Commission unanimous decided to stand affirmative on their recommendation relying within the facts as originally presented. As a result of this conference we would like to recommend (re-submit) 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.  
Deputy Chief of Police  
City of Gardner Police Department

# ORDINANCE

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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:

<u>Name of Street</u>	<u>Side</u>	<u>Location</u>
Nutting Street	Both	Entire length

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



CITY OF GARDNER  
MASSACHUSETTS 01440-2630

OFFICE OF THE  
CITY CLERK

10305  
RECEIVED

2020 SEP 15 PM 12:00

CITY CLERK'S OFFICE  
GARDNER, MA

CITY OF GARDNER  
NOTICE OF JOINT PUBLIC HEARING  
DEVELOPMENT OVERLAY DISTRICT DESIGNATION

Pursuant to G.L. c. 40A, § 5, notice is hereby given that the City Council and Planning Board will conduct a **Joint Public Hearing on Monday, October 5, 2020 at 6:00 P.M.** to consider designating 2 parcels of land at 525 Parker Street as a Development Overlay District 1. The Hearing will be held via Zoom and broadcast on the City of Gardner YouTube Channel. Interested parties desiring to offer testimony are encouraged to submit their comments in writing and e-mailed to the City Clerk at [aagnelli@gardner-ma.gov](mailto:aagnelli@gardner-ma.gov) or mailed to **City Clerk, 95 Pleasant Street, Room 121, Gardner, MA 01440**. Parties desiring to address their comments via Zoom are required to pre-register in advance of the hearing by contacting the City Clerk by e-mail. The proposed Amendment is available for viewing on the City Council's webpage – [www.gardner-ma.gov/324/City-Council](http://www.gardner-ma.gov/324/City-Council) under **Informational Documents**.

ALAN L. AGNELLI  
CITY CLERK



10305  
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2020 JUL 14 PM 1:22

CITY CLERK'S OFFICE  
GARDNER, MA

July 13, 2020

Elizabeth J. Kazinskas, 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 16.2 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.

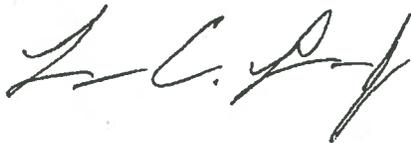
In harmony with the previously approved project and the City-wide growth and development policies, the applicant proposes to redevelop this parcel and construct three multi-family residential buildings, totaling 123 units.

The site has been configured such that the main access into the site will be off of Parker Street with an emergency access provided off of Water 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. A traffic-assessment memorandum has been submitted with this cover letter detailing the potential impact this project would have on the surrounding area.

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 or comments, please feel free to contact our office.

Sincerely,



Lar Greene, RLA

P:\MEI\223-Olson\City Council\Docs\Revised Development 1 Overlay Requestletter.docx

10305

**MEMORANDUM**

93 Stiles Road, Suite 201, Salem, New Hampshire 03079 USA  
800 Turnpike Street, Suite 300, North Andover, Massachusetts 01845 USA  
Phone (603) 212-9133 and Fax (603) 226-4108  
Email [tepp@teppllc.com](mailto:tepp@teppllc.com) and Web [www.teppllc.com](http://www.teppllc.com)

Ref: 1505  
Subject: Traffic Assessment  
Parker Estates Apartment Development  
Gardner, Massachusetts  
From: Kim Eric Hazarvartian, Ph.D., P.E., PTOE  
Principal  
Date: July 7, 2020



**INTRODUCTION**

TEPP LLC to prepare this traffic-assessment memorandum (TAM) regarding the proposed Parker Estates apartment development in the City of Gardner, Massachusetts.

This TAM concludes that:

- relevant sight distances for the Parker Street/proposed driveway intersection provide for greater than the Parker Street speed limit
- the project is anticipated to have no significant impact on area traffic operations
- further traffic-impact analysis is not warranted

**PROJECT DESCRIPTION**

The existing site:

- has an area of about 706,849 square feet
- was previously developed as an industrial use
- fronts on the north side of Parker Street
- has residential development to the north and east
- has Parker Pond and a railroad to the west

The project:

- provides a total of 123 dwelling units in three three-story buildings
- includes a proposed driveway intersecting the north side of Parker Street about 700 feet (ft) west of Rock Street

- includes a proposed emergency-access driveway intersecting the west side of Water Street about 180 ft south of the end of the street

**PARKER STREET**

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Parker Street:

- functions as arterial street
- connects the City central business district, to the east, and the Town of Templeton, to the west
- is under the jurisdiction of the City and is signed as Massachusetts Route 101

Parker Street near the site:

- is oriented about east-west
- has a tangent horizontal alignment
- includes a minor westbound downgrade
- has a marked travelway with one lane per direction
- has curb and sidewalk on the south side
- has asphaltic-cement-concrete pavement in poor-to-fair condition
- includes utility poles on the west side, some with luminaires
- provides access for residential development
- underpasses a railroad about 300 ft west of the proposed driveway location

**WATER STREET**

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Water Street:

- functions as local street
- is oriented roughly north-south
- extends from Branch Street, to the south, to the end of the street, to the south, a length of about 650 ft
- is under the jurisdiction of the City

Water Street near the site:



- has tangent alignment that includes a turn about 140 ft south of the proposed driveway location
- included minor grades
- has an unmarked travelway providing one lane per direction
- has curb and sidewalk on the east side
- has asphaltic-cement-concrete pavement in fair-to-good condition
- includes utility poles on the north side, some with luminaires
- provides access for residential development

**SIGHT DISTANCES**

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The American Association of State Highway and Transportation Officials (AASHTO) has established authoritative policy for sight distances at unsignalized intersections in terms of:

- stopping sight distance (SSD)
- optional intersection sight distance (ISD)

SSD:

- provides for safety
- enables a driver, on the major road, to perceive and react accordingly to a vehicle entering the major road from a minor road
- is conservative because it encompasses a wide range of brake-reaction times and deceleration rates<sup>1</sup>

Optional ISD:

- is ordinarily greater than SSD and may enhance traffic operations
- is not required for safety<sup>2</sup>

Table 1 shows relevant available sight distances for the Parker Street/proposed driveway intersection. Stopping sight distances are available for greater than the Parker Street speed limit.

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<sup>1</sup> AASHTO, *A Policy on Geometric Design of Highways and Streets*, 6th Edition (Washington, DC, 2011), pages 3-2 to 3-6.

<sup>2</sup> AASHTO, pages 9-28 to 9-29.

**Table 1. Sight distances for Parker Street/proposed driveway intersection.**

Movement and View	Available Sight Distance (ft) <sup>a</sup>	Speeds (mph)		
		Limit	SSD	ISD
<b>Movement—Left Turns from Proposed Driveway</b>				
View—To and from Parker Street East Leg	700	30	50+	50+
View—To and from Parker Street West Leg	700	30	50+	50+
<b>Movement—Right Turns from Proposed Driveway</b>				
View—To and from Parker Street East Leg	700	30	50+	50+
<b>Movement—Left Turns from Parker Street</b>				
View—To and from Parker Street East Leg	700	30	50+	50+

<sup>a</sup> From field assessment on June 30, 2020.

For the Water Street/proposed emergency-access driveway intersection, sight distances extend from the horizontal turn, to the south, and the end of street, to the north.

**TRIP GENERATION**

The Institute of Transportation Engineers (ITE) publishes trip-generation information in the authoritative *Trip Generation Manual*.<sup>3</sup> This information is based on empirical data for a variety of land uses including multifamily housing (mid-rise), land use 221, based on dwelling units<sup>4</sup>

Table 2 shows calculated weekday vehicle-trips for the proposed 123-dwelling-unit development as:

**Table 2. Calculated weekday vehicle-trip generation.**

Time Period and Direction	Vehicle-Trips <sup>a</sup>		
	Total	In	Out
Daily	669	334	335
AM-Street-Peak Hour	42	11	31
PM-Street-Peak Hour	54	33	21

<sup>a</sup> Based on ITE, multifamily housing (mid-rise), land use 221, 123 dwelling units.

<sup>3</sup> ITE, *Trip Generation Manual*, 10<sup>th</sup> Edition (Washington DC, September 2017).

<sup>4</sup> ITE, *Trip Generation Manual*, Volume 2, Data, Residential (Land Uses 200-299), pages 71 to 149.

- daily, 669 (total of in and out)
- AM-street-peak hour, 42 (11 in and 31 out)
- PM-street-peak hour, 54 (33 in and 21 out)

**POTENTIAL TRAFFIC IMPACTS**

ITE suggests that land developments generating at least 100 peak-hour vehicle trips, in the busier direction, are candidates for consideration of traffic impact analysis.<sup>5</sup> Tabulated peak-hour trip generation due to the proposed redevelopment is well below this national ITE threshold.

The proposed redevelopment is calculated to generate 42 to 54 vehicle-trips during tabulated peak hours, split:

- in versus out of the site
- along Parker Street to and from the east
- along Parker Street to and from the west

This represents averages of about:

- 10 to 14 vehicles per hour per direction on Parker Street east or west of the site
- 1 vehicle per 4 to 6 minutes per direction on Parker Street east or west of the site

On this basis, the proposed development is anticipated to have no significant impact on area traffic operations.

**CONCLUSION**

This TAM concludes that:

- relevant sight distances for the Parker Street/proposed driveway intersection provide for greater than the Parker Street speed limit
- the project is anticipated to have no significant impact on area traffic operations
- further traffic-impact analysis is not warranted

<sup>5</sup> ITE, *Manual of Transportation Engineering Studies* (Prentice Hall: Englewood Cliffs, New Jersey, 2000), page 144.



# CITY OF GARDNER

## DEPARTMENT OF COMMUNITY DEVELOPMENT AND PLANNING

Manca Annex, 115 Pleasant Street, Room 201 Gardner, Massachusetts 01440

Phone: (978) 630-4014 ◊ Fax: (978) 632-1905 ◊ CDBG (978) 632-3800



August 24, 2020

President Elizabeth J. Kazinskas  
C/o Alan Agnelli, City Clerk  
City Hall  
95 Pleasant Street  
Gardner, MA 01440

RECEIVED  
2020 AUG 25 AM 11:08  
CITY CLERK'S OFFICE  
GARDNER, MA

Subject: Amendment to Development Overlay District 1 ~ 525 Parker Street

Dear President Kazinskas:

At the Planning Board meeting held on Monday, August 17, 2020, the Planning Board voted 4-1 to recommend approval of the amendment to Development Overlay District 1 referenced above. The parcel is zoned industrial, has long been vacant, and is surrounded by residential uses, therefore, the amendment will prove beneficial for future development of area by encouraging the change in use.

The Planning Board looks forward to joining the City Council at a joint public hearing scheduled at its earliest convenience. Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

Trevor M. Beauregard  
Director, Community Development and Planning

10305



**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

August 10, 2020

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

Re: Renewed 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 renewed 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  
City Clerk

Enclosures (2)

10326

AN ORDER APPROPRIATING A SUM OF MONEY FROM FREE CASH TO  
POOL FILTRATION SYSTEM ACCOUNT.

ORDERED:

That there be and is hereby appropriated the sum of Seventy-Five Thousand  
Dollars and No Cents (\$75,000.00) from Free Cash to the Pool Filtration System  
Account:

10326

City of Gardner, *Executive Department*

RECEIVED



Michael J. Nicholson, Mayor

2020 AUG 27 PM 4:26

CITY CLERK'S OFFICE  
GARDNER, MA

August 27, 2020

The Hon. Elizabeth Kazinskas, President  
And City Councilors  
Gardner City Hall, Rm 121  
95 Pleasant St  
Gardner, MA 01440

**RE: Free Cash to Pool Filtration System Account**

Dear President Kazinskas and Councilors,

Attached, please find a request for appropriation from Free Cash for \$75,000.00.

This appropriation is being requested in order to replace the current filtration system at the Greenwood outdoor pool. The current filter is over 30 years old and is in rough condition.

The objective is to have it repaired before the cold weather sets in, with the hopes of having it ready for next year's seasonal operation.

Respectfully Submitted,

Michael J. Nicholson  
Mayor, City of Gardner



City of Gardner  
 Human Resources Department  
 95 Pleasant Street Rm. 14  
 Gardner, MA 01440  
 (978) 630-4001 • (978) 630-4025

Debra A. Pond, Director of Human Resources

---

August 27, 2020

Michael Nicholson, Mayor  
 City of Gardner  
 95 Pleasant Street  
 Gardner, MA 01440

SUBJECT: Greenwood Pool Filtration System

Dear Mayor Nicholson:

I am respectfully requesting an appropriation in the amount of \$75,000.00 for a new filtration system for the Greenwood outdoor pool facility. The current filtration system is over thirty (30) years old and springing leaks. We will make it through this season, but it will not survive another season. The proposal is to install the new system after the pool closes for the season and before the snow falls so that we will have a turnkey operation in the early summer.

We have a proposal for a Whitten 1U-2C-90 Two-Cell Pressure Sand Filter in the amount of \$42,500.00. This is the cost of the filtration system delivered to the site. It does not include:

- Offloading or placement in the filter building;
- Installation by a mechanical contractor/commercial pool contractor; or
- Engineering consultation for preparation of system changes for presentation to the Board of Health.

The estimated cost for these items are included in the appropriation request. Thank you for your consideration. If you have any questions, please contact me.

Sincerely,

Debra A. Pond  
 Director of Human Resources

Enclosure

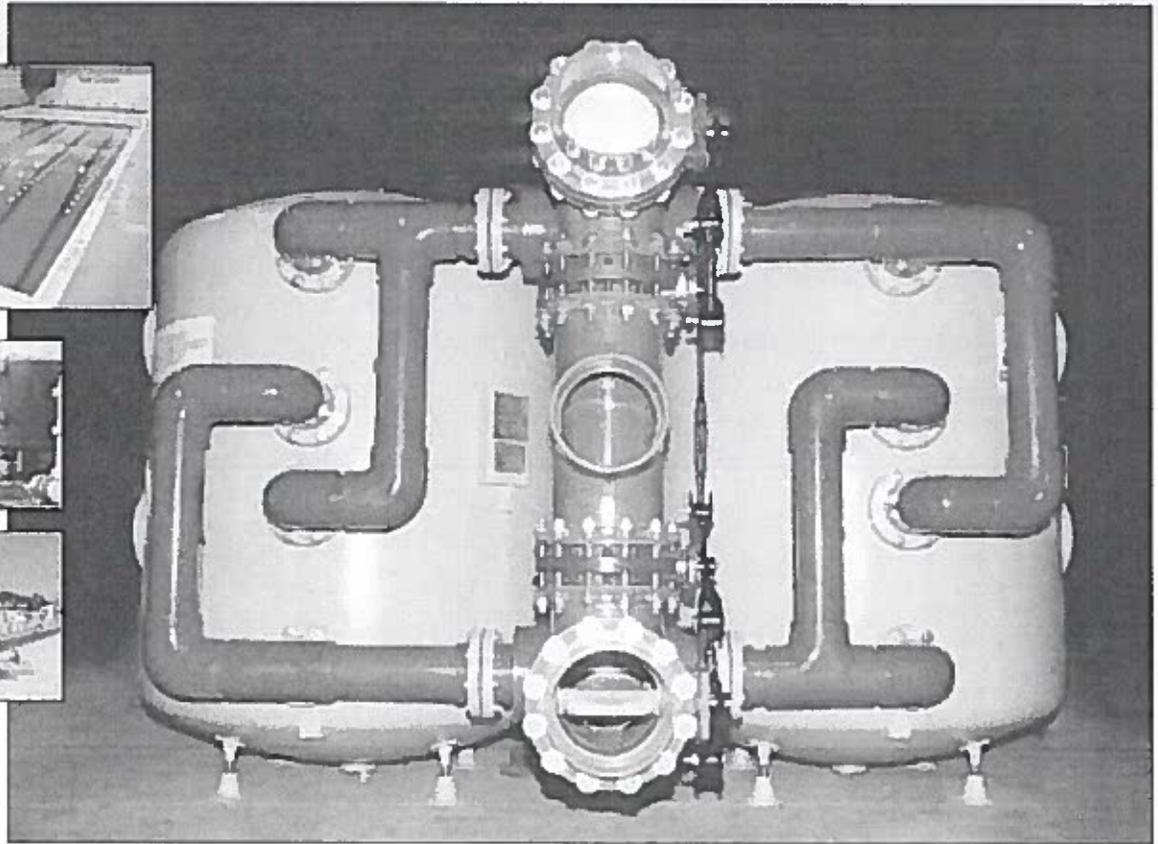
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# WHITTEN

ADG  
EQUIPMENT  
SYSTEMS

An Aquatic Development Group Company  
Quality Pool Products for Over 30 Years



## Pressure Multi-Cell Filtration System

Whitten pressure sand filters are NSF listed for flows up to 20 GPM per sq.ft. of filter area. Whitten Multi-Cells offer unique space savings which is achieved by stacking multiple filter cells within a single tank.

High quality tank materials for all models are selected based on specific application. Typically, A-36 or SA-516 carbon steel comes in thicknesses of 3/16" through 1/2" or T-304L and T-316L stainless steel also in thicknesses up to 1/2". Standard tanks are sized in

six-inch increments from 36" through 120" diameter. Multiple tanks can be arranged in series to accommodate high volume systems.

- Proven
- Reliable
- Simple
- Affordable

Whitten filter tanks are lined with Unisol 2000 PVC baked coatings to provide a 15 year warranty. Optional linings include epoxy rubber membrane Unisol 2000 R or Hypalon for ozone applications. All linings are NSF approved for installation in Whitten Multi-Cell filters.

# Over 1500 Installations World-Wide

(notable installations)

an Lake Center for the Handicapped, Dallas, TX; Badger Swimpools, Inc., Sauk City, WI; Baker Pools, Minneapolis, MN; Baltimore Pool  
 Korea, DR; Balcones Estupan, DF Mexico; Bally's Park Pool Casino, Atlantic City, NJ; Bangor-Brewer YMCA, Bangor, ME; Bard College, New York  
 Hudson, NY; Baruch College, New York, NY; Barrington Recreation Center, Barrington, IL; Barrington Community College, Barrington, IL  
 argonne, IL; Battle Creek Community Center, Battle Creek, MI; Battle Creek Community Center, Battle Creek, MI; Battle Creek Community Center, Battle Creek, MI  
 Little Creek, VA; Bathing Machine, Bathing Machine, VA; Bathing Machine, Bathing Machine, VA; Bathing Machine, Bathing Machine, VA  
 MA; Bell-Rega, New Rochelle, NY; Bemington Recreation Center, Bemington, VA; Bennington College, Wallham, MA; Bergen Community College, Paramus  
 Children's Home, Housatonic, MA; Berkshire Falls, Housatonic, MA; Berkshire Falls, Housatonic, MA; Berkshire Falls, Housatonic, MA  
 MA; Bernards Township Pool Comm., Bernards Township, NJ; Bernards Township Pool Comm., Bernards Township, NJ; Bernards Township Pool Comm., Bernards Township, NJ  
 MA; Berwick Area School, Berwick, PA; Bethlehem Central High School, Dotmar, NY; Beverly Regional YMCA, Beverly, MA; Big Kahuna-Trop  
 Lakespark, Boston, FL; Big Surf Waterpark, Linn Co., IA; Big Surf Waterpark, Linn Co., IA; Big Surf Waterpark, Linn Co., IA  
 SD; Bloomsburgh Middle School, Bloomsburgh, PA; Blue Water Pool Service, Hopewell Junction, NY; BOCES Voc. School, Plattsburg  
 York Aquatic Center, Robustock, IL; Borough of Palisades Park, Palisades, NY; Borough of Paramus, Paramus, NY; Borough of Ridgeway, Ridgeway  
 of Virginia, Virginia; Borough of Ridgeway, Ridgeway, NY; Borough of Ridgeway, Ridgeway, NY; Borough of Ridgeway, Ridgeway, NY  
 MA; Brainerd Manor Recreation, Brainerd Manor, NY; Bridgewater College, Bridgewater, VA; Brock Enterprises, Ni  
 CA; Brock University, Brock University, ON; Brookline Pools, Inc., North Little Rock, AR; Brookline Pools, Inc., North Little Rock, AR  
 ay, Providence, RI; Brunswick Community Recreation Center, Brunswick, OH; Buccaneer State Park, Waveland, MS; Buckingham Towers, I  
 Buffalo Grove Park District, Buffalo Grove, IL; Burleson Pool Co., Huntsville, AL; Burnt Hills/Ballston Lake Central Schools, Burnt Hills, NY; Bu  
 ment Corp., Wilbraham, MA; Burnt Hills/Ballston Lake Central Schools, Burnt Hills, NY; Burnt Hills/Ballston Lake Central Schools, Burnt Hills, NY  
 VA; Camp Lovejoy, Schoenectady, NY; Camp Pinewood, Arkport, NY; Camp Services Ltd., White Lake, MI; Cananda  
 iv Canandaigua, NY; Canyon Ranch Resort, Lenox, MA; Cape May Co. School for Special Services, G.V.B.U., Cape May, NJ; Capital District YMCA, Albany  
 Reg. Educ. Council, Carbondale Area School, Carbondale, PA; Carousel House, Dept. of Recreation, Philadelphia, PA; Carter Cor  
 g Assoc., Lebanon, NH; Eastwood Park, G.V.B.U., Vallejo, CA; Catskill Valley Pool, Athens, NY; Cedar Point Amusement Park, Sandusky, OH; Ce  
 Community Ctr., Cedar Point, OH; Cedar Point Amusement Park, Sandusky, OH; Cedar Point Amusement Park, Sandusky, OH  
 CA, Los Angeles, CA; Central Michigan University, East Lansing, MI; Central Michigan University, East Lansing, MI; Central Michigan University, East Lansing, MI  
 Pools Inc., New Britain, CT; Certified Pool Mechanics, Inc., Bonita Springs, FL; Chaminade High School, Mineola, NY; Charles Foster Park, Lakewood  
 Co. Parks & Rec., Elmira, NY; Chenango Forks Ctr. Sch. Dist., Binghamton, NY; Chesapeake Pools Inc., Linthicum, MD; Chicago Parks Dept., Chicago  
 n's Seashore House, Chicago, IL; Chesapeake Pools Inc., Linthicum, MD; Chesapeake Pools Inc., Linthicum, MD; Chesapeake Pools Inc., Linthicum, MD  
 a Swimming Pools, North Reading, MA; Chesapeake Pools Inc., Linthicum, MD; Chesapeake Pools Inc., Linthicum, MD; Chesapeake Pools Inc., Linthicum, MD  
 Albany, NY; City of Beaver Falls, Beaver Falls, PA; City of Binghamton, Binghamton, NY; City of Cambridge, Cambridge, MA; City of Chand  
 er, AZ; City of Cohoes, Cohoes, NY; City of Cranford, Cranford, NJ; City of Cranford, Cranford, NJ; City of Cranford, Cranford, NJ; City of Cranford, Cranford, NJ  
 City of Dalton, Dalton, AL; City of Dover, Parks & Rec., Dover, NH; City of El Paso Parks Facilities Dept., El Paso, TX; City of Garland Audu  
 riana, TX; City of Glendale, Glendale, AZ; City of Guilph, Guilph, ONT., CN; City of Holstein, Holstein, IA; City of Middletown, Middletown, CT; Cit  
 e Falls, Niagara Falls, NY; City of Middletown, Middletown, CT; City of Middletown, Middletown, CT; City of Middletown, Middletown, CT  
 Owensville, Owensville, MO; City of Peekskill, Parks & Rec., Peekskill, NY; City of Phoenix, Phoenix, AZ; City of Rutland, Rutland, VT; Cit  
 k, Saginaw, MI; City of Schenectady, Schenectady, NY; City of Scottsdale, Scottsdale, AZ; City of Tempe, Tempe, AZ; City of Tempe, Management & S  
 Tempe, AZ; City of Watertown, Watertown, NY; City of Watertown, Watertown, NY; City of Watertown, Watertown, NY; City of Watertown, Watertown, NY  
 atridge, Wheatridge, CO; Clark University, Worcester, MA; Clarkson College, Potsdam, NY; Claude Robillard Center St. Michel, Montreal, QUE.,  
 rli Area School, Clifton, NJ; Clifton Amusement Park, Clifton, NJ; Clifton Amusement Park, Clifton, NY; Clifton Amusement Park, Clifton, NY  
 Hamilton, NY; College of Dupage, Glen Ellyn, IL; Colonie Country Club, Voorheesville, NY; Commonwealth of Massachusetts, Boston  
 wealth of Virginia, Richmond, VA; Community High School Dist. #24, West Chicago, IL; Contractor's Group, Inc., Luzerne, PA; Copperfield Inn, Ni

**Bates College**

**Lewistown, Maine**

**Dorney Park & Wild Water Kingdom**

**Allentown, Pennsylvania**

**Fairland Aquatic Center**

**Laural, Maryland**

**Georgetown University**

**Washington, DC**

**Hewlett High School**

**Hewlett, New York**

**Ithaca High School**

**Ithaca, New York**

**Lexington YMCA**

**Manhattan, New York**

**Six Flags Great Adventure**

**Jackson, New Jersey**

**Southern Illinois University**

**Carbondale, Illinois**

**University of Massachusetts**

**Boston, Massachusetts**

**Williams College**

**Williamstown, Massachusetts**



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**AQUATIC  
 DEVELOPMENT  
 GROUP, INC.**

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 Cohoes, NY 12047  
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**For a complete catalog of ADG Equipment Systems call 800-458-9283.**

# Pressure Filtration

## Why Whitten Pressure Filters?

- NSF International listed
- Multi-Cell filters reduce floor space requirements
- Filters can be back washed one cell at a time or one tank at a time to avoid overflowing sewer capacity (Rate=15gmp/sf)
- Filtration controls are available in manual, semi-automatic and fully automatic
- High quality tank materials for all models are selected based on specific application
- Affordable upfront investment with low operating costs
- Standard interior tank coating (unisol 2000) baked PVC has over 20 years of proven reliability
- 15-Year limited warranty
- Over 30 years of proven service

SINGLE TANK								
MODEL NUMBER	FILTER AREA SQ. FT.	FLOW RATE G.P.M./SQ. FT.					PIPE CONNECTION (FOR 3 TO 15 GPM)	
		3 G.P.M. FILTER RATE	5 G.P.M. FILTER RATE	7.5 G.P.M. FILTER RATE	15 G.P.M. FILTER RATE	20 G.P.M. FILTER RATE	INFLUENT/ EFFLUENT	BACK- WASH
1U-1C-36	7.07	21.21	35.35	53.03	106.05	141.40	3"	3"
1U-1C-42	9.62	28.86	48.10	72.15	144.30	192.40	3"	3"
1U-1C-48	12.57	37.71	62.85	94.28	188.55	251.40	3"	3"
1U-1C-54	15.90	47.70	79.50	119.25	238.50	318.00	4"	4"
1U-1C-60	19.83	58.89	98.15	147.23	294.45	392.60	4"	4"
1U-1C-66	23.76	71.28	118.80	178.20	356.40	475.20	4"	4"
1U-1C-72	28.27	84.81	141.35	212.03	424.05	565.40	4"	4"
1U-1C-78	33.18	99.54	165.90	248.85	497.70	663.60	6"	6"
1U-1C-84	38.48	115.44	192.40	288.60	577.20	769.60	6"	6"
1U-1C-90	44.18	132.54	220.90	331.35	662.70	883.60	6"	6"
1U-1C-96	50.27	150.81	251.35	377.03	754.04	1005.38	6"	6"
1U-1C-102	56.75	170.25	283.75	425.63	851.25	1135.00	8"	8"
1U-1C-108	63.62	190.86	318.10	477.15	954.30	1272.40	8"	8"
1U-1C-114	70.89	212.64	354.40	531.60	1063.20	1417.60	8"	8"
1U-1C-120	78.54	235.62	392.70	589.05	1178.10	1570.80	8"	8"
1U-2C-36	14.04	42.12	70.20	105.30	210.60	280.00	3"	3"
1U-2C-42	19.24	57.72	98.20	144.30	288.60	384.80	3"	4"
1U-2C-48	25.14	75.42	125.70	188.55	377.10	502.80	3"	4"
1U-2C-54	31.80	95.40	159.00	238.50	477.00	636.00	4"	6"
1U-2C-60	39.28	117.75	196.40	294.60	589.20	785.60	4"	6"
1U-2C-66	47.52	142.56	237.60	356.40	712.80	950.40	4"	6"
1U-2C-72	56.54	169.62	282.70	424.05	848.10	1130.80	6"	6"
1U-2C-78	66.36	199.08	331.80	497.70	995.40	1327.20	6"	8"
1U-2C-84	76.96	230.88	384.80	577.20	1154.40	1539.20	6"	8"
1U-2C-90	88.36	265.08	441.80	662.70	1325.40	1767.20	6"	8"
1U-2C-96	100.54	301.62	502.70	754.05	1508.10	2018.80	6"	8"
1U-2C-102	113.50	340.50	567.50	851.25	1702.50	2270.00	6"	10"
1U-2C-108	127.24	381.72	638.20	954.30	1908.60	2544.80	8"	10"
1U-2C-114	144.76	434.28	708.80	1063.20	2126.40	2836.20	8"	10"
1U-2C-120	157.08	471.24	785.40	1178.10	2356.20	3141.60	8"	10"
1U-3C-36	21.21	63.90	108.05	159.08	318.15	424.20	3"	4"
1U-3C-42	28.88	86.58	144.30	216.45	432.90	577.20	3"	6"
1U-3C-48	37.71	113.13	188.55	282.83	565.65	754.20	3"	6"
1U-3C-54	47.70	143.10	238.50	357.75	715.50	954.00	4"	6"
1U-3C-60	58.92	176.76	294.60	441.90	883.80	1178.40	4"	6"
1U-3C-66	71.28	213.84	358.40	534.60	1069.20	1425.60	4"	6"
1U-3C-72	84.81	263.52	424.05	636.08	1272.15	1696.20	6"	8"
1U-3C-78	99.54	298.92	497.70	748.55	1493.10	1990.80	6"	8"
1U-3C-84	115.44	346.32	577.20	865.80	1731.60	2308.80	6"	10"
1U-3C-90	132.54	397.62	662.70	994.05	1988.10	2650.80	6"	10"
1U-3C-96	150.81	452.43	754.05	1131.08	2262.16	3018.20	6"	10"
1U-3C-102	170.25	510.75	851.25	1278.88	2553.75	3405.00	6"	12"
1U-3C-108	190.86	572.64	954.40	1431.45	2862.90	3817.20	8"	12"
1U-3C-114	212.64	637.92	1063.20	1584.80	3189.60	4252.80	8"	12"
1U-3C-120	235.62	706.86	1178.10	1767.15	3534.30	4712.40	8"	12"



## Laterals

The laterals in the Whitten Pressure Filtration System are attached to the interior perimeter of the tank by end-nipples which ensure stabilization during periods of backwash and high volume flow.

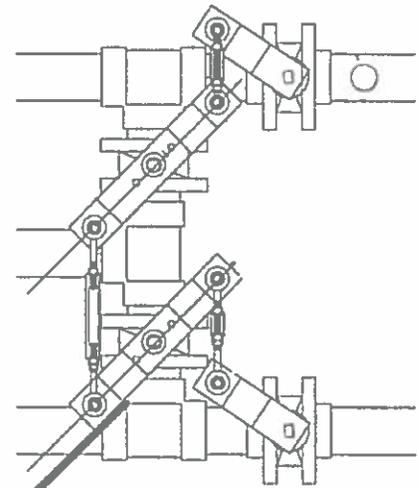
## Over Drain

Whitten internal over drain distribution system is carefully designed to provide the most uniform and efficient flows through the filter sand-media bed. Precise distribution of water flow ensures longer filter runs and maximum dirt holding capacity of the filter sand-media bed.



# ation Systems

MODEL NUMBER	FILTER AREA SQ FT	DUAL TANK					PIPE CONNECTION (FOR 3 TO 15 GPM)	
		FLOW RATE G.P.M./SQ. FT.					INFLUENT/ EFFLUENT	BACK- WASH
		3 G.P.M. FILTER RATE	5 G.P.M. FILTER RATE	7.5 G.P.M. FILTER RATE	15 G.P.M. FILTER RATE	20 G.P.M. FILTER RATE		
2U-2C-36	14.04	42.12	70.20	105.30	210.60	280.00	3"	3"
2U-2C-42	19.24	57.72	96.20	144.30	288.60	384.80	3"	4"
2U-2C-48	25.14	75.42	125.70	188.55	377.10	502.80	3"	4"
2U-2C-54	31.80	95.40	159.00	238.50	477.00	636.00	4"	6"
2U-2C-60	39.28	117.75	196.40	294.60	589.20	785.60	4"	6"
2U-2C-66	47.52	142.56	237.60	356.40	712.80	950.40	4"	6"
2U-2C-72	56.54	169.62	282.70	424.05	848.10	1130.80	6"	6"
2U-2C-78	66.36	199.08	331.80	497.70	695.40	1327.20	6"	8"
2U-2C-84	76.96	230.88	384.80	577.20	1154.40	1539.20	6"	8"
2U-2C-90	88.36	265.08	441.80	662.70	1325.40	1767.20	6"	8"
2U-2C-96	100.54	301.62	502.70	754.05	1508.10	2010.80	6"	8"
2U-2C-102	113.50	340.50	567.50	851.25	1702.50	2270.00	6"	10"
2U-2C-108	127.24	381.72	636.20	954.30	1908.60	2544.80	8"	10"
2U-2C-114	144.76	434.28	708.80	1063.20	2126.40	2835.20	8"	10"
2U-2C-120	157.08	471.24	785.40	1178.10	2356.20	3141.60	8"	10"
2U-4C-36	28.08	84.24	144.40	210.60	421.20	560.00	3"	6"
2U-4C-42	38.48	115.44	192.40	288.60	577.20	769.60	3"	6"
2U-4C-48	50.28	150.84	251.60	377.10	754.20	1005.60	3"	6"
2U-4C-54	63.60	190.80	318.00	477.00	954.00	1272.00	4"	8"
2U-4C-60	78.56	235.50	392.80	589.20	1178.40	1571.20	4"	8"
2U-4C-66	95.04	285.12	475.20	712.80	1425.60	1900.80	4"	8"
2U-4C-72	113.08	339.24	565.40	848.10	1696.20	2261.60	6"	10"
2U-4C-78	132.72	398.16	663.60	995.40	1990.80	2654.40	6"	10"
2U-4C-84	153.92	461.76	769.60	1154.40	2308.80	3078.40	6"	10"
2U-4C-90	178.72	512.16	883.60	1325.40	2650.80	3534.40	6"	12"
2U-4C-96	201.08	603.24	1005.40	1508.01	3016.20	4021.60	6"	12"
2U-4C-102	227.00	681.00	1135.00	1702.50	3405.00	4540.00	6"	12"
2U-4C-108	254.48	763.44	1272.40	1908.60	3817.20	5089.60	8"	14"
2U-4C-114	289.52	868.56	1417.60	2126.40	4252.80	5652.74	8"	14"
2U-4C-120	314.16	942.48	1570.80	2356.20	4712.40	6283.20	8"	14"
2U-6C-36	42.42	127.80	212.10	318.16	636.30	848.40	3"	6"
2U-6C-42	57.72	173.16	288.60	432.80	865.80	1154.40	3"	6"
2U-6C-48	75.42	226.26	377.10	565.66	1131.32	1514.44	3"	8"
2U-6C-54	95.40	286.20	477.00	715.50	1431.00	1908.00	4"	8"
2U-6C-60	117.84	353.52	589.20	883.80	1767.80	2356.80	4"	8"
2U-6C-66	142.56	427.68	712.80	1068.20	2138.40	2851.20	4"	10"
2U-6C-72	169.62	507.04	848.10	1272.16	2544.30	3392.40	6"	10"
2U-6C-78	199.08	597.84	989.40	1493.10	2988.20	3981.60	6"	12"
2U-6C-84	230.88	692.64	1154.40	1731.60	3463.20	4617.60	8"	12"
2U-6C-90	265.08	795.24	1325.40	1988.10	3976.20	5301.60	6"	14"
2U-6C-96	301.62	904.86	1508.10	2262.16	4524.32	6032.40	6"	14"
2U-6C-102	340.50	1021.50	1702.50	2553.75	5107.50	6810.00	8"	16"
2U-6C-108	381.72	1145.28	1908.60	2862.90	5725.80	7634.40	8"	16"
2U-6C-114	425.28	1275.84	2126.40	3189.60	6379.20	8505.60	8"	16"
2U-6C-120	471.24	1413.72	2356.20	3534.30	7068.60	9424.80	8"	16"

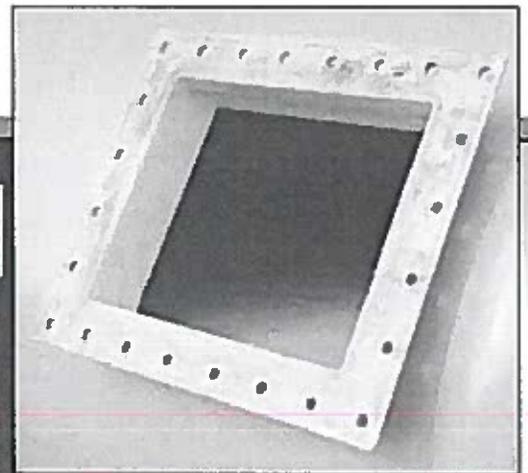
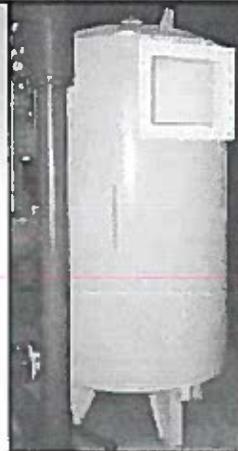


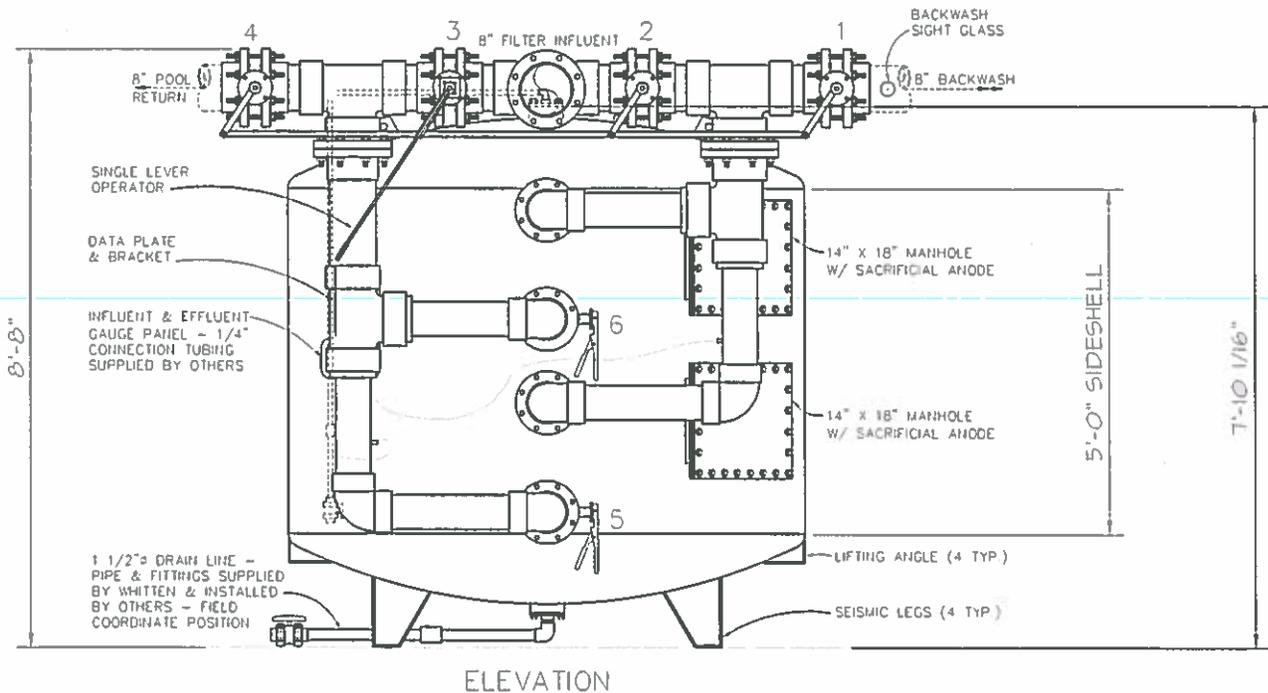
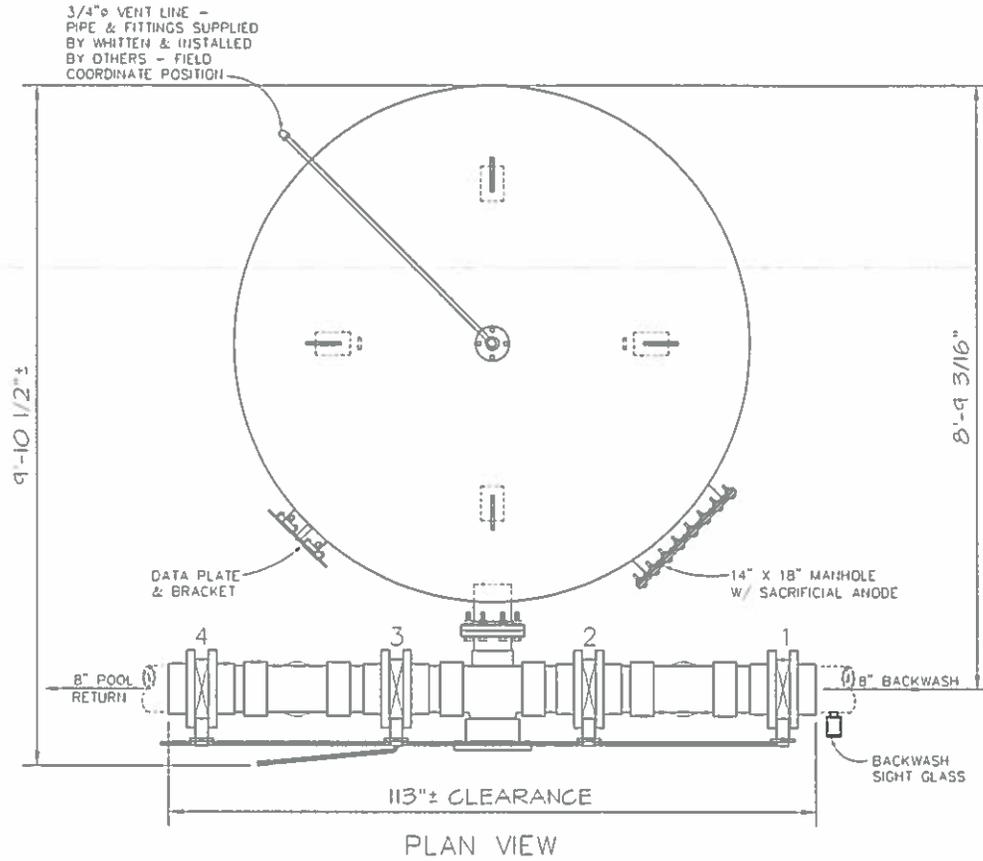
## Face Piping

Whitten face piping incorporates user friendly single lever linkage. This allows operator simplicity by moving one lever in order to activate valves for backwashing. Whitten's standard valves are nylon coated with undercut wafer for early valve-seating and efficiency.

## Access Hatch

An oversized access hatch is standard on all Whitten Pressure filters. With its rectangular shape and a size of 18" x 14", it allows for easy operator inspection of internal components or media. It features an industrial grade heavy-duty gasket that is designed to be reused after each inspection. The Whitten gasket eliminates the inconvenience and cost of reordering and replacing gaskets each time you inspect the filter.



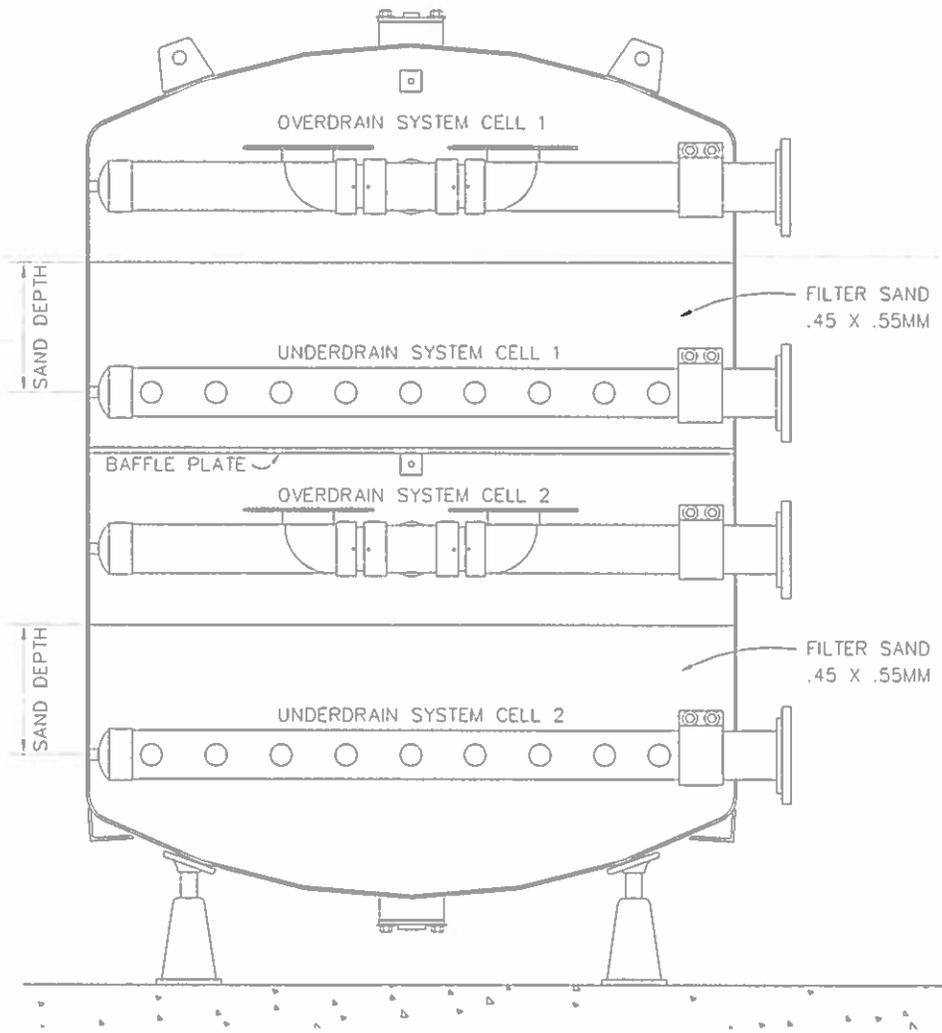


**1U-2C-90 MULTI-CELL FILTER**      DATE: -  
 JOB NO.: -  
 FILE NO.: -

**WHITTEN PRODUCTS**  
 DIVISION of HYDROTECH SYSTEMS Ltd.

P.O.Box 648  
 One Aquatic Center  
 Cohoes, NY 12047  
 Tel. 518-783-0038  
 Fax 518-783-0474

**AQUATIC  
 DEVELOPMENT  
 GROUP**



FILTER SIZE	# of 100 lb. Bags .44mm X .55mm	FILTER SIZE	# of 100 lb. Bags .44mm X .55mm
1U-2C-36	20	1U-2C-84	110
1U-2C-42	36	1U-2C-90	146
1U-2C-48	42	1U-2C-96	160
1U-2C-54	45	1U-2C-102	210
1U-2C-60	65	1U-2C-108	235
1U-2C-66	84	1U-2C-114	255
1U-2C-72	92	1U-2C-120	276
1U-2C-78	110		

2-CELL (1U-2C) MEDIA DEPTH CHART

DATE: 7/17/01

FILE NO:

**W** **HITTEN PRODUCTS**  
DIVISION of HYDROTECH SYSTEMS Ltd.

P.O.Box 648  
One Aquatic Center  
Cohoes, NY 12047  
Tel. 518-783-0038  
Fax 518-783-0474



**AQUATIC  
DEVELOPMENT  
GROUP**



10305  
RECEIVED

2020 JUL 14 PM 1:22

CITY CLERK'S OFFICE  
GARDNER, MA

July 13, 2020

Elizabeth J. Kazinskas, 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 16.2 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.

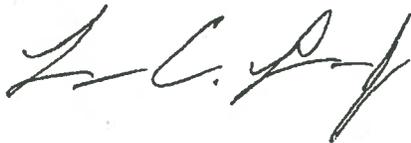
In harmony with the previously approved project and the City-wide growth and development policies, the applicant proposes to redevelop this parcel and construct three multi-family residential buildings, totaling 123 units.

The site has been configured such that the main access into the site will be off of Parker Street with an emergency access provided off of Water 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. A traffic-assessment memorandum has been submitted with this cover letter detailing the potential impact this project would have on the surrounding area.

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 or comments, please feel free to contact our office.

Sincerely,



Lar Greene, RLA

P:\MEI\223-Olson\City Council\Docs\Revised Development 1 Overlay Requestletter.docx

10305

**MEMORANDUM**

93 Stiles Road, Suite 201, Salem, New Hampshire 03079 USA  
800 Turnpike Street, Suite 300, North Andover, Massachusetts 01845 USA  
Phone (603) 212-9133 and Fax (603) 226-4108  
Email [tepp@teppllc.com](mailto:tepp@teppllc.com) and Web [www.teppllc.com](http://www.teppllc.com)

Ref: 1505  
Subject: Traffic Assessment  
Parker Estates Apartment Development  
Gardner, Massachusetts  
From: Kim Eric Hazarvartian, Ph.D., P.E., PTOE  
Principal  
Date: July 7, 2020



**INTRODUCTION**

TEPP LLC to prepare this traffic-assessment memorandum (TAM) regarding the proposed Parker Estates apartment development in the City of Gardner, Massachusetts.

This TAM concludes that:

- relevant sight distances for the Parker Street/proposed driveway intersection provide for greater than the Parker Street speed limit
- the project is anticipated to have no significant impact on area traffic operations
- further traffic-impact analysis is not warranted

**PROJECT DESCRIPTION**

The existing site:

- has an area of about 706,849 square feet
- was previously developed as an industrial use
- fronts on the north side of Parker Street
- has residential development to the north and east
- has Parker Pond and a railroad to the west

The project:

- provides a total of 123 dwelling units in three three-story buildings
- includes a proposed driveway intersecting the north side of Parker Street about 700 feet (ft) west of Rock Street

- includes a proposed emergency-access driveway intersecting the west side of Water Street about 180 ft south of the end of the street

**PARKER STREET**

---

Parker Street:

- functions as arterial street
- connects the City central business district, to the east, and the Town of Templeton, to the west
- is under the jurisdiction of the City and is signed as Massachusetts Route 101

Parker Street near the site:

- is oriented about east-west
- has a tangent horizontal alignment
- includes a minor westbound downgrade
- has a marked travelway with one lane per direction
- has curb and sidewalk on the south side
- has asphaltic-cement-concrete pavement in poor-to-fair condition
- includes utility poles on the west side, some with luminaires
- provides access for residential development
- underpasses a railroad about 300 ft west of the proposed driveway location

**WATER STREET**

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Water Street:

- functions as local street
- is oriented roughly north-south
- extends from Branch Street, to the south, to the end of the street, to the south, a length of about 650 ft
- is under the jurisdiction of the City

Water Street near the site:



- has tangent alignment that includes a turn about 140 ft south of the proposed driveway location
- included minor grades
- has an unmarked travelway providing one lane per direction
- has curb and sidewalk on the east side
- has asphaltic-cement-concrete pavement in fair-to-good condition
- includes utility poles on the north side, some with luminaires
- provides access for residential development

**SIGHT DISTANCES**

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The American Association of State Highway and Transportation Officials (AASHTO) has established authoritative policy for sight distances at unsignalized intersections in terms of:

- stopping sight distance (SSD)
- optional intersection sight distance (ISD)

SSD:

- provides for safety
- enables a driver, on the major road, to perceive and react accordingly to a vehicle entering the major road from a minor road
- is conservative because it encompasses a wide range of brake-reaction times and deceleration rates<sup>1</sup>

Optional ISD:

- is ordinarily greater than SSD and may enhance traffic operations
- is not required for safety<sup>2</sup>

Table 1 shows relevant available sight distances for the Parker Street/proposed driveway intersection. Stopping sight distances are available for greater than the Parker Street speed limit.

---

<sup>1</sup> AASHTO, *A Policy on Geometric Design of Highways and Streets*, 6th Edition (Washington, DC, 2011), pages 3-2 to 3-6.

<sup>2</sup> AASHTO, pages 9-28 to 9-29.

**Table 1. Sight distances for Parker Street/proposed driveway intersection.**

Movement and View	Available Sight Distance (ft) <sup>a</sup>	Speeds (mph)		
		Limit	SSD	ISD
<b>Movement—Left Turns from Proposed Driveway</b>				
View—To and from Parker Street East Leg	700	30	50+	50+
View—To and from Parker Street West Leg	700	30	50+	50+
<b>Movement—Right Turns from Proposed Driveway</b>				
View—To and from Parker Street East Leg	700	30	50+	50+
<b>Movement—Left Turns from Parker Street</b>				
View—To and from Parker Street East Leg	700	30	50+	50+

<sup>a</sup> From field assessment on June 30, 2020.

For the Water Street/proposed emergency-access driveway intersection, sight distances extend from the horizontal turn, to the south, and the end of street, to the north.

**TRIP GENERATION**

The Institute of Transportation Engineers (ITE) publishes trip-generation information in the authoritative *Trip Generation Manual*.<sup>3</sup> This information is based on empirical data for a variety of land uses including multifamily housing (mid-rise), land use 221, based on dwelling units<sup>4</sup>

Table 2 shows calculated weekday vehicle-trips for the proposed 123-dwelling-unit development as:

**Table 2. Calculated weekday vehicle-trip generation.**

Time Period and Direction	Vehicle-Trips <sup>a</sup>		
	Total	In	Out
Daily	669	334	335
AM-Street-Peak Hour	42	11	31
PM-Street-Peak Hour	54	33	21

<sup>a</sup> Based on ITE, multifamily housing (mid-rise), land use 221, 123 dwelling units.

<sup>3</sup> ITE, *Trip Generation Manual*, 10<sup>th</sup> Edition (Washington DC, September 2017).

<sup>4</sup> ITE, *Trip Generation Manual*, Volume 2, Data, Residential (Land Uses 200-299), pages 71 to 149.

- daily, 669 (total of in and out)
- AM-street-peak hour, 42 (11 in and 31 out)
- PM-street-peak hour, 54 (33 in and 21 out)

**POTENTIAL TRAFFIC IMPACTS**

ITE suggests that land developments generating at least 100 peak-hour vehicle trips, in the busier direction, are candidates for consideration of traffic impact analysis.<sup>5</sup> Tabulated peak-hour trip generation due to the proposed redevelopment is well below this national ITE threshold.

The proposed redevelopment is calculated to generate 42 to 54 vehicle-trips during tabulated peak hours, split:

- in versus out of the site
- along Parker Street to and from the east
- along Parker Street to and from the west

This represents averages of about:

- 10 to 14 vehicles per hour per direction on Parker Street east or west of the site
- 1 vehicle per 4 to 6 minutes per direction on Parker Street east or west of the site

On this basis, the proposed development is anticipated to have no significant impact on area traffic operations.

**CONCLUSION**

This TAM concludes that:

- relevant sight distances for the Parker Street/proposed driveway intersection provide for greater than the Parker Street speed limit
- the project is anticipated to have no significant impact on area traffic operations
- further traffic-impact analysis is not warranted

<sup>5</sup> ITE, *Manual of Transportation Engineering Studies* (Prentice Hall: Englewood Cliffs, New Jersey, 2000), page 144.

**NOT FOR CONSTRUCTION**  
 THE PURPOSES OF OBTAINING STATE AND LOCAL PERMITS AND ARE NOT CONSTRUCTION DOCUMENTS.

NO.	DATE	REVISIONS



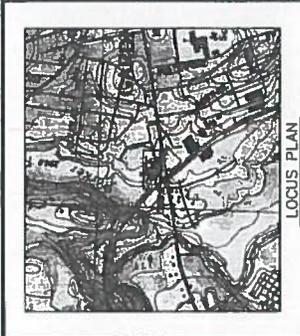
Drawn By: *[Signature]*  
 Checked By: *[Signature]*  
 Date: 7/17/10

**McCarty Engineering, Inc.**  
 Civil Engineers  
 41 South Road, Lanesboro, MA 01453  
 Phone: (978) 351-1311 Fax: (978) 354-6977  
 www.mccartyeng.com

**Parker Estates**  
 Gardner, MA

**Proposed Development Plan**

Sheet No. **1**  
 File Name: 2252-27902  
 Date: July 11, 2010  
 Scale: 1"=40'



**LOCUS PLAN**  
 1"=1,000 FT ±

- NOTES:**
- EXISTING CONDITIONS INFORMATION SHOWN WAS RECEIVED FROM MATTHEW ENGINEERING, INC. DATED NOVEMBER 14, 2010.
  - THE WETLANDS WERE DELINEATED BY ECOLOG, INC. ON OCTOBER 20, 2010. PLACES WERE FIELD LOCATED BY HANEGAN INC. ON OCTOBER 20, 2010.
  - PORTIONS OF THIS PLAN ARE LOCATED WITHIN THE LIMITS OF THE 100-YEAR FLOODPLAIN BASED ON A REVIEW OF THE BASES OF ONLINE DATA. HOWEVER, NO WORK IS PROPOSED WITHIN THE FLOODPLAIN.

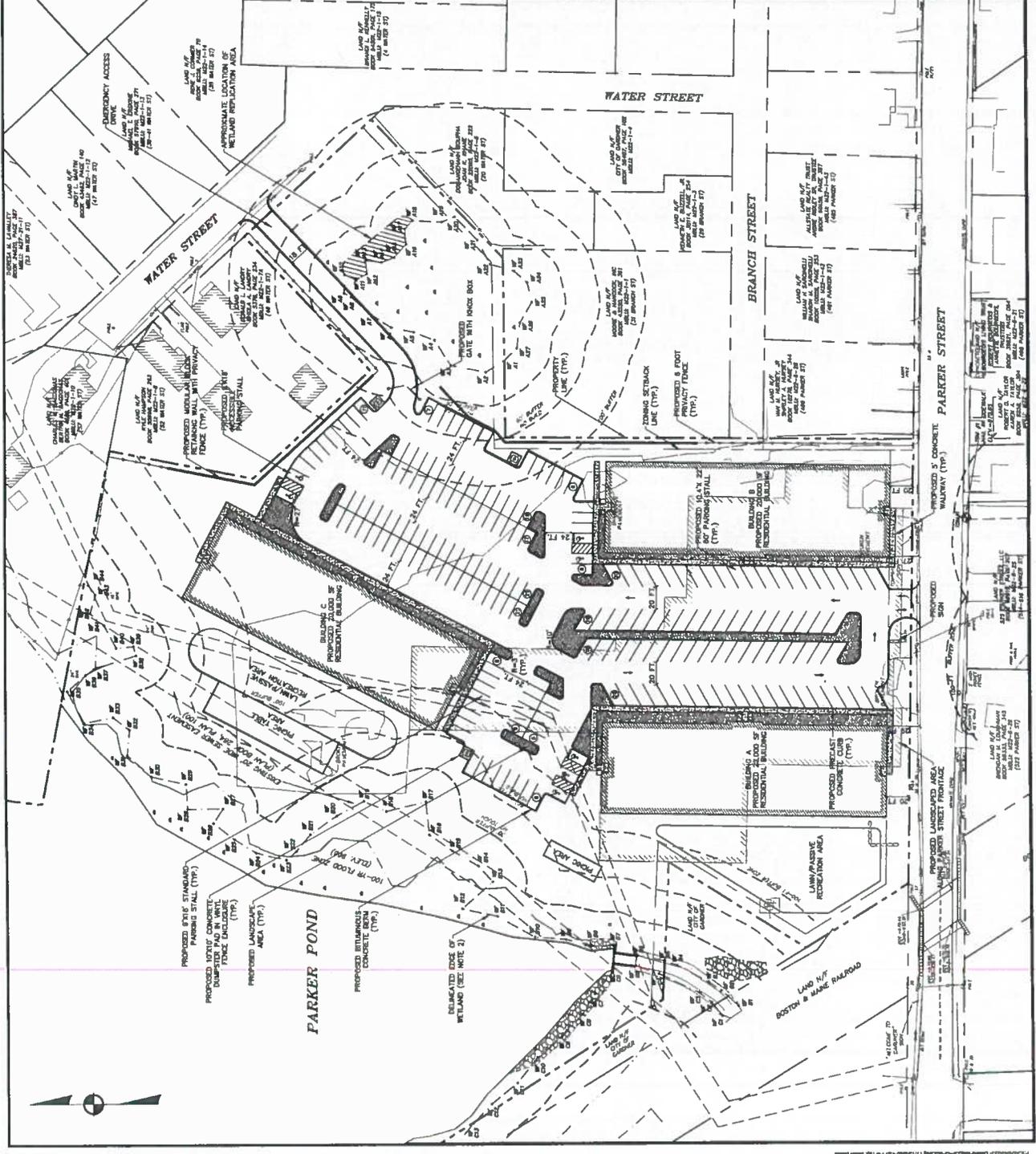
**ZONING OVERLAP/SETBACK TABLE**

REQUIREMENTS	REQUIREMENTS	COMPARISONS
MIN. LOT COVERAGE: 35%	MIN. LOT COVERAGE: 35%	Y
MIN. SIDE YARD: 10 FT.	MIN. SIDE YARD: 10 FT.	Y
MIN. REAR YARD: 20 FT.	MIN. REAR YARD: 20 FT.	Y
MIN. FRONT YARD: 50 FT.	MIN. FRONT YARD: 50 FT.	Y
MIN. HEIGHT: 35 FT.	MIN. HEIGHT: 35 FT.	Y
OPEN SPACE: 15%	OPEN SPACE: 15%	Y

**WIND SECTION CHECK OF THE ZONING BYLAW THE PROJECT WILL REQUIRE A SPECIAL PERMIT BY THE CITY OF GARDNER PLANNING BOARD.**  
 -MAX LOT COVERAGE WITHIN THE USABLE AREA IS 31%.  
 -MIN. FRONT YARD SETBACK IS 50 FT. SURFACE AREA OF PARKER POND IS NOT INCLUDED IN THIS CALCULATION.

**CARDING SUMMARY:**  
 REQUIREMENTS: RESIDENTIAL: 2 SPACES/UNIT  
 RESIDENTIAL: 1 BEDROOM: 1 SPACES/UNIT  
 PROPOSED: RESIDENTIAL: 40 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  
 PARKING PROVIDED: 213 SPACES

TOTAL ACCESSIBLE REQUIRED: 7 SPACES  
 ACCESSIBLE PARKING PROVIDED: 7 SPACES



# CITY OF GARDNER

## DEPARTMENT OF COMMUNITY DEVELOPMENT AND PLANNING

Manca Annex, 115 Pleasant Street, Room 201 Gardner, Massachusetts 01440

Phone: (978) 630-4014 ◊ Fax: (978) 632-1905 ◊ CDBG (978) 632-3800



August 24, 2020

President Elizabeth J. Kazinskas  
C/o Alan Agnelli, City Clerk  
City Hall  
95 Pleasant Street  
Gardner, MA 01440

RECEIVED  
2020 AUG 25 AM 11:08  
CITY CLERK'S OFFICE  
GARDNER, MA

Subject: Amendment to Development Overlay District 1 ~ 525 Parker Street

Dear President Kazinskas:

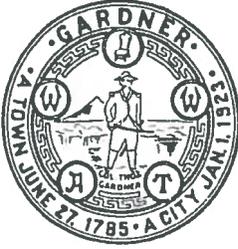
At the Planning Board meeting held on Monday, August 17, 2020, the Planning Board voted 4-1 to recommend approval of the amendment to Development Overlay District 1 referenced above. The parcel is zoned industrial, has long been vacant, and is surrounded by residential uses, therefore, the amendment will prove beneficial for future development of area by encouraging the change in use.

The Planning Board looks forward to joining the City Council at a joint public hearing scheduled at its earliest convenience. Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

Trevor M. Beauregard  
Director, Community Development and Planning

10305



**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

August 10, 2020

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

Re: Renewed 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 renewed 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  
City Clerk

Enclosures (2)