City of Gardner, Massachusetts
Office of the City Council

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CALENDAR FOR THE MEETING
of
MONDAY, FEBRUARY 3, 2020
COUNCIL CHAMBER
7:30 P.M.

ORDER OF BUSINESS

I. CALL TO ORDER

II. CALL OF THE ROLL OF COUNCILLORS

III. OPENING PRAYER

IV. PLEDGE OF ALLEGIANCE

V. ANNOUNCEMENT OF OPEN MEETING RECORDINGS

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

VI. READING OF MINUTES OF PRIOR MEETING(S)

Reading and Approval of the Minutes of the January 21, 2020 Special Meeting, Public Hearing, and the Regular Meeting.

VII. PUBLIC HEARINGS

VIII. COMMUNICATIONS FROM THE MAYOR

APPOINTMENT

10244 – A Measure Confirming the Mayor's Appointment of Eric Knudsen to the position of Member, Disability Commission, for term expiring 1/15/2023 *(Finance Committee).*

IX. PETITIONS, APPLICATIONS, COMMUNICATIONS, ETC.

10245 – Election of the City Auditor *(Finance Committee).*

10246 – A Measure Relative to a Financial Interest under G.L. Chapter 268A, § 20(b) in the Matter of Bradley J. Fucile, Data Collector, for a Contract for Parking Meter Clerk Services *(Finance Committee).*

10247 – Scheduling a Joint Convention with the Gardner School Committee to Appoint a Gardner Representative/Member to the Montachusett Regional Vocational Technical School District Committee.

10248 – A Notice from the Gardner Contributory Retirement Board relative to a meeting to grant a cost-of-living adjustment to retirees and survivors.
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X. REPORTS OF STANDING COMMITTEES

PUBLIC SAFETY COMMITTEE

10216 – An Ordinance to Amend the Code of the City of Gardner, Chapter 560 Thereof, Entitled "Solid Waste," to Change Solid Waste Program Fees *(In City Council and Referred to Public Safety, 12/2/2019).*

X. REPORTS OF STANDING COMMITTEES

PUBLIC WELFARE COMMITTEE

10207 – An Ordinance to Amend the Code of the City of Gardner, Chapter 675 Thereof, Entitled "Zoning," to Amend Section 675-610, General Requirements, Sec. F and Section 675-1050, Fences and Hedgerows *(In City Council and Referred to Public Welfare, 11/18/2019).*

FINANCE COMMITTEE

10237 – An Ordinance Amending the Code of the City of Gardner, Chapter 171 Thereof, Entitled "Personnel" to Change Article IX. Vacations for City Officers and Employees, Section 171-36, Other full-time officers and employees; and, by adding new Section 171-37 (a) Conservation/Planning Agent, providing for additional vacation leave *(In City Council and Referred to Finance, 1/21/2020).*

10238 – An Ordinance Amending the Code of the City of Gardner, Chapter 171 Thereof, Entitled "Personnel" to change Article XIII. Department Head Benefit Time and Longevity Pay, Section 171-53, Vacation, providing for additional vacation leave *(In City Council and Referred to Finance, 1/21/2020).*

COUNCIL AS COMMITTEE OF THE WHOLE

10240 – A Measure Authorizing the FY2020 Community Development Block Grant Mini-Entitlement Plan *(In City Council and Referred to the Council as Committee of the Whole, 1/21/2020).*

XI. UNFINISHED BUSINESS AND MATTERS FOR RECONSIDERATION

10207 – An Ordinance to Amend the Code of the City of Gardner, Chapter 675 Thereof, Entitled "Zoning," to Amend Section 675-610, General Requirements, Sec. F and Section 675-1050, Fences and Hedgerows *(In City Council; Referred to the Planning Board for Report; and, Ordered to Joint Hearing, 11/18/2019; Hearing, 1/21/2020; Planning Board Final Report pending).*

XII. NEW BUSINESS

XIII. CLOSING PRAYER

XIV. ADJOURNMENT

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

CITY OF GARDNER IN CITY COUNCIL

SPECIAL MEETING OF JANUARY 21, 2020

Special Meeting of the City Council was held in the City Council Chamber, Room 219, City Hall, on Tuesday evening, January 21, 2020.

CALL TO ORDER

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

CALL OF THE ROLL

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

Also present was Attorney John Flick, City Solicitor.

OPEN MEETING RECORDING & PUBLIC RECORDS ANNOUNCEMENT

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

SPECIAL MEETING NOTICE

Council President James Walsh read aloud the Special Meeting Notice, as follows:

> "Pursuant to Rule 1 of the Rules of the City Council, a Special Meeting will be held upon the request of Councillors Scott Joseph Graves, Esq. and Karen G. Hardern for the purpose of deliberating on the powers of an Acting Mayor under City Charter Section 32 and the issue of a vacancy in that office under Charter Sections 23 and 32."

Commenting on the meeting's proceedings, President Walsh stated that, customarily, a special meeting is for the purpose of voting on a particular item appearing on the Agenda and the discussion and debate associated with it, and then to act on the particular item. The subject matter in the call of this special meeting, he said, is for a discussion on the topics raised in the meeting request. Customarily, he said, a discussion about a certain topic is the subject of an Informal meeting of the Council, after the measure has been referred to the Council as a Committee of the Whole. "So, this is somewhat unusual in that respect," he stated.

Continuing, President Walsh said that given the circumstances in which the Council finds itself, the resignation of the Mayor and the circumstances of an Acting Mayor, that he would "exercise his discretion to permit discussion on the topic even though it is not really a topic for a vote on tonight's Agenda." There were no objections, so Councillor Graves started the discussion.

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Councillor Graves moved to commit the discussion item in the Call of the Meeting to the Council as a Committee of the Whole for the purpose of discussing the issue.

Councillor James Boone seconded the motion.

On the motion to commit the matter to the Council as a Committee of the Whole, Councillor Graves stated that he and Councillor Hardern thought that the Council "should get its arms around the thing in advance," and added, "The Mayor resigned today, so that issue is off the table, which is [now] moot."

On the motion, Councillor Graves said, "As far as the powers of an Acting Mayor, it comes down to the phrase 'matter not admitting of delay.' A lot of issues will come back to the City Council from the Acting Mayor and the Council has to make sure that the Council is making the right decision. That whatever we're working on, it has the have authority before it comes to us." He remarked that [discussions] in the Committee of the Whole is more informal and that Councillors get to speak more than twice.

President Walsh stated that at the end of the meeting, a motion to adjourn will be required to close the Special meeting.

On the motion, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to commit the item to the Council as a Committee of the Whole for the purpose of discussing the issue.

Councillor Graves opened discussion by asking, "When can an acting mayor exercise mayoral powers under our Charter? Our Charter mimics two sections of State Law, which uses the phrase 'not admitting of delay'." In a meeting with the City Solicitor, Assistant City Solicitor, the Mayor, and City Clerk, Councillor Graves said that the City Solicitor used the term "emergencies" when describing "matters not admitting of delay," and his [Atty. Flick] Memo of November 18, 2019 also referred to 'emergencies'. Councillor Graves said that he did not agree with Atty. Flick's Opinion, so he [Graves] sent a new response letter to the City Solicitor in December with 35 questions which, he added, are included in his letter that he distributed to the Councillors before the meeting.

Continuing, Councillor Graves stated, "After the election for Council President, the City Solicitor's opinion changed from 'emergencies' to 'a bunch of things', but let's just call it 'a sense of a necessity'." "I think," He said, "that we [Graves and the City Solicitor] agree that the case we use is Dimick v. Barry, which is 'the seminal case'." "The statutes don't define the meaning of 'matters not admitting of delay,' but that it just uses the phrase. The Dimick case if the only thing that we have to go by," he added.

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Continuing, Councillor Graves said, as he "pointed out in his letter," "It doesn't mean what the City Solicitor says it means. The City Solicitor says it means a 'sense of necessity'. First of all, a sense of a necessity is less than a necessity. A necessity in city government is just about everything." "So,", he said, "if you want to call 'a sense of a necessity' the same as 'a matter not admitting of delay', then the Acting Mayor will be able to essentially make any decision that he wants, which may be you guys want that. Maybe the City wants that, I don't know. Should we go to that lax of a definition of matters not admitting of delay?"

"Now," Councillor Graves stated, "Dimick says that not only do you need more than a 'sense of a necessity' – I have no idea what that means. But, it's like having a sense of a wind. If you're in the middle of Lake Champlain in a sailboat, wind will get you to the other side of the lake. A 'sense of wind' will help you write poetry in the boat overnight while you're stranded."

Continuing, Councillor Graves stated, "Dimick says you need more than a necessity – you need an urgency. But, you need more than an urgency, you need 'a pressing and irresistible public urgency of an unusual kind'." "So," he said, "I think it is important that we have the definition of 'matters not admitting of delay' and I think the Acting President needs to know the definition, because you're not going to know when you can act and when you can't act." "So," he said, "I think that if we agree that the definition – Dimick says it is "a pressing and irresistible public urgency of an unusual kind."

Continuing, Councillor Graves stated, "Now, here's the other point. The discretion is all with the Acting Mayor. I don't think that there's anything that the City Council can do about it. I just think that it's good to talk about what that definition might be in open public, in a transparent situation where the public can see what we are talking about and can see what…the City Council thinks the definition is."

Continuing, Councillor Graves said, "The other part of Dimick that I have a question about, and I read it several times, it almost sounds like Dimick is saying every time the issue comes up as to whether or not we need a determination about what is a matter 'not admitting of delay', it looks like they want us to go to Court for a judicial determination. It could be read that way." "I don't think it's saying that," he continued, "I'm using common sense. I think it is saying that you can make that decision at your own risk, but that it could be challenged – but ultimately it could always go to court to be challenged." "It can't mean that," he continued," because everything is challengeable in Court. Anyways, that is a question for the City Solicitor, but at the very least, we have to have that definition pinned down." "A sense of a necessity is basically anything," he added.

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Continuing, Councillor Graves stated, "There is no way the City Council is going to know - we don't have the executive that the people voted in – he's gone, he resigned" "So," he said, "we would like, if possible, [that] the City Council knows about the decisions that the Acting Mayor is making." "But," he said, "We're not going to know what the Acting Mayor is doing unless the Acting Mayor tells us. I would hope that we are informed as to what the Acting Mayor is doing, but it's his discretion and he doesn't have to tell us anything."

Continuing, Councillor Graves stated, "Some people say that the Charter needs to be revised or the Charter is lacking – it's a nightmare – I'm just saying maybe you agree with me. There's only so far the human language can go with these things."

Citing the City of Fall River case, Councillor Graves stated, "They tried to come up with an Ordinance as to when a City Council can declare a vacancy. The Court said, 'You can't do that'. There's only so much that a City Council can do – only so much a Charter can do." "You hope," he said, "that the people you elect – you hope that the City officials use common sense and reason when they make decisions and sometimes that doesn't happen and so you have to revert to the Charter which really isn't there to cover every consequence and every circumstance and every potentiality that might happen." "So," he said, "I don't think there's anything wrong with the Charter…I think at this point the City Council should, if at all possible, be kept in the loop as to what the Acting Mayor is doing."

Council President Walsh recognized Councillor Karen Hardern, the second petitioner for the Special meeting.

Councillor Karen Hardern said, "My concern is that we need some kind of clarity like Councillor Graves has been speaking about – 'Emergency' or 'matters of admitting to a delay." "I've had a few department heads give me a call," she said, "as they have their own concerns about what if something should happen in their department. Can they take of that or will they have to wait many months before a new Mayor comes in?" "I've heard from quite a few people from the City who don't understand this and I thought this meeting would be a great thing for the people and the Councillors to get together and speak about this," she said, adding "I don't think this situations ever happened quite like this."

Council President James Walsh introduced City Solicitor John Flick.

The City Solicitor, Attorney John Flick, announced to the Council that he prepared a Power Point Presentation to summarize the standing laws currently relating to the Dimick Case and other matters, as well as the Law Department's opinion regarding "matters not admitting of delay".

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Attorney Flick cited the following:

From Section 32 of the City Charter:

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

Matters Not Admitting of Delay

> The phrase "matters not admitting of delay" comes from M.G.L. c. 39, § 5 Except as otherwise provided by city charters, upon the death, resignation or absence of the mayor, or his inability to perform the duties of his office, the president of the board of aldermen shall perform them; and if there is no such officer, or if he also is absent or unable from any cause to perform them, they shall be performed by the president of the common council, or, if there is no such officer, or if he is absent or unable to perform such duties, by such alderman as the board of aldermen may from time to time elect, until the mayor or the president of the board of aldermen is able to attend to said duties or until the vacancy is filled. **The person upon whom such duties devolve shall be called "acting mayor" and shall possess the powers of mayor only in matters not admitting of delay, and shall not make permanent appointments.**

Meaning of "matters not admitting of delay"

- There are two court cases which address the meaning of the clause "matters not admitting of delay."

  Ryan v. City of Boston, 204 Mass. 456 (1910)
  Dimick v. Barry, 211 Mass. 165 (1912)

- Despite the age of these cases, they present the controlling law on the meaning of the clause "matters not admitting of delay."

Ryan v. City of Boston

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

The Court posed the question:

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

The Ryan Court ultimately upheld the contract concluding that Whelton, as acting mayor was authorized to perform all the duties of the office of mayor as required by the "general and special laws applicable to the administration of the municipal affairs of the city."

- In holding thusly, the Court acknowledges that there is a need of an acting mayor to maintain the administration of the municipal affairs of the City.

Atty. Flick added that he believes that the Ryan case is applicable in this instance, even though it was not referenced in the Dimick case, as "the Court acknowledges that there is a need of an acting mayor to maintain the administration of the municipal affairs of the City, which is very important as the City considers the question."

Dimick v. Barry

Atty. Flick noted that the Dimick case was different, as it dealt with the absence of a Mayor.

- *Dimick* considered the application of M.G.L. c. 39, § 5 to the execution of a contract by an acting mayor occasioned by the absence of a mayor due to illness.
- In *Dimick* the Court considered the laying out of a public way.
- The Mayor's absence lasted over four weeks and returned to the full performance of his duties.
- The *Dimick* decision provides a robust analysis of the meaning of the clause "matters not admitting of delay." In presenting its initial analysis the *Dimick* Court states:

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

- The Dimick Court provides concrete examples to illustrate the meaning of "matters not admitting of delay."
- "Cases might arise where it would be apparent as matter of law upon the face of the papers that the approval of the order was 'a matter not admitting of delay.' Such an inference might be drawn respecting a warrant for an election or an appropriation of

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money to be used for a Fourth of July celebration or a corporate anniversary, or like orders where time appears to be of the essence of the subject."

- "Appropriations necessary for immediate payment of fixed charges of various municipal departments would come within this rule."
- The Court concluded: "The mayor is the one designated by law to be the executive of the city. It is not a mere passing incident which enables another to supplant him, but a *pressing urgency of an unusual kind*." [Emphasis added.]
- Continuation of illustration of "matters not admitting of delay."
- An emergency measure requiring instant attention. Impending disaster, threatened disorder, public pestilence, devastation by flood or fire illustrate the range of subjects of this character.

In Summary

When considering if a matter is not admitting of delay, the acting mayor should consider the following:

- Is the matter immediately necessary to maintain the administration of the municipal affairs of the City?
- Does the matter present an issue of urgent public necessity?
- Is time of the essence?
- Would a failure to act result in potential "immediate" liability to the City?
- This is a case by case analysis.
- The acting mayor must operate within the appropriations already made by the Council. If supplemental appropriations are needed, additional Council action will be required.

Attorney Flick suggested that the signing of contracts for road paving for [seasonal] work when funds have been appropriated, for example, is a determination to be made by the acting mayor as to whether it is a matter "not admitting of delay." "What the Law Department has proposed," he said, "is that department heads provide a statement that would list reasons why they believe a matter needs to be addressed immediately. The acting mayor could then review the request and in the acting mayor's opinion that it is a 'matter not admitting of delay' and no further appropriation is necessary; the acting mayor could sign the measure, as the document is included within the contract packet, thus, the acting mayor had the authority to sign that contract."

Continuing, Attorney Flick said that the same process could possibly be adapted to other scenarios. For example, he said, that "if there were a desire to pass Ordinances, such as creating

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a new public park. Would that be "admitting of delay? No, probably not." "It would have to be considered on a case-by-case analysis," he added.

In Conclusion

"There is force in the argument that the question whether a matter admits of delay or not is an administrative one and must in the nature of things *be decided by the officer called upon to act*; that it relates to public affairs of importance which ought not to be held in doubt as to their validity until there can be a determination by the courts; that public officers are assumed to act in good faith and that all reasonable presumptions should be drawn in favor of the existence of facts necessary to constitute a legal performance of duty." Dimick, at 167-68

- In other words, the existence of an urgent matter requiring action by the acting mayor, must be left to his or her final determination.

Attorney Flick stated, "We trust in the good faith of the Acting Mayor in these decisions on a day-to-day basis when there is a call for these decisions to be made." "Over the next five months," he said, "we'll see this issue primarily on the issue of contracts where the City Council has voted appropriations for those contracts."

Concluding, Attorney Flick said, "We are ready to place a process in effect to deal that will provide sound defense for the City should somebody challenge the validity of a contract, but also give the acting mayor guidance to get through the next few months in an orderly way to maintain sound administration of the City's government."

Councillor James Boone stated that the public is still confused, but that through the [special] meeting, he would like to address a couple of issues. "One," he said, "is that if the Mayor had not resigned today, what action could the City Council have taken?" "And," he said, "number two, is there anything that could have been put into the Charter to prevent the situation that we are in?"

In response, Council President Walsh said that the question "is probably outside the scope of the matter that is subject of the Special Meeting. However, if the City Solicitor is in a position to respond, then he may have that opportunity."

Attorney Flick remarked that Councillor Boone's questions "are very large." "The question 'could this have been prevented'?" "The problem," he said, "is that the Office of Mayor is elected by the people and has very specific and strict constitutional protections. The Council lacks the legal authority to declare a vacancy, absent very specific guidelines."
"And," he said, "in the case of the City Charter, only by death, resignation, or absence, as noted in Chapter 39, section 5."

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Continuing, Attorney Flick stated, "In the Fall River case, the definition of 'vacancy' in that case is not defined. The Council, in that case, tried to force the question – the Mayor was indicted for criminal activity – so they [Council] said it constitutes a vacancy in the office. The Court said, 'No, it does not.' If he was convicted, then that would be a different story. But, the term vacancy wasn't properly defined in the [Fall River] Charter."

Councillor Boone asked, "What recourse does the City have if he [Hawke] stayed on and did not resign?"

Attorney Flick responded, saying that the City could certainly attempt to take action through the Law Department, whether through an injunctive action or a declaratory judgment action against the sitting Mayor or the Mayor-elect to force the Mayor-elect to take the oath of office. "The problem," he said, "is that Section 23 of the City Charter says that 'the Mayor-elect, should he or she be absent from the first meeting of the Council of the year following the election, or cannot attend that meeting, he or she can take the oath of office at any meeting of the Council thereafter'." "So," he said, "just on the face of the Charter, that matter, I believe, would get thrown out of Court because the Charter allows that person…months to take the oath of office."

Councillor Boone remarked that it appears to him that the Charter does not have clear definitions and that it sounds like it [Charter] may need change.

Attorney Flick said that considering what the City is currently facing, there may be some room for clarification and refinement to the Charter.

Councillor Judy Mack stated that about thirty years ago, Council President Walsh served as Acting Mayor and then questioned the powers that he [Walsh] had at that time and whether there was any precedent then.

President Walsh stated that the City had been in this situation twice before. First, in June, 1933, the elected Mayor, George Sweeney, was appointed Assistant United States Attorney General and as a result, he resigned via telegram. As a result of Mayor Sweeney's resignation, Council President Stanford Hartshorn became Acting Mayor.

Continuing, President Walsh informed the Council that he reviewed the minutes of Council meetings following Mayor Sweeney's resignation and found that matters were addressed, that elections were ordered and held, and that James Timpany was elected Mayor at the Special Election to serve the unexpired term.

Continuing, President Walsh said that thirty years ago, there was no Mayoral vacancy, but that the Mayor was unavailable, which is mentioned in the City Charter and a situation in

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which an Acting Mayor becomes involved. As a result, as Council President, he became Acting Mayor, serving from November, 1989 until January, 1990, when the duly elected Mayor, Charles Manca, elected at the scheduled election in November, was sworn into office.

Continuing, President Walsh said that following the Mayor's unavailability, meetings of the City Council were conducted without difficulty and that he was aware of the limitations as Acting Mayor, including permanent appointments. He said that when he became Acting Mayor, the City did not have a Law Department since there was no City Solicitor or Assistant City Solicitor. Therefore, he appointed C. Deborah Phillips to the position of City Solicitor and Timothy Hillman, now a Federal District Court Judge, to the Assistant City Solicitor's position. Both were appointed for terms not more than 60 days. He added that he consulted with Mayor-Elect Charles Manca about the temporary appointments, both of whom were appointed by Mayor Manca to permanent appointments.

Concluding, President Walsh said that Council meetings and government operations functioned in an orderly fashion, adding, "I can tell you that I understand the limitations of the office and the guidance that the Dimick case provides and will conduct myself accordingly."

Councillor Nathan Boudreau complimented Attorney Flick for his eloquent presentation and noted solace in knowing the Attorney Flick will be available to guide the Acting Mayor.

Councillor George Tyros informed the Council that in his line of work, they operate using an "80-20" rule. He said that when a situation arises, outcomes cannot always be predicted, so solutions are designed to provide for 80% of anticipated situations and then deal with the 20% of unanticipated situations as they arise. He said that it is his understanding that the situation that the City now faces, the Acting Mayor's powers are limited to maintaining the administration, covering about 80% of situations that may arise. The other 20% of the situations may be beyond the authority of the Acting Mayor, so then the Acting Mayor would alert the Council.

In response, President Walsh said, "A more cogent analysis is that if it is a matter that isn't needed to be done right now and that it can be deferred or delayed until the elected Mayor can address it, then it should be delayed." "But," he added, "in the orderly administration of government, on a day-to-day basis – contracts, bills – those are matters that really cannot be delayed."

Attorney Flick commented that the 80% would be for items already appropriated, but the need to address a falling building, for example, would fall within the 20%, on a case by case basis.

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Councillor Ronald Cormier stated that his concern focused on matters where funds have been appropriated and contracts are of a time-sensitive nature, such as a school bus contract, where bidding has occurred and the contract would coincide with the school year.

Councillor Graves said that Dimick is an old case. "I don't think it says exactly what the City Solicitor is saying it says, but the point that Dimick does make is, that four times it bends over backwards to say that the Acting Mayor's power is severely limited," he said. "Dimick," he continued, "says it is an extremely limited power of the Acting Mayor. They [Court] say, 'When a public officer undertakes to perform by way of substitution duties so definitely circumscribed it must appear they are warranted and no strong presumption exists in favor of the Acting Mayor's decision'."

Continuing, Councillor Graves said, "So, the point is you can have the best plan that you can come up with - by the way [it] doesn't include the City Council unless you need money - but the contract's not going to be valid unless a court says it is." "What this is going to do," he said, "unfortunately, nine times out of ten, you're going to know what to do – it's definitely a 'matter not admitting of delay.' But, in those gray areas, if we don't get court approval, it's just going to give somebody down the road fodder to say, 'Well, this is an illegal contract because that wasn't a matter 'not admitting of delay'." Continuing, "This is why I think what Dimick is saying – the court is what makes the judicial determination, on a case by case basis, as to whether something is not a matter admitting of delay. So, I'm thinking that nine times out of ten you're going to be okay, then that one time, I hope that – nobody – the City Council – cannot approve that the make it valid, unless it's a court."

Commenting on Councillor Graves' remarks, President Walsh said, "The factual basis upon which the decision to act is based on that establishes it as an urgent matter that can't be delayed would form the foundation for any defense of an action challenging it. And I believe that the Dimick case addresses that in a meaningful way."

Seeking clarification, Councillor James Boone questioned whether Council President Walsh would continue to serve as Council President while also serving as Acting Mayor.

Council President Walsh nodded in the affirmative.

Councillor James Boone questioned whether Council President Walsh could vote on an appropriation if he filed it in his role as Acting Mayor.

President Walsh responded, saying that as the Acting Mayor, he is able to vote, unless excluded by interest.

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ADJOURNMENT

On a motion by Councillor Ronald Cormier and seconded by Councillor Nathan Boudreau, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to adjourn at 6:44 p.m.

Accepted by the City Council:

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Scott j. Graves
City Councillor AT LARGE
sgraveslawoffice@verizon.net

["Sandwiches sure taste better with milk." Opie Taylor]

MEMORANDUM

To: Attorney John Flick, Esq., City Solicitor
From: Scott j. Graves, Councillor AT LARGE
Date: Jan. 21, 2020
Re: Your Nov. 18, 2019 Memorandum and Three Emails of Jan. 8, 2020

BACKGROUND.

On Nov. 14th you and Mayor Hawke met with me (the Asst. City Solicitor was there, as was the City Clerk). You said that the Acting Mayor (to be me, at that time – as we discussed during that meeting) would not have any powers of the Mayor unless in connection with an "emergency." Your word.

Four days later, you issued your "Memorandum" in which you confirmed that aforementioned legal opinion that the Acting Mayor (still, to be me at that time) "does not assume the office of the mayor" and cannot take any action unless in response to "emergencies."

In December 2019, I provided you a letter in response to your said 11/18/19 opinion in which I formally asked you many (35) questions raised by your said 11/18 Memorandum. I stated that there were certain aspects about your "Memorandum" and its opinions that caused me concern, and requested clarification. That was in December. You have never responded to my December communication.

In December, you sent emails to Councillor James Johnson (but never responded to my December questions) which included, among other sentiments, your opinion that, even given our established facts, the Mayor could keep the Mayor's office empty (no Mayor, no Acting Mayor) for two years - and there would be nothing the City could successfully do about it.[1] Now that the Mayor has resigned, I do not need to provide my response to that opinion of yours – but I will say that I see it as patently astounding.

On Jan. 8th – you informed me that you were working on a plan to "protect the actions of Acting Mayor," and that that plan involved the legal determinations of an unelected Department Head, the unelected City Solicitor, and the Acting Mayor – but not the City Council. This caused much confusion and potential chaos in city government. No City Councillor knew about this plan of yours.

YOUR CHANGING OPINION.

On Jan. 6th, I was removed as Council President. After I was removed, you sent me an email in which you provided a drastic change in your opinion that the Acting Mayor could only act in the face of "emergencies." Again, you never responded to my aforementioned December letter.

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[1] So, according to you, if the People kept electing him, and if he kept refusing to take the oath, the City of Gardner would never again have a Mayor or an Acting Mayor – with nothing the City could do about it.

Your new opinion, post-Jan. 6th, is that you didn't actually mean "emergencies" when you wrote "emergencies" in your 11/18/19 Memorandum. You say, post-Jan. 6th, that when you wrote "emergencies" you really meant a "*sense* of something where time appears to be of the essence," or a "*sense* of a necessity."

So, you now believe that a "sense of a necessity" triggers the Acting Mayor's powers as a "matter not admitting of delay." That is not correct, obviously, as set forth below.

I have no idea where this "sense" comes from, and you don't say where it comes from.

You write that the Dimick Court made "necessities" the same thing as "emergencies." This obviously is not correct, far from it - as I point out below.

I hope we will all be able to eventually agree that a "matter not admitting of delay" is much more than a "sense of a necessity." Otherwise, the Acting Mayor will literally have unbounded and unchecked Mayoral power – because a "sense of a necessity" is just about anything you want it to be.

I do not know where you originally came up with "emergency" in November (pre-Jan. 6th) to define a "matter not admitting of delay." We can agree that Dimick does not hold that "matters not admitting of delay" are *only* emergencies. Though emergencies do suffice to trigger the Acting Mayor's powers (obviously), what else can trigger them? In November (pre-Jan. 6th), according to you, nothing else.

So, I agree: the case law does not require an all or nothing "emergency" in order for it to be "a matter not admitting of delay." The City Charter, likewise, also does not require an emergency in this regard.[2]

But, something far greater than what you say is merely a "sense of a necessity" is required to amount to a "matter not admitting of delay."

So, post-Jan. 6th, you say that the triggering of the Acting Mayor's powers does not have to be an "emergency," and, in fact, we do not even need an *actual* "necessity" itself. All it takes, according to you (post-Jan. 6th), is a lyrical "*sense*" of a necessity. Obviously, that is a definition so devoid of a skeleton that it would be whatever the Acting Mayor wants it to be.

No court has used the phrase "sense of necessity," or a "sense" of anything. So not only can no one know what it means, legally it means nothing. It's like being on the middle of a Lake Champlain in a sailboat. The wind gets the boat to the shore. A "sense" of the wind helps you compose poetry while stranded in the middle of the Lake all night.

DOES *DIMICK* REQUIRE A JUDICIAL DETERMINATION THAT SOMETHING IS A "MATTER NOT ADMITTING OF DELAY"?

Dimick v. Barry is the seminal case law that defines "matters not admitting of delay." I think we agree on that. The Dimick Court states this: "[t]he statute makes no provision for the ascertainment of 'matters not admitting of delay.' Therefore, it must be determined according to the usual course of judicial procedure as each case arises." So, it looks like the SJC kept *for the courts* the ultimate role of determining what it

[2] The City Charter shows this by its use of "emergencies" (and a 2/3 CC vote) in other Sections of the Charter. Obviously, the Founders chose not to use "emergencies" in Section 32. Logic demands, therefore, that the Founders' employment of the phrase "matters not admitting of delays" means they did not require "emergencies."

means, on a case by case basis.[3] So, the Court is pointing out that the Acting Mayor makes a mayoral decision without *prior* judicial approval at the City's own risk and peril.

The Dimick Court considered the argument that such municipal decisions as those of the Acting Mayor "ought not to be held in doubt as to their validity until there can be a determination by the courts." But, Dimick is not persuaded that that concern overrides the Public's interest that the decisions of the Mayor should be made by the human they elected as Mayor, and not some "substitute."

The Court goes on to say that, "[t]he extremely limited power conferred by the statute does not seem to us to indicate a legislative intent to leave a question deemed so important to the conscience of persons clothed temporarily with a power, for the exercise of which they were not primarily selected." In other words, the Acting Mayor should not be the one to decide when a "matter not admitting of delay" exists.

So, do we have to go to Court each time the question comes up as to whether a situation triggers the Acting Mayor's exercise of mayoral powers? Should we?

THE LAW REGARDING THE DEFINITION OF "MATTERS NOT ADMITTING OF DELAY."

No statute defines a "matter not admitting of delay." So, we rely on Dimick – which *is* the law on this. Dimick does not state that the Acting Mayor's powers are triggered by something as vague and amorphous as a "*sense* of a necessity," as you say is the case. In fact, Dimick does not use the word "sense" at all.[4] It requires much more than that.

Furthermore, apart from the fact that your mystical illusion of a "*sense* of a necessity" is nowhere to be found in Dimick, the Court does state that an *actual* "necessity" is not even enough to amount to a "matter not admitting of delay." Dimick says you need *more than* even an actual "necessity." Dimick provides that you need a necessity that rises to a level that is so compelling ("importunate") that it cannot be "resisted with reason." But, the Dimick reasoning goes even *further* than that – it states that you need *more than* an actual necessity – you need an actual "urgency" (not a "sense" of an urgency). But, believe it or not, Dimick goes even *further* than that – you need not just an actual urgency, but an actual urgency that rises to the level of a "*pressing* urgency of an *unusual* kind," an "*irresistible* public urgency."

So, Dimick's holding is that the definition of a "matter not admitting of delay" is:

"A pressing and irresistible public urgency of an unusual kind."

So, no. You are not correct when you state that Dimick states that "emergency" and a basic "necessity" are the same thing. That only muddies the unfortunate dilemma facing the City, and expands the Acting Mayor's powers when Dimick is bending over backwards to limit them.

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[3] It can be argued that every decision the Acting Mayor makes requires *prior* judicial approval to have validity.

[4] You cite the Ryan v. Boston case. But, Ryan contains only dicta – and contains no reasoning or analysis whatsoever as to what constitutes a "matter not admitting of delay." The Ryan Court talks about what *reaction* is required in consequence of the existence of an "urgent public necessity" – such *reaction* being "immediate action." If anything can be taken away from Ryan (and Dimick is two years newer that Ryan, and did not even give it a passing reference) is that the Court required, at the least, an "urgent public necessity" – not just a "sense" of a necessity or even a basic "necessity" or even a basic "urgency." In other words, it takes a lot to amount to a "matter not admitting of delay." Anyway, Ryan is only dicta.

So, the Acting Mayor's powers are triggered by 1) an actual "public urgency," which is 2) pressing, and 3) irresistible, and 4) unusual. All of those elements are required. A nebulous "sense" of a basic "necessity" is nowhere near enough.

DIMICK PROVIDES THAT THE INTEREST AT STAKE IS THAT OF THE CITIZENS IN HAVING THEIR ELECTED OFFICIALS MAKE THE DECISIONS THEY WERE ELECTED TO MAKE.

In Dimick the SJC points out *four times* in a very short decision, that the primary interest is the public, the citizenry, in making these determinations. Dimick points out that this is an "*extremely limited power of the acting mayor*." Where the SJC in Dimick bent over backwards (see below) to point out that the acting mayor's powers should be as *limited* as possible, your opinion seeks to *expand* those powers.

The Dimick court repeatedly states that the primary interest here is that Mayoral decisions be made "by the person elected by the people, rather than by a substitute (the Acting Mayor)." The Dimick Court repeats this concern for the interests of the Citizenry: "[w]hen a public officer undertakes to perform by way of substitution duties so definitely circumscribed . . . it must appear that they are warranted and no strong presumption exists in (favor of the Acting Mayor's decision)."

The Dimick Court says it yet again in explaining the priority of the Public's interest here: "[t]he Mayor is the one designated by law to be the executive of the city. It is not a mere passing incident which enables (the Acting Mayor) to supplant him."

Obviously, the Courts are firmly *against* the Acting Mayor making Mayoral decisions right from the get-go. There is no presumption in favor of the Acting Mayor, only against him.

The Dimick court goes on to say that in an analysis of whether a decision of the Acting Mayor was made validly as to a "matter not admitting of delay," the Acting Mayor's discretion is not determinative. Instead, the Court held that "[t]he extremely limited power conferred (to the Acting Mayor) does not seem to us to indicate a legislative intent to leave a question deemed so important to the conscience of *persons clothed temporarily with power, for the exercise of which they were not primarily elected* (emphasis added)."

YOUR STATEMENTS AND YOUR NEW PLAN HAVE CAUSED CONFUSION

The point here, though, is that there is much confusion inserted here by your post-Jan. 6th reversals, and by your misstatements as to the Dimick holding.

For you to say a "necessity" (or even less – a "*sense*" of a necessity) is the same thing as an "emergency" is incorrect, and misstates the Dimick holding. We must be careful not to expand the Acting Mayor's powers where the Dimick SJC bent over backwards to limit them.

Prior to Jan. 6th, your opinion was that it took "emergencies" to amount to a "matter not admitting of delay." We all know that you know what the word "emergencies" means.

Your newly-reformed (post-Jan. 6th) legal opinion on this subject means that the Acting Mayor is free to do virtually anything the elected Mayor can do (except for making appointments).[5] This is an astounding

[5] I will not go into a long philosophical diatribe to support the obvious reality that, in government, one is hard-pressed to come up with anything that requires Mayoral imprimatur that does not have a "sense" of necessity. But, if you want me to – I will.

development, post-Jan. 6th, which essentially erases your original, pre-Jan. 6th opinion regarding the powers of the acting mayor.

Now, to make matters worse, on Jan. 8th you revealed to me your private plan to affect and effect (I guess) the Acting Mayor's authority. No City Councillor knew about your plan. I am not sure they all know about it now. Your plan does not include notice to or input from the City Council as to any legal determination triggering the Acting Mayor's authority to act. Instead of involving the City Council in this critical aspect of city government, your plan requires unelected city employees to issue legal conclusions as to when a "matter not admitting of delay" exists as a matter of law. I'm not sure that the Councillors will see that as the best idea – when the CC is here to help.

The Dimick Court suggested that the City Council be the elected body to weigh in on these determinations.[6] Yet, you cut the CC out of it (unless you need taxpayer money).

Can the plan of an unelected city employee in the Executive Department, a plan that seeks to substantively affect/effect Executive authority, be enacted and take effect in the absence of an elected Executive/Mayor? Remember, an Acting Mayor (you have written) does not "assume the office of the Mayor." If your plan goes into effect, I assume it will only be a safeguard or informal process of some kind. I don't know for sure because your reference to it was not specific. But, the question is an interesting one - and the legal issue should be explored. Regardless, why it is that the City Council, the law-making branch, is not a part of it seems to be something that should be addressed.

CONCLUSION.

The *elected* Mayor might be gone, but the *elected* City Council is still here. The City Council is made up of the *only* people at City Hall who were elected by the People. I think the Citizens, whose 2019 vote for Mayor has now been left to the curiosities of posterity, will have confidence at this time of flux if their 11 elected lawmakers are included in any plans moving forward regarding decisions to be made by the Acting Mayor as a substitute for the elected Mayor (Mayor Hawke, of course).

This is especially the case because everything the CC does is in the open, and after due notice to the public.

But, the decision as to whether to include the CC is within the discretion of the Acting Mayor.

I suggest that the full City Council, in order that the City comply with the case law set forth by the SJC in Dimick, adopt the following definition of "matters not admitting of delay":

"A pressing and irresistible public urgency of an unusual kind."

Of course, for each decision of the Acting Mayor that does not require City Council action - the City Council will have no prior knowledge of it (unless the Acting Mayor voluntarily notifies the CC in advance). Likewise, the CC will have no role in the determination of whether a matter is one "not admitting of delay" in those same decisions unless the Acting Mayor voluntarily gives the City Council such role.

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[6] I know Dimick had to do with a CC decision, which is probably why the Court suggested a role for the CC, but later in the case the Court seems to imply a general role for the CC in these determinations.

However, the Acting Mayor's understanding of the definition of "matters not admitting of delay" is critical to the interests of the Citizens of this City. I hope that my reasoning in this letter will be of use in that regard. This is his prerogative, not mine.

I hope that the CC will be informed of each instance where the Acting Mayor is making a decision with mayoral powers. But, at the very least, I hope that the CC is seasonably informed of each decision the Acting Mayor has made with mayoral powers.

I know that we guard the usual separation of powers. But, that might not be an ideal that the City can entirely maintain with a crystal clear delineation right now given the unique and unusual situation at hand.

So, I recognize that I am providing many questions, but not enough solutions.

Scott j. Graves, City Councillor AT LARGE

CITY OF GARDNER
Law Department

Powers of the Acting Mayor

Discussion

January 21, 2020

The City Charter

- From Section 32 of the City Charter:

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

Matters Not Admitting of Delay

- The phrase "matters not admitting of delay" comes from M.G.L. c. 39, § 5

  Except as otherwise provided by city charters, upon the death, resignation or absence of the mayor, or his inability to perform the duties of his office, the president of the board of aldermen shall perform them; and if there is no such officer, or if he also is absent or unable from any cause to perform them, they shall be performed by the president of the common council, or, if there is no such officer, or if he is absent or unable to perform such duties, by such alderman as the board of aldermen may from time to time elect, until the mayor or the president of the board of aldermen is able to attend to said duties or until the vacancy is filled. **The person upon whom such duties devolve shall be called "acting mayor" and shall possess the powers of mayor only in matters not admitting of delay, and shall not make permanent appointments.**

  M.G.L. ch. 39, § 5 (West)

Meaning of “matters not admitting of delay”

- There are two court cases which address the meaning of the clause “matters not admitting of delay.”
  - Ryan v. City of Boston, 204 Mass. 456 (1910)
  - Dimick v. Barry, 211 Mass. 165 (1912)

- Despite the age of these cases, they present the controlling law on the meaning of the clause “matters not admitting of delay.”

Ryan v. City of Boston

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

The Court posed the question:

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

Ryan v. City of Boston

The Ryan Court ultimately upheld the contract concluding that Whelton, as acting mayor was authorized to perform all the duties of the office of mayor as required by the "general and special laws applicable to the administration of the municipal affairs of the city."

- In holding thusly, the Court acknowledges that there is a need of an acting mayor to maintain the administration of the municipal affairs of the City.

Dimick v. Barry

- *Dimick* considered the application of M.G.L. c. 39, § 5 to the execution of a contract by an acting mayor occasioned by the absence of a mayor due to illness.
- In *Dimick* the Court considered the laying out of a public way.
- The Mayor's absence lasted over four weeks and returned to the full performance of his duties.

Dimick v. Barry

- The *Dimick* decision provides a robust analysis of the meaning of the clause "matters not admitting of delay." In presenting its initial analysis the *Dimick* Court states:

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

Dimick v. Barry

- The Dimick Court provides concrete examples to illustrate the meaning of "matters not admitting of delay."
  - "Cases might arise where it would be apparent as matter of law upon the face of the papers that the approval of the order was 'a matter not admitting of delay.' Such an inference might be drawn respecting a warrant for an election or an appropriation of money to be used for a Fourth of July celebration or a corporate anniversary, or like orders where time appears to be of the essence of the subject."
  - "Appropriations necessary for immediate payment of fixed charges of various municipal departments would come within this rule."
- The Court concluded: "The mayor is the one designated by law to be the executive of the city. It is not a mere passing incident which enables another to supplant him, but a *pressing urgency of an unusual kind*." [Emphasis added.]

Dimick v. Barry

- Continuation of illustration of “matters not admitting of delay.”
  - An emergency measure requiring instant attention. Impending disaster, threatened disorder, public pestilence, devastation by flood or fire illustrate the range of subjects of this character.

In summary

- When considering if a matter is not admitting of delay, the acting mayor should consider the following:
  - Is the matter immediately necessary to maintain the administration of the municipal affairs of the City?
  - Does the matter present an issue of urgent public necessity?
  - Is time of the essence?
  - Would a failure to act result in potential “immediate” liability to the City?
- This is a case by case analysis.
- The acting mayor must operate within the appropriations already made by the Council. If supplemental appropriations are needed, additional Council action will be required.

In conclusion

"There is force in the argument that the question whether a matter admits of delay or not is an administrative one and must in the nature of things *be decided by the officer called upon to act*; that it relates to public affairs of importance which ought not to be held in doubt as to their validity until there can be a determination by the courts; <u>that public officers are assumed to act in good faith and that all reasonable presumptions should be drawn in favor of the existence of facts necessary to constitute a legal performance of duty.</u>" <u>Dimick</u>, at 167-68

- In other words, the existence of an urgent matter requiring action by the acting mayor, must be left to or his final determination.

CHARLES W. DIMICK v. J. EDWARD BARRY & others.

211 Mass. 165

November 17, 1911 - February 29, 1912

Middlesex County

Present: RUGG, C. J., HAMMOND, BRALEY, SHELDON, & DECOURCY, JJ.

Municipal Corporations, Approval by mayor, "Acting mayor." Certiorari. Way, Public. Words, "Matters not admitting of delay."

The time given to the executive officer of a city for deliberating whether he shall approve or disapprove an act of a legislative body of the city does not begin to run until the legislative act has come to him in fact, and no constructive or implied action falling short of a physical putting of the act before him suffices.

What is a matter "not admitting of delay" as to which under R. L. c. 26, §§ 29, 30, except as otherwise provided by city charters, the presiding officer of the board of aldermen of a city has power to act, in case of the death, resignation or absence of the mayor or of his inability to perform the duties of his office, must be determined according to the usual course of judicial procedure as each case arises.

On June 7 and 8, 1910, the two branches of the city council of a city passed an order laying out a street. The charter required that such an order should be approved or vetoed by the mayor within ten days after it was presented to him. The mayor by reason of illness was absent from his office when the order was passed and continued so until July 6. Under the provisions of R. L. c. 26, §§ 29, 30, the president of the board of aldermen became "acting mayor" possessed of "the powers of mayor only in matters not admitting of delay." The order was presented to and approved by the "acting mayor" on June 10, and never was presented to or approved by the mayor. The city entered upon the location described in the order for purposes of constructing the street on June 1, 1911. Seven days later an owner of land taken in laying out the street petitioned for a writ of certiorari to quash the proceedings. Held, that the order was not a matter "not admitting of delay" and that the acting mayor had no power to approve it, that the error in accepting his approval and in not procuring that of the mayor was substantial and not technical, that there was no unconscionable delay by the petitioner, and therefore that the writ should issue.

PETITION , filed on June 8, 1911, for a writ of certiorari, directing the mayor and the members of the board of aldermen and of the common council of Cambridge to

quash proceedings with regard to the laying out of an extension of Waverly Street from Erie Street to Pacific Street in that city.

The case was reserved for the full court by Morton, J., upon the pleadings and an agreed statement of facts. The facts are stated in the opinion.

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A. Kendall, for the petitioner.

J. F. Aylward, (F. M. Phelan with him,) for the respondents.

RUGG, C. J. The point to be decided is the validity of an order passed by each branch of the city council of Cambridge on June 7 and 8, 1910, respectively, laying out a street. The city charter required that it be approved or vetoed by the mayor within ten days after it was presented to him. St. 1891, c. 364, § 11. The mayor was absent from his office continuously from May 6 to July 6, by reason of illness, and was unable to perform his duties. Under R. L. c. 26, §§ 29, 30, the president of the board of aldermen became "acting mayor," and possessed "the powers of mayor only in matters not admitting of delay." The "acting mayor" approved the order on June 10, and it was never presented to nor approved by the mayor.

It has been decided that the time given to the executive officer for deliberating whether he shall approve or disapprove an act of a legislative body does not begin to run until the legislative act has come to him in fact, and that no constructive or implied action, falling short of a physical putting before him, suffices. Farwell v. Boston, 192 Mass. 15. See Opinion of the Justices, 99 Mass. 636, and Galligan v. Leonard, 204 Mass. 202.

These decisions, together with the express words of the statute and the inherent importance of the acts to be done, indicate the significance attached to the performance of official executive duties by the person elected by the people, rather than by a substitute designated in this instance in another way. The case would be quite different if the statute required the order to be presented to the mayor within a definite time after it was passed by the city council.

The statute makes no provision for the ascertainment of "matters not admitting of delay." Therefore, it must be determined according to the usual course of judicial

procedure as each case arises. The powers of the acting mayor are expressly limited to such matters as do not admit of delay. While this language should not be given a narrow or refined interpretation and should be construed in view of the practical necessities of municipal administration, yet it should be given its natural force and meaning in the connection in which it is found. The words are both plain and emphatic. They express a definite conception of a necessity

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so importunate that it cannot be resisted with reason. When a public officer undertakes to perform by way of substitution duties so definitely circumscribed, and their validity is questioned, it must appear that they are warranted and no strong presumptions exist in their favor. The irresistible public urgency which warrants the "acting mayor" in performing the functions of mayor chosen by popular election might be manifested in various ways.

Cases might arise where it would be apparent as matter of law upon the face of the papers that the approval of the order was a matter "not admitting of delay." Such an inference might be drawn respecting a warrant for an election or an appropriation of money to be used for a Fourth of July celebration or a corporate anniversary, or like orders where time appears to be of the essence of the subject. Appropriations necessary for immediate payment of fixed charges of various municipal departments would come within this rule. The nature of the order might stamp it as an emergency measure requiring instant attention. Impending disaster, threatened disorder, public pestilence, devastation by flood or fire illustrate the range of subjects of this character. The layout of a public way, although based upon an adjudication that common necessity and convenience require it, usually does not fall within any of these classes. While it is conceivable that an exigency might demand it, there is nothing to indicate that in the case at bar. The city council might vote that any particular order was of a nature not admitting of delay in executive determination as to its wisdom. While this would not be conclusive, in most instances it would be strongly persuasive of the existence of pressing need. Universal acquiescence by public officers charged with the performance of official duties coupled with the acquirement of rights in reliance upon the validity of the act might create a presumption in favor of the existence of the pressing necessity. Burrage v. County of Bristol, 210 Mass. 299. Instances may arise when the delay of public business

required for awaiting the mayor would be so great as to be unreasonable and to create a situation calling for action by the acting mayor. These would be likely to occur in the ordinary conduct of the administrative affairs of the city far more frequently than in the approval of acts of its legislative body.

There is force in the argument that the question whether a

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matter admits of delay or not is an administrative one and must in the nature of things be decided by the officer called upon to act; that it relates to public affairs of importance which ought not to be held in doubt as to their validity until there can be a determination by the courts; that public officers are assumed to act in good faith and that all reasonable presumptions should be drawn in favor of the existence of facts necessary to constitute a legal performance of duty. The adoption of this rule of construction in substance would leave the existence of the exigency requiring action by the acting mayor to his final determination in most instances. The extremely limited power conferred by the statute does not seem to us to indicate a legislative intent to leave a question deemed so important to the conscience of persons clothed temporarily with a power, for the exercise of which they were not primarily selected. The mayor is the one designated by law to be the executive of the city. It is not a mere passing incident which enables another to supplant him, but a pressing urgency of an unusual kind. These two circumstances are emphasized by the statute and lead us to the conclusion stated.

The case at bar comes within none of these principles. There is nothing in the record to indicate that the health of the mayor on June 10 was such that he was not reasonably expected to resume his duties in the near future. In fact, he did return to his public work within four weeks. For aught that appears, the order might well have waited this length of time without detriment to the public welfare. It cannot be said upon this record that it was a matter "not admitting of delay."

This is not an error so technical or insubstantial as not to warrant issuance of the writ of certiorari. Exercise of the power of eminent domain is a governmental function of importance, both to the landowner whose property is taken and the public whose money must pay for it. In this instance the decision of the designated public officer was wanting. There was a failure to comply with an essential provision of the statute

which involved the application of sound business judgment and executive discretion upon a matter affecting both public and private interests. It may be that a different result would have been reached if the statute had been followed. Bowditch v. Boston, 168 Mass. 239, 243. Warren v. Street Commissioners, 181 Mass. 6.

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The defense of laches has not been relied upon. Upon the facts disclosed in this record it was not apparent, until the city entered upon the land in question and constructed edgestones at a street junction on or about June 1, 1911, that the city might not let the alleged location lapse under R. L. c. 48, § 92. This petition was brought on June 8, 1911. There is nothing to show that any substantial expenditures have been made or that the rights of other persons have been materially affected.

Writ of certiorari to issue.

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DENNIS S. RYAN v. CITY OF BOSTON.

204 Mass. 456

November 17, 1909 - January 13, 1910

Suffolk County

Present: Knowlton, C. J., Morton, Braley, Sheldon, & Rugg, JJ.

Boston, Acting mayor, Superintendent of streets. Contract, Validity. Statute, Repeal. Pleading, Civil, Answer. Words, "Act as mayor."

The provision of St. 1895, c. 449, § 1, in the revision of the charter of the city of Boston of that year, that if a vacancy in the office of mayor occurs in the last six months of the term, "the chairman of the board of aldermen shall act as mayor for the unexpired term," was not restricted nor repealed by implication by the provisions contained in R. L. c. 26, §§ 29, 30, which, "except as otherwise provided by city charters," limit the power of an acting mayor to "matters not admitting of delay."

The provision of St. 1895, c. 449, § 1, in the revision of the charter of the city of Boston of that year, that if a vacancy in the office of mayor occurs in the last six months of the term, "the chairman of the board of aldermen shall act as mayor for the unexpired term," gives to such an acting mayor the power to

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perform all the duties of the office of mayor as defined by the charter, and he accordingly has authority to approve a contract for the construction of a sewer for which the necessity is not immediate.

Under St. 1885, c. 266, § 6, and St. 1890, c. 418, § 6, although the superintendent of streets of the city of Boston is authorized to make a contract in behalf of the city for the construction of a sewer for a price less than $2,000 without the approval in writing of the mayor, if in his judgment such a course is advisable, he is not required to act thus independently, and may make a contract for a price less than $2,000 in such a form that its validity depends on the mayor's approval in writing.

In an action against the city of Boston for the breach of an agreement in writing for the construction of a sewer, which was made with the plaintiff by the superintendent of streets of the defendant in the month of December and was approved lawfully in writing by the acting mayor, the defendant, under an answer containing a general denial and an allegation of payment, cannot set up the defense that the superintendent of streets did not comply with the requirement of St. 1903, c. 268, § 1, by filing in the registry of deeds before beginning the work a statement approved by the mayor of his intention to construct a sewer, and did not comply with the requirement of St. 1891, c. 323, § 13, which by amendments includes the construction of sewers,

by filing a certificate in writing approved by the mayor that public necessity required the work to be done after the fifteenth of November in that year.

CONTRACT against the city of Boston for the alleged breach of a contract in writing, by which the plaintiff agreed to lay for the defendant five hundred and seventy-five linear feet of sewer pipe in Walk Hill Street, in that part of Boston called West Roxbury, for the prices set out in a proposal submitted to the deputy superintendent of the sewer division of the street department of the defendant on December 4, 1905, the cost of the labor and materials to be furnished by the plaintiff being estimated by the city engineers as $1,960. Writ in the Municipal Court of the City of Boston dated February 10, 1908.

The defendant's answer consisted of a general denial and an allegation of payment.

On appeal to the Superior Court the case was tried before Crosby, J. It appeared that the contract was signed on December 22, 1905, by the plaintiff and by James Donovan, the superintendent of streets of the city of Boston, and was approved by Daniel A. Whelton while acting as mayor of the city of Boston, its form being approved by Thomas M. Babson, Esquire, the corporation counsel.

On December 26, 1905, the plaintiff began the work of excavating, and continued to work under the contract until January 4, 1906, when the newly elected mayor, John F. Fitzgerald,

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and the acting superintendent of streets, one Logue, ordered the work stopped by a notice which also stated that the street would be put in condition by the city at the expense of the plaintiff, as the contract under which he was working was illegal because the acting mayor possessed the powers of mayor only in matters not admitting of delay.

The plaintiff asked the judge to give to the jury the following instructions:

"1. The jury are instructed that the superintendent of streets had authority to make a binding contract with the plaintiff without the approval of the mayor where the amount involved does not exceed $2,000 and since the estimated cost of the labor and materials to be furnished by the plaintiff under this contract was less than

$2,000 the jury may disregard the signature of the acting mayor and also the question of whether or not he was acting within his rights in signing this contract.

"2. There is a presumption of right acting by the mayor until the contrary is shown.

"3. The plaintiff is entitled to recover as damages the amount paid out for labor and materials and the difference between the amount it would cost him to complete the contract and the contract price.

"4. The plaintiff is entitled to interest on any amount it may find him entitled to recover from the time fixed in the contract when the work was to be completed."

The judge refused to make any of these rulings. He ruled that as a matter of law the plaintiff was not entitled to recover, and ordered a verdict for the defendant. The plaintiff alleged exceptions.

D. V. McIsaac, for the plaintiff.

G. A. Flynn, for the defendant.

Braley, J. If the city of Boston became bound by the contract, the plaintiff, having been prevented from full performance by the defendant's repudiation and interference, can recover damages for the breach. Clark v. Gulesian, 197 Mass. 492. Moffat v. Davitt, 200 Mass. 452.

The agreement is signed in behalf of the city by the superintendent of streets, and approved by "Daniel A. Whelton, acting Mayor." The defense rests upon the ground, that the approval

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having been unauthorized, the contract is void. Section 29 of R. L. c. 26 provides for the discharge of the duties of the office where the mayor is absent, or becomes incapacitated, or a vacancy occurs by resignation or death. But the powers of an acting mayor are expressly limited by § 30 to matters requiring immediate action. If this limitation is applicable to the defendant, the contract is invalid, as it does not appear there was any urgent public necessity for the construction of the sewer. Before the enactment of the revision, the charter of the defendant was amended by

St. 1895, c. 449, § 1. This act not only lengthened the tenure of office, but further provided that "in case of a vacancy in the office of mayor, the city council shall, if such vacancy occurs before the last six months of said term, order an election for a mayor to serve for the unexpired term, and if such vacancy occurs in the last six months of the term, the chairman of the board of aldermen shall act as mayor for the unexpired term." The defendant, while conceding that, a vacancy having occurred in the last six months of the term, Daniel A. Whelton, the chairman of the board of aldermen, was empowered by the charter to act for the unexpired time, contends that the scope of his duties was defined by R. L. c. 26, § 30. It is a general rule that statutes, where possible, are to receive such a construction as will give them full effect. It was within the power of the Legislature to have made the revision applicable to all cities, but this was not done, and the exception by § 29 of cities whose charters otherwise provided removes all ground for argument that there was a repeal by implication. By the amended charter ample provisions were made for filling a vacancy if one occurred, and if the powers of the chairman of the board upon succession are not specifically enumerated, they are designated by the phrase that he "shall act as mayor." The legislative intention having been unambiguously expressed is to be accorded full recognition, and these words are to be given their ordinary acceptation. To "act as mayor," is to perform all the duties of the office as defined by the charter, and the general and special laws applicable to the administration of the municipal affairs of the city. It is unquestioned that, if the contract had been approved by his predecessor, the approval would have been binding. And, as Whelton came into office by a statutory succession which

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conferred upon him the right to exercise all its functions, the defendant cannot repudiate his action.

The plaintiff also contends that the contract was valid without the mayor's approval. If, however, by the St. of 1885, c. 266, § 6, and St. of 1890, c. 418, § 6, the superintendent of streets is authorized to contract for building a sewer, where the amount involved neither equals nor exceeds $2,000, he is not required to act independently. If in his judgment such a course is advisable, the validity of the contract may be made to depend upon its written acceptance by the mayor. The plaintiff does not even suggest that he has been misled, or that any mistake was

made, and the rights of the parties must be determined by their written agreement, of which the mayor's approval forms an essential element.

But, if there was no error in refusing the plaintiff's first request, and the third and fourth requests correctly stated the measure of recovery, the defendant relies on St. of 1903, c. 268, § 1, and St. of 1891, c. 323, § 12, as amended by St. of 1902, c. 521, § 1, in justification of the order which rendered a continuance of the work impossible. We express no opinion, however, upon these questions as they are not before us. If under St. of 1903, c. 268, § 1, where the superintendent of streets, or other officer by appointment of the mayor, constructs the sewer, he shall file in the registry of deeds before beginning the work notice of his intention, naming the street or otherwise describing the land in which it is to be laid, and if by § 13 of St. 1891, c. 323, which by amendments includes the construction of sewers, the superintendent of streets "shall not do, or permit to be done, any of the work described in any year after the fifteenth day of November, unless he certifies, in a writing approved by the mayor and kept on file in the office of said superintendent, that public necessity requires the work to be done," this defense has not been pleaded. It is not open under an answer which contains only a general denial, with a plea of payment. Kidder v. United Order of the Golden Cross, 192 Mass. 326, 336, 337, and cases cited.

The ruling that the action could not be maintained was wrong, and the exceptions must be sustained.

So ordered.

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CITY OF GARDNER IN CITY COUNCIL

JOINT PUBLIC HEARING OF JANUARY 21, 2020

Tuesday evening, January 21, 2020. Joint Public Hearing of the City Council and Planning Board held in the City Council Chamber, Room 219, City Hall.

CALL TO ORDER

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

ATTENDANCE

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

Five (5) Planning Board Members were present including Robert Bettez, Sr., Paul Cormier, Stephen Cormier, Mark Schafron and Robert Swartz.

President James Walsh read aloud the Public Hearing Notice, as follows:

CITY OF GARDNER
NOTICE OF JOINT PUBLIC HEARING
ZONING AMENDMENTS

> 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 Tuesday, January 21, 2020 at 7:00 P.M. in the City Council Chamber, Room 219, City Hall, 95 Pleasant Street, Gardner, to consider amending the Code of the City of Gardner, Section 675–610. General Requirements, Section F and Section 675–1050. Fences and hedgerows. The proposed Amendment is available for viewing in the City Clerk's Office, the Department of Community Development & Planning (DCDP), or on the City Council's webpage – www.gardner-ma.gov/324/City-Council under *Informational Documents*. All persons interested in this matter and desire to offer testimony are invited to attend the hearing.
>
> ALAN L. AGNELLI
> CITY CLERK

Community Development and Planning Director Trevor Beauregard, testifying on behalf of the Planning Board, stated that in October, 2019, Building Commissioner Roland Jean brought several inconsistencies in the Zoning Code to the Planning Board's attention, specifically Section 675–610. General Requirements, Section F and Section 675–1050. Fences and hedgerows. He noted that under Section 675–610. General Requirements, Section F, the Diagram shows 30 feet, but the narrative lists 15 feet, so the Building Commissioner and the DPW Director recommend 30 feet to maintain consistency. The Section also reads "20 feet", so the Planning Board recommends that it read "30 feet." Continuing, he stated that there is an inconsistency in Section 675–1050. Fences and hedgerows – where one reads 2½ feet, another 3½ feet. The Planning Board recommends 3 feet for consistency. Also, the Planning

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Board recommends that the word "street" be inserted instead of "curb" for consistency, since all streets do not have curbs.

President Walsh thrice called for persons wishing to testify in favor of the proposed Ordinance amendment.

There being none, he called for persons wishing to testify in opposition to the proposed Ordinance amendment.

Christopher Pera, 24 Lovewell Street, Gardner, a Registered Professional Land Surveyor (MA), provided the following Summary of his comments made in support and opposition to the proposed zoning amendment:

1. Definition of Street Line

As a clarification with regards to the City Ordinance to be changed, the term "side line" as mentioned in Section 675-610, Section F, is not defined in the Definition section of the Zoning Code (Section 675-210), but such term is often synonymous with 'street line," which is defined in the Zoning Code and refers to the property boundary or edge of the public right-of-way of the street. This definition is inconsistent with the diagram referencing the sight triangle (or Intersection Clearance Zone as shown on the diagram) within the Zoning Code. Said diagram shows point of reference with regards to measurements made as being the face of the curb, or edge of the traveled way assuming no curb is present. This reference line makes practical sense for two reasons.

First being that the line of sight for traffic safety is related to approaching vehicles within the traveled way, and not necessarily associated with property lines. Property lines can vary widely based on the width of the right-of-way and the varied location and width of the traveled way. As an example, most currently designed right-of-ways have a width of 50 feet for public/private access and utilities. In accordance with Gardner's Subdivision Rules and Regulations, Section 6.1.3 regarding Street Width, the standard pavement width for minor streets is 28 feet. If the pavement were centered with the right-of-way, which is not always the case, this would allow for an 11 foot strip of grass and/or sidewalk area from the edge of the traveled way to the property line. If the proposed 30 foot sight triangle were to be from the "side line" or property line, this would place the sight clearance zone well into the private portion of the abutting lot.

Second would be that determination of the sight triangle based on the edge of the traveled way is much more simplistic, as the edge of traveled way can easily be seen and determined without the need to determine the edge of the right-of-way by a Registered Land Surveyor, as required in the Commonwealth of Massachusetts.

I would therefore recommend that the proposed change to the ordinance remove the term "side lines" and change such term to "edge of the traveled way."

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2. Sight Triangle Distance Change

According to the American Association of State Highway and Transportation Officials (AASHTO) publication "A Policy on Geometric Designs of Highways and Streets (2011 ed.)" (often referred to as the "Green Book"), there are two types of sight triangles commonly used at intersections, approach sight triangles and departure sight triangles. Approach sight triangles allow a driver in a moving vehicle sufficient time to slow or stop at an intersection without traffic control, a stop or yield. Departure sight triangles allow a stopped driver at an intersection to see oncoming traffic before entering the intersection.

While not having performed or seen a traffic study of the number or types of traffic intersections within the city with regards to being controlled or uncontrolled, nor reviewing reports of incidents of accidents or complaints where obstructive views contributed to the accident or made it difficult for a motorist to see oncoming traffic, my assumption would be that most intersections in the city have stop or yield signs, or the accepted speeds or practice at these intersections is to yield or stop. These types of intersections would likely need a lesser sight distance and the side distance of the sight triangle would not be as great.

In addition, there is an existing City Ordinance (Part II, Chapter 600 (Vehicles and Traffic), Article VI (Stopping, Standing and Parking), Section 600-21 (General prohibitions)) that already prohibits vehicles from parking within 20 feet of an intersection, which is assumed to be for the purpose of a sight triangle at the intersection. With the proposed change in the ordinance to make the side of the sight triangle to 30 feet, this would still be in conflict with this existing 20 foot parking ordinance.

My personal opinion therefore is that increasing the side of the sight triangle from 15 feet to 30 feet may not be necessary and is more restrictive, and such increase may infringe upon the property and privacy rights of the abutting private property owner by requiring a greater area of their property to be free of sight obstructions or meet the height restriction of the ordinance for any fences or shrubs within their yard or along their property boundary. Such an increase may also be a burden on property owners if existing fences, shrubs or objects that meet the existing requirements had to be moved or changed to meet the proposed increase.

As a proposed change to be consistent with the City Ordinance with regards to parking at an intersection, a recommended proposed sight triangle distance to 20 feet might be more appropriate. Such amendment would change the corner clearance distance for Chapter 675-610, but would leave the current distance in Chapter 675-1050 as the same.

There being no others asking to testify, President Walsh declared the Hearing closed at 7:09 p.m.

Accepted by the City Council:

UNACCEPTED/UNCORRECTED PROOF

CITY OF GARDNER IN CITY COUNCIL

REGULAR MEETING OF JANUARY 21, 2020

Regular Meeting of the City Council was held in the City Council Chamber, Room 219, City Hall, on Tuesday evening, January 21, 2020.

CALL TO ORDER

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

CALL OF THE ROLL

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

OPENING PRAYER

President Walsh led the Council in reciting the Opening Prayer.

PLEDGE OF ALLEGIANCE

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

OPEN MEETING RECORDING & PUBLIC RECORDS ANNOUNCEMENT

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

READING & ACCEPTANCE OF MINUTES

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

COMMUNICATIONS FROM THE MAYOR

APPOINTMENTS

#10232

Reporting for the Finance Committee, Councillor Elizabeth Kazinskas informed the Council that Atty. Gandbhir has done a fantastic job in her position and that the Committee voted to recommend confirmation of her Appointment.

UNACCEPTED/UNCORRECTED PROOF

On a motion by Councillor Elizabeth Kazinskas and seconded by Councillor George Tyros, on recommendation of the Finance Committee, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to confirm the following Appointment received from the Mayor:

PRIYA GANDBHIR to the position of **ASSISTANT CITY SOLICITOR** for the term expiring January 3, 2021.

Worcester, ss. January 21, 2020

Then personally appeared **PRIYA GANDBHIR** and made oath that she would faithfully and impartially perform the duties of **ASSISTANT CITY SOLICITOR** according to law and the best of her abilities.

Before me,
/s/ Alan L. Agnelli, City Clerk

#10233

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that the Mayor is appointing Dr. Michele Parker to replace Dr. John Mulqueen who moved out of Gardner and that the Committee voted to recommend her confirmation.

On a motion by Councillor Ronald Cormier and seconded by Councillor Craig Cormier, on recommendation of the Finance Committee, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to confirm the following Appointment received from the Mayor:

DR. MICHELE PARKER to the position of **MEMBER, BOARD OF HEALTH**, for the term expiring December 31, 2022.

Worcester, ss. January 27, 2020

Then personally appeared **DR. MICHELE PARKER** and made oath that she would faithfully and impartially perform the duties of **MEMBER, BOARD OF HEALTH,** according to law and the best of her abilities.

Before me,
/s/ Faith A. Glover, Assistant City Clerk

#10234

Reporting for the Finance Committee, Councillor Elizabeth Kazinskas informed the Council that Mr. O'Keefe has been in the position for many years and has done a fantastic job for the City; therefore, the Committee voted to recommend confirmation of his Appointment.

UNACCEPTED UNCORRECTED PROOF

On a motion by Councillor Elizabeth Kazinskas and seconded by Councillor Ronald Cormier, on recommendation of the Finance Committee, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to confirm the following Appointment received from the Mayor:

ROBERT O'KEEFE to the position of **INFORMATION TECHNOLOGY DIRECTOR** for the term expiring January 7, 2023.

Worcester, ss. January 22, 2020

Then personally appeared **ROBERT O'KEEFE** and made oath that he would faithfully and impartially perform the duties of **INFORMATION TECHNOLOGY DIRECTOR** according to law and the best of his abilities.

Before me,
/s/ Faith A. Glover, Assistant City Clerk

#10235

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that Mr. Hirons is being reappointed, has held the position for many years, and that the Committee voted to recommend his confirmation.

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, on recommendation of the Finance Committee, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to confirm the following Appointment received from the Mayor:

STEPHEN HIRONS to the position of **SEALER OF WEIGHTS AND MEASURES** for the term expiring January 8, 2021.

Worcester, ss. January 21, 2020

Then personally appeared **STEPHEN HIRONS** and made oath that he would faithfully and impartially perform the duties of **SEALER OF WEIGHTS AND MEASURES** according to law and the best of his abilities.

Before me,
/s/ Alan L. Agnelli, City Clerk

UNACCEPTED UNCORRECTED PROOF

#10236

Reporting for the Finance Committee, Councillor Elizabeth Kazinskas informed the Council that Ms. Butler is a new Appointee and is experienced, as she has served as Conservation Administrator for the Town of Townsend, as well as its Land Use Coordinator, and in other positions. She added that she holds a Master's Degree and has many of the qualifications for the position, so the Committee voted to recommend her confirmation.

On a motion by Councillor Elizabeth Kazinskas and seconded by Councillor Craig Cormier, on recommendation of the Finance Committee, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to confirm the following Appointment received from the Mayor:

LYNDSY BUTLER to the position of **CONSERVATION AGENT** for the term expiring January 8, 2023.

Worcester, ss. January 22, 2020

Then personally appeared **LYNDSY BUTLER** and made oath that she would faithfully and impartially perform the duties of **CONSERVATION AGENT** according to law and the best of her abilities.

Before me,
/s/ Faith A. Glover, Assistant City Clerk

ORDINANCES

#10237

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that the Ordinance amendment was presented for the first time at its recent meeting, so the Committee is seeking additional information and a report from the Human Resources Director; therefore, the Committee is recommending that the Measure be referred back to the Finance Committee for further study and report.

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, on recommendation of the Finance Committee, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to refer *An Ordinance Amending the Code of the City of Gardner, Chapter 171 Thereof, Entitled "Personnel" to Change Article IX. Vacations for City Officers and Employees, Section 171-36, Other full-time officers and employees; and, by adding new Section 171-37 (a) Conservation/Planning Agent, providing for additional vacation leave* to the Finance Committee for study and report.

UNCORRECTED/UNCORRECTED PROOF

#10238

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that the Ordinance amendment was presented for the first time at its recent meeting, so the Committee is seeking additional information and a report from the Human Resources Director; therefore, the Committee is recommending that the Measure be referred back to the Finance Committee for further study and report.

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, on recommendation of the Finance Committee, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to refer *An Ordinance Amending the Code of the City of Gardner, Chapter 171 Thereof, Entitled "Personnel" to change Article XIII. Department Head Benefit Time and Longevity Pay, Section 171-53, Vacation, providing for additional vacation leave* to the Finance Committee for study and report.

PETITIONS, APPLICATIONS, COMMUNICATIONS, ETC.

#10239

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, on recommendation of the Finance Committee, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to adopt the following Order:

PRESIDENTIAL PRIMARY ORDER
TUESDAY, MARCH 3, 2020

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

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

It is further ordered that the polls shall open at 7:00 o'clock in the morning and close at 8:00 o'clock in the evening.

Presented to the Acting Mayor for Approval – January 22, 2020
Approved – January 22, 2020
JAMES M. WALSH, Acting Mayor

UNACCEPTED UNCORRECTED PROOF

#10240

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that the Committee voted to recommend that the Measure be referred to the Council as Committee of the Whole to allow Jeffrey Legros, the Assistant Director of the Department of Community Development and Planning, to present the Mini-Entitlement Plan to the full Council.

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, on recommendation of the Finance Committee, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to refer the following Measure to the Council as Committee of the Whole for study and report:

FY 2020 COMMUNITY DEVELOPMENT BLOCK GRANT
Mini-Entitlement Plan

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

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

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

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

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

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

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

UNACCEPTED UNCORRECTED PROOF

REPORTS OF STANDING COMMITTEES

PUBLIC SAFETY COMMITTEE

#10216

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

> AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 560 THEREOF, ENTITLED "SOLID WASTE," TO CHANGE THE FEE FOR SOLID WASTE COLLECTION.
>
> Be it ordained by the City Council of the City of Gardner as follows:
>
> Section 1. Section 560-3 of the Code of the City of Gardner, is hereby amended by striking the sentence: "The annual fee for the collection and handling of rubbish, garbage, ashes and source-separated materials is set at $200 per apartment unit per building, effective July 1, 2013," and by inserting in place thereof, the sentence: "Effective July 1, 2020, the annual fee for the collection and handling of rubbish, garbage, ashes and source-separated materials is set at $230 per household and each unit of apartment buildings containing eight or fewer units in the City.
>
> Section 2. Effective date.
>
> This ordinance shall become effective upon passage and publication as required by law.

PUBLIC WELFARE COMMITTEE

#10207

Councillor Scott Joseph Graves, Chairman of the Public Welfare Committee, reported that the Committee met to discuss the proposed Ordinance amendment and expressed favorable action; however, since additional information was presented at the Joint Hearing earlier in the evening, then the Committee seeks additional time to explore these issues with the Community Development Director and Building Commissioner. The Council is also awaiting the Planning Board's Final Report, he added.

There being no objections, the Public Welfare Committee was granted more time to study and report on the following Ordinance:

> AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 675 THEREOF, ENTITLED "ZONING," TO REVISE ARTICLE VI, DENSITY AND DIMENSIONAL REGULATIONS, AND ARTICLE X, SUPPLEMENTAL REGULATIONS.
>
> Be it ordained by the City Council of the City of Gardner, as follows:

UNCORRECTED/UNCORRECTED PROOF

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

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

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

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

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

FINANCE COMMITTEE

#10226

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that the Committee voted to recommend that the Measure be returned to the Executive Department for study and execution, if need be, to coincide with the new budget year and to remove the Measure from the Calendar.

Councillor Graves questioned whether any negative action on the Measure would prohibit the matter from being brought before the Council within two years, in light of the recent change in the Council Rules involving "renewal of motions".

Council President James Walsh, Chairman of the Finance Committee, informed the Councillor that Council action to return the Measure to the Mayor is not a vote on the merits of the issue, since no Ordinance amendment accompanied the Mayor's correspondence.

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, on recommendation of the Finance Committee, it was voted viva voce, ten (10) yeas, President James Walsh and Councillors James Boone, Craig Cormier, Ronald Cormier, Aleksander

UNACCEPTED/UNCORRECTED PROOF

Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros; one (1) nay, Councillor Nathan Boudreau, to return *Correspondence from the Mayor relative to the Title and Compensation of the Executive Secretary* to the Executive Department for study and execution, if need be, to coincide with the new budget year and to remove the Measure from the Calendar.

#10229

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that the Committee voted to recommend that the Measure be returned to the Executive Department for the following reasons: an engineering report determining the non-salvageability of the building before the Council is asked to vote on its demolition; that the Executive Department determine costs for demolition; that at least preliminary plans for the entire area, including the National Grid parcel, be included in the design; that a cost and design estimate to include reuse, design, and implementation.

Councillor Ronald Cormier moved to return the Order to the Executive Department for an engineering report to determine the non-salvageability of the building before the Council is asked to vote on its demolition; that the Executive Department determine costs for demolition; that at least preliminary plans for the entire area, including the National Grid parcel, be included in the design; and that a cost and design estimate be prepared to include reuse, design, and implementation.

Councillor Elizabeth Kazinskas seconded the motion.

On the motion, Councillor Nathan Boudreau stated that he supports the motion, but that he "did open himself to phone calls and Facebook and it is overwhelmingly accepted that it needs to come down…it is becoming a public safety concern." He added that he hopes that the Council would consider it.

Councilor Cormier reiterated his initial remark that the non-salvageability of the Pool be determined and that should include the question of the public's safety.

Councillor Scott Graves questioned whether the City is legally able to demolish the pool structure and read from correspondence from Levi H. Greenwood dated April 24, 1914 as delivered to the Inhabitants of Gardner at Town Meeting. Councillor Graves said that the City has had many studies performed on the Pool's condition and that the Pool has lost money from the day that it opened. He said that the latest study noted that with three million committed that the pool will still lose money. He cited several capital and operational expenses that the City faces, "so what more information do we need." "I won't support it – it is where it should be – the legislative department," he added.

UNACCEPTED UNCORRECTED PROOF

On the motion, on recommendation of the Finance Committee, it was voted viva voce, nine (9) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Judy Mack, Elizabeth Kazinskas, and George Tyros; two (2) nays, Councillors Scott Joseph Graves and Karen Hardern, to return the following Order to the Executive Department in order to determine costs for demolition and public safety; that preliminary plans for the entire area, including the National Grid parcel, be included in the design; and, that a cost and design estimate be prepared to include reuse, design, and implementation:

> AN ORDER APPROPRIATING FROM FREE CASH TO GREENWOOD POOL DEMOLITION ACCOUNT.
>
> ORDER: That there be and is hereby appropriated the sum of Four Hundred Thousand Dollars and No Cents ($400,000.00) from Free Cash to the Greenwood Pool Demolition Account.

#10230

Reporting for the Finance Committee, Councillor Elizabeth Kazinskas informed the Council that available funds from the pump station loan order would be used to upgrade the Coleman Street and the Dyer Street sewer pump stations.

On a motion by Councillor Elizabeth Kazinskas and seconded by Councillor Ronald Cormier, on call of the roll, it was voted on recommendation of the Finance Committee, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to adopt the following Order:

> AN ORDER APPROPRIATING FROM SEWER SURPLUS TO SEWER CAPITAL PROJECT PUMP STATION UPGRADES EXPENSE.
>
> ORDERED: That there be and is hereby appropriated the sum of Ninety Five Thousand Five Hundred Dollars and No Cents ($95,500.00) from Sewer Surplus to Sewer Capital Project Pump Station Upgrades Expense.

Presented to the Acting Mayor for Approval – January 22, 2020
Approved – January 22, 2020
JAMES M. WALSH, Acting Mayor

#10231

On a motion by Councillor Elizabeth Kazinskas and seconded by Councillor Ronald Cormier, on recommendation of the Finance Committee, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to adopt the following Measure:

UNCORRECTED PROOF

AUTHORIZING FIVE-YEAR CONTRACT PERIOD
SCHOOL TRANSPORTATION SERVICES

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

Presented to the Acting Mayor for Approval – January 22, 2020
Approved – January 22, 2020
JAMES M. WALSH, Acting Mayor

UNFINISHED BUSINESS AND MATTERS FOR RECONSIDERATION

#10207

The Council continued *An Ordinance to Amend the Code of the City of Gardner, Chapter 675 Thereof, Entitled "Zoning," to Amend Section 675-610, General Requirements, Sec. F and Section 675-1050, Fences and Hedgerows* until the Planning Board issues its Final Report.

NEW BUSINESS

On a motion by Councillor James Boone and seconded by Councillor Nathan Boudreau, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to consider New Business.

#10241

On a motion by Councillor Ronald Cormier and seconded by Councillor James Boone, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to place on file correspondence from the City Clerk relative to a Notice of Vacancy in the Office of Mayor, as follows:

CITY OF GARDNER, MASSACHUSETTS
CITY CLERK

January 21, 2020

James M. Walsh, Esq., President
And Members of the City Council
City Hall, 95 Pleasant Street
Gardner, MA 01440

Re: Notice of Vacancy in the Office of Mayor

UNACCEPTED/UNCORRECTED PROOF

Dear President Walsh and Members of the City Council:

I am writing to inform you that a vacancy in the office of Mayor shall exist as of 4:30 p.m. on Tuesday, January 21, 2020. A copy of Mayor Hawke's letter of resignation is enclosed.

Consequently, the provisions of Section 32 of the *Charter of the City of Gardner* state, in part: "If a vacancy occurs in the office of mayor before the last six months of the term of office, the city council shall order an election to fill the same for the unexpired term."

Accordingly, a consolidated Special Municipal Preliminary Election Order and Special Municipal Election Order is enclosed for the Council's consideration.

Thank you for your attention in this matter.

Very truly yours,

ALAN L. AGNELLI
City Clerk

****

City of Gardner, Executive Department

January 21, 2020

Alan Agnelli, Clerk City of Gardner
95 Pleasant Street
Room 121
Gardner, MA 01440

Mr. Clerk,

Please share this communication with the City Council.

"I'm bitter, but at least I can recognize that fact so I know I will get over it. I'm bitter because I had a job I loved. Who wouldn't? Working for your hometown wasn't a dream come true for me as it is something I never had as a goal at any point in my career or even growing up in Gardner. However, it is a job I grew to love and, as humble as I can be, was pretty good at doing too.

As Mayor, you are responsible for a $68 million budget, negotiating 7 city-side union contracts and assisting on 3 school-side union contracts, appointing more than 100 individuals to various offices, departments, boards and commissions. Managing the day to day operations of a City encompassing police, fire, public works as well as the office and back room operations of City Hall and the public school system as the Chair of the School Committee. The Mayor is also the political face of the City in dealing with other municipalities, the state and federal governments. After all of this, there is the expectation of the general public to attend local events, speak at various engagements across the City and state as well simply show up everywhere.

UNACCEPTED/UNCORRECTED PROOF

The pay for doing all of this is now lower than 6 department heads that report directly to the Mayor. It is also lower than every principal and all but one vice principal as well as 30 or so various other positions including teachers, guidance counselors, police, firefighters and DPW employees.

The City Council insisted upon a salary study for all non-union employees and included in that study was the position of Mayor. This report clearly stated that the pay for the Mayor should be trending toward $100k and raise by at least the same amount as all non-union employees. The City Code also states that the Finance Committee should take up the pay of the Mayor and Council on or after January and make a report to the Council as a Committee of the whole. However, it tends to fall to the Mayor to make a recommendation to the Finance Committee and, once again, the final decision wasn't made until late September (long after any possibility to withdraw from the election).

The final decision to not increase the pay of the Mayor is where the bitterness comes in. It seems that some individuals have succeeded. After working to build the City's Stabilization Fund to its largest level ever, installing proper financial mechanisms to ensure appropriate Free Cash certifications, achieving record level school funding, investing more in the City's infrastructure than at any point in the City's history, funding road paving well beyond any realistic expectations, initiating quarterly tax billing, instituting municipal electric aggregation and so much more, more individuals that work for the Mayor, now make more than the Mayor and this trend will continue for at least the next 2 years.

As Mayor, my real estate taxes increase each year, my homeowners insurance, auto insurance and utility bills increase each year. My expenses continue to climb while my pay remains the same for 4 years because of some foolish political gamesmanship.

The City of Gardner deserves better. Instead of a 2% ($1,800} increase for the position of Mayor (the same as all non-Union employees}, the City will now spend up to $40,000 for new elections.

When I first ran for Mayor I talked about the possibility of moving to a City Manager form of government. I still believe that is the best course of action today. There are those that are against change and moving the City forward. This may be the change the City needs.

In conclusion, those that believe they have won, have only performed irreparable damage to the City.

After working for the City for 18 years and 3 months, **effective 4:30pm, Tuesday, January 21, 2020,** I will be resigning the office of Mayor.

Sincerely,

Mark Hawke

UNACCEPTED/UNCORRECTED PROOF

#10242

On a motion by Councillor Elizabeth Kazinskas and seconded by Councillor Craig Cormier, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to adopt the Special Election Schedule as provided by the City Clerk, as follows:

CITY OF GARDNER, MASSACHUSETTS
SCHEDULE FOR THE 2020 SPECIAL MUNICIPAL ELECTIONS
To fill the unexpired term for the Office of Mayor

Nomination Papers Available from the City Clerk – January 27, 2020
Deadline for Candidates to File Nomination Papers with Registrars – Feb. 13, 2020
Deadline for Registrars to Transmit Nomination Papers to City Clerk – Feb. 27, 2020
Last Day to File Objections or to Withdraw – March 2, 2020
Drawing for Ballot Positions – March 9, 2020
Last Day to Register to be eligible to Vote in the *Preliminary – March 18, 2020
Preliminary Election* (*if necessary*) – April 7, 2020
Last Day to Register to be eligible to Vote in the Special Election – April 15, 2020
Special Election –May 5, 2020

**A Preliminary Election will be held only if there are more than two (2) candidates certified for nomination.*

And further, to adopt the following Order:

CITY OF GARDNER, MASSACHUSETTS
SPECIAL MUNICIPAL PRELIMINARY ELECTION ORDER
AND
SPECIAL MUNICIPAL ELECTION ORDER

ORDERED: *If necessary*, that meetings of the citizens of this City qualified to vote for City officers shall be held on TUESDAY, the SEVENTH DAY of APRIL, 2020 from 7:00 o'clock in the morning until 8:00 o'clock in the evening for the purpose of casting their votes for the nomination of Mayor to serve for the unexpired term.

ORDERED: That meetings of the citizens of this City qualified to vote for City officers shall be held on TUESDAY, the FIFTH DAY of MAY, 2020 from 7:00 o'clock in the morning until 8:00 o'clock in the evening for the purpose of casting their votes for Mayor to serve for the unexpired term.

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

UNACCEPTED/UNCORRECTED PROOF

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

Presented to the Acting Mayor for Approval – January 22, 2020
Approved – January 22, 2020
JAMES M. WALSH, Acting Mayor

#10243
On a motion by Councillor James Boone and seconded by Councillor Karen Hardern, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to send a *Letter of Appreciation and Recognition to former Mayor Mark Hawke for his many years of dedicated service to the City of Gardner.*

ANNOUNCEMENTS and COMMENTARY

Councillor Nathan Boudreau expressed his appreciation to Council President James Walsh for appointing him to Chair the Public Service Committee and then recognized his colleagues on the Committee, as "all are Ward Councillors and get the calls involving their wards."

Councillors expressed their appreciation and best wishes to Council President James Walsh for the new task that he will undertake as Acting Mayor.

Councillors expressed their appreciation to former Mayor Make Hawke for his many years of dedicated service to the City.

Citing Mayor Hawke's Letter of Resignation, Councillor Scott Graves said, "I could not help but wonder how things might have been if my decision in your [President's] seat would have been upheld by the City Council when I tried one last time to put the salary issue in front of the City Council. I thought I made the right decision. I was overruled by the City Council. So it stands forever as the fact that I was wrong. However, there is a memo that I put in the file for posterity's sake, so if anybody wants to take a gander at that. And, I think perhaps there's a chance that Mark Hawke would still be here if my decision had been upheld that night."

UNACCEPTED UNCORRECTED PROOF

Commenting on the issue raised by Councillor Graves, Council President James Walsh stated that it is important to point out that the Council did not defeat a salary adjustment for the Mayor, but simply did not pass it because it was a 5-5 vote. The reason, he said, is because he was not present and did not vote. But, he said, he was hopeful at a subsequent meeting that the matter would come up again under Reconsideration and that he expected that it would. "But it did not," he said, "as a result, I was not able to vote. Had I been able to do, I would have voted in favor of the adjustment. But, that time is passed. Circumstances have developed and we move on from here."

Councillor Judy Mack said that the departure of Mayor Hawke and the current situation may provide something for the Council to reflect upon moving forward, whether equitable pay for the Mayor or reviewing parts of the City Charter to meet the needs of the City in the future.

Councillor Judy Mack wished "a very Happy 90th Birthday" to her mother, Mary, "a proud lifelong resident of Gardner and a great example of a life well-lived."

Councillor Ronald Cormier stated that the Council met with the City Solicitor earlier in the evening concerning the function of an Acting Mayor and what powers that an Acting Mayor position possesses. He said that the powers "were quite clarified," but, "as with all things, this has become a learning experience for all of us."

Council President James Walsh informed the Council that he understands the duties, responsibilities, and the limitations of Acting Mayor and accepts them, noting that he has some experience in the role many years before. "I will do my best to act responsibly in their execution," he added.

CLOSING PRAYER

President Walsh led the Council in the Closing Prayer.

ADJOURNMENT

On a motion by Councillor Nathan Boudreau and seconded by Councillor Judy Mack, it was voted viva voce, eleven (11) yeas, President James Walsh and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, Elizabeth Kazinskas, and George Tyros, to adjourn at 8:06 p.m.

Accepted by the City Council:

UNACCEPTED/UNCORRECTED DRAFT

10244

RECEIVED
2020 JAN 15 PM 1:46
CITY CLERK'S OFFICE
GARDNER, MA

January 15, 2020

Commonwealth of Massachusetts

Worcester County

City of Gardner

CERTIFICATE OF APPOINTMENT

I appoint ***Eric Knudsen*** *to the position of* ***Member, Disability Commission,*** *and I certify*
172 Manca Drive, 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*

Mark P. Hawke

Confirmed by City Council _____

_____ City Clerk

Alan L. Agnelli

Expires: January 15, 2023

Worcester, ss., _____

Then personally appeared the above named **Eric Knudsen** *and made oath that he/she would faithfully and impartially perform the duties of the office of* **Member, Disability Commission** *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 _____

Ref: 10245

FILE COPY

FEBRUARY 21, 2017

Commonwealth of Massachusetts

Worcester County

City of Gardner

CERTIFICATE OF ELECTION

We hereby elect JOHN RICHARD, 21 Carruth Road, Templeton, Massachusetts to the position of CITY AUDITOR and certify that in our opinion he is a person specially fitted by education, training, or experience to perform the duties of said office, and that we make this election solely in the interests of the City.

President, City Council of Gardner

Elected by City Council February 21, 2017

Alan L. Agnelli, City Clerk

Expires February 3, 2020

Worcester, ss., FEBRUARY 22, 2017

Then personally appeared the above named JOHN RICHARD *and made oath that he would faithfully and impartially perform the duties of the office of* CITY AUDITOR *according to law and the best of his abilities.*

Before me,

City Clerk

Chapter 303 Acts of 1975
and
Chapter 409 Acts of 1983

Received

10246

APPROVAL OF EXEMPTION PURSUANT TO G.L. C.268A, §20(b)
FINANCIAL INTEREST OF BRADLEY J. FUCILE
CONTRACT FOR PARKING METER CLERK SERVICES

VOTE: To approve an Exemption pursuant to G.L. C. 268A, §20(b) in the Matter of a Financial Interest by Bradley J. Fucile for a Contract for Parking Meter Clerk Services.

10246

DISCLOSURE BY MUNICIPAL EMPLOYEE OF FINANCIAL INTEREST IN A MUNICIPAL CONTRACT AS REQUIRED BY G. L. c. 268A, § 20(b)

RECEIVED
2020 JAN 17 PM 12: 19
CITY CLERK'S OFFIC
GARDNER, MA

	MUNICIPAL EMPLOYEE INFORMATION
Name of municipal employee:	Bradley J. Fucile
Title/ Position	Data Collector (part time - less than 20 hours)
Fill in this box if it applies to you.	If you are a municipal employee because a municipal agency has contracted with your company or organization, please provide the name and address of the company or organization.
Agency/ Department	City of Gardner - Assessor's Department
Agency Address	95 Pleasant Street, Rm. 226 Gardner, MA 01440
Office phone:	(978) 630-4004
Office e-mail:	
	Check one: ____ **Elected** **or** X **Non-elected**
Starting date as a municipal employee.	09/12/2018
BOX # 1 **Select either STATEMENT #1 or STATEMENT #2.** **Write an X beside your financial interest.**	**ELECTED MUNICIPAL EMPLOYEE** I am an **elected municipal employee**. ___ **STATEMENT #1**: I had one of the following financial interests in a contract made by a municipal agency before I was elected to my municipal employee position. I will continue to have this financial interest in a municipal contract. **OR** ___ **STATEMENT #2**: I will have a new financial interest in a contract made by a municipal agency. **My financial interest in a municipal contract is:** ____ I have a non-elected, compensated municipal employee position. ____ A municipal agency has a contract with me. ____ I have a financial benefit or obligation because of a contract that a municipal agency has with another person or an entity, such as a company or organization. ____ I work for a company or organization that has a contract with a municipal agency, and I am a "key employee" because the contract identifies me by name or it is otherwise clear that the city or town has contracted for my services in particular.
BOX # 2 **Select either STATEMENT #1 or STATEMENT #2.**	**NON-ELECTED, COMPENSATED MUNICIPAL EMPLOYEE** I am a **non-elected municipal employee**. ___ **STATEMENT # 1**: I had one of the following financial interests in a contract made by a municipal agency **before** I took a position as a non-elected municipal employee. I will continue to have this financial interest in a municipal contract.

10246

Write an X beside your financial interest.	**My financial interest in a municipal contract is:** ____ A municipal agency has a contract with me, but not an employment contract. ____ I have a financial benefit or obligation because of a contract that a municipal agency has with another person or an entity, such as a company or organization. **-- OR --** ___ **STATEMENT # 2**: I will have a **new** financial interest in a contract made by a municipal agency. **My financial interest in a municipal contract is:** _X_ I have a non-elected, compensated municipal employee position. _X_ A municipal agency has a contract with me. ____I have a financial benefit or obligation because of a contract that a municipal agency has with another person or an entity, such as a company or organization. ____ I work for a company or organization that has a contract with a municipal agency, and I am a "key employee" because the contract identifies me by name or it is otherwise clear that the city or town has contracted for my services in particular.
	FINANCIAL INTEREST IN A MUNICIPAL CONTRACT
Name and address of municipal agency that made the contract	City of Gardner - Treasurer/Collector's Department 95 Pleasant Street, Rm. 116 Gardner, MA 01440
Please put in an X to confirm these facts.	**"My Municipal Agency"** is the municipal agency that I serve as a **municipal employee**. The **"contracting agency"** is the **municipal agency that made the contract.** ___ My Municipal Agency is not the contracting agency. _X_ My Municipal Agency does not regulate the activities of the contracting agency. _X_ In my work for my Municipal Agency, I do not participate in or have official responsibility for any of the activities of the contracting agency. _X_ The contract was made after public notice or through competitive bidding.
FILL IN THIS BOX OR THE BOX BELOW	**ANSWER THE QUESTION IN THIS BOX IF THE CONTRACT IS BETWEEN THE CITY OR TOWN AND YOU.** - Please explain what the contract is for. Part time employment in the City of Gardner Treasurer/Collector's Department performing parking meter clerk duties including the collection of parking fees and the repair of parking meters.
FILL IN THIS BOX OR THE BOX ABOVE	**ANSWER THE QUESTIONS IN THIS BOX IF THE CONTRACT IS BETWEEN THE CITY OR TOWN AND ANOTHER PERSON OR ENTITY.** - Please identify the person or entity that has the contract with the municipal agency. - What is your relationship to the person or entity? - What is the contract for?

10246

What is your financial interest In the municipal contract?	- Please explain the financial interest and include the dollar amount if you know it. I will receive hourly compensation for each hour worked as the Parking Meter Clerk, not to exceed twenty hours, in addtion ot receiving compensation as the part time Data Collector for the Assessor's Department. Work for each department will be conducted during working hours - not to exceed full time hours (total of 40 hours).
Date when you acquired a financial interest	Commences January 21, 2020.
What is the financial interest of your immediate family?	- Please explain the financial interest and include the dollar amount if you know it. None.
Date when your immediate family acquired a financial interest	N/A
Write an X to confirm each statement.	**FOR A CONTRACT FOR PERSONAL SERVICES –** **Answer the questions in this box ONLY if you will have a contract for personal services with a municipal agency (i.e., you will do work directly for the contracting agency).** I will have a contract with a municipal agency to provide personal services. X The services will be provided outside my normal working hours as a municipal employee. X The services are not required as part of my regular duties as a municipal employee. ___ For these services, I will be compensated for not more than 500 hours during a calendar year.
Employee signature:	Bradley J Fucile
Date:	1/17/2020

Attach additional pages if necessary.

NOT A PERSONAL SERVICES CONTRACT -- File disclosure with the city or town clerk.

SEE CERTIFICATION AND APPROVAL REQUIRED FOR PERSONAL SERVICES CONTRACTS, BELOW.

10246

FOR CONTRACTS FOR PERSONAL SERVICES ONLY:

If you are disclosing a financial interest in a contract for personal services with a municipal agency, you must file the Certification below signed by the head of the contracting agency, and you must get approval of the exemption from the city council, board of aldermen, board of selectmen or town council.

CERTIFICATION BY HEAD OF CONTRACTING AGENCY

	INFORMATION ABOUT HEAD OF CONTRACTING AGENCY
Name:	Mark Hawke
Title/ Position	Mayor
Municipal Agency:	City of Gardner
Agency Address:	95 Pleasant Street, Gardner, MA 01440
Office Phone:	(978) 632-1490
	CERTIFICATION
	I have received a disclosure under G.L. c. 268A, § 20(b) from a municipal employee who seeks to provide personal services to my municipal agency, identified above. I certify that no employee of my agency is available to perform the services described above as part of his or her regular duties.
Signature:	
Date:	1/14/20

APPROVAL BY CITY COUNCIL, BOARD OF ALDERMEN, BOARD OF SELECTMEN OR TOWN COUNCIL

	INFORMATION ABOUT APPROVING BODY
Name:	James Walsh, Esq.
Title/ Position	President, Gardner City Council
Agency Address:	95 Pleasant Street Gardner, MA 01440
Office Phone:	(978) 630-4058
	APPROVAL
	I have received a disclosure under G.L. c. 268A, § 20(b) from a municipal employee who seeks to provide personal services to a municipal agency, identified above. The exemption under § 20(b) is approved.
Signature:	On behalf of the Council or Board, I sign this approval.
Date:	

Attach additional pages if necessary.
File disclosure, Certification and Approval with the city or town clerk.

10247

CITY OF GARDNER, Executive Department
James M. Walsh, Acting Mayor
95 Pleasant Street, Room 125
Gardner, MA 01440
1-978-630-1490

January 30, 2020

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

RE: Montachusett Vocational Technical School District Committee

Dear Mr. Clerk

It appears that the term of office for one of our Monty Tech School Committee members has expired.

I recommend that the Council schedule a joint convention of the Council and School Committee in order to fill in the position.

Please contact me if you have any questions.

Very truly yours,

James M. Walsh
Acting Mayor

10247

3rd AMENDMENT 1989
Appointive Method

This Amendment amends the agreement among the cities of Fitchburg and Gardner and the Towns of Ashburnham, Ashby, Athol, Barre, Harvard, Hubbardston, Lunenburg, Petersham, Phillipston, Princeton, Royalston, Sterling, Templeton, Westminster and Winchendon with respect to the establishment of the Montachusett Regional Vocational Technical School District pursuant to Chapter 568 of the Acts of 1964, as amended by Chapter 543 of the Acts of 1965 (the "Agreement") as follows:

A. Section I(A) - "Composition" shall be amended by Striking out said paragraph and inserting in lieu thereof the following: "The Committee shall consist of four members from the city of Fitchburg, two members from the city of Gardner, and one member from each of the member towns. Except as provided in subsection I(B), members shall be appointed (i) from the Cities of Fitchburg and Gardner by majority vote of the members of the Cities Council, Mayor, and School Committee, and (ii) from each town by majority vote of the members of the Board of Selectmen,Town Moderator, and local School Committee members. All members shall be residents of the municipalities they represent and they shall serve until their respective successors are appointed and qualified.

B. Section I(C) of the Agreement is stricken and the following language inserted in lieu thereof: "Within thirty days after the annual town meeting in each town and within thirty days after January 1st in each city, members of the Regional District School Committee shall be appointed for a term of four years as set forth in Section I(A)."

Within ten days after admission of any new municipality to the Montachussett Regional Vocational Technical School District, each such municipality shall appoint in accordance with subsection I(A) one member to serve on the committee until the municipality shall appoint a member as set forth in the preceding paragraph of this section.

Notwithstanding the foregoing, all members of the Committee elected to office under the terms of the Agreement as enacted July 1965 shall continue to serve until the expiration of their elected terms.

C. Section I(D) - "Vacancies" shall be amended by striking out said paragraph and inserting in lieu thereof the following:" Any vacancy occurring among the members of the Committee during appointed or elected term shall be filled by appointment in the manner set forth in subsection I(A) to serve for the balance of the unexpired term."

Ref: 10247

City of Gardner

Massachusetts

Certificate of Appointment

At a Joint Convention of the City Council and School Committee
held on the 19th day of January 2016

James S. Boone

was appointed

Gardner Representative
To the Montachusett Regional Vocational
Technical School District Committee

for the term expiring the 19th day of January in the Year Two Thousand Twenty. Said action taken in accordance with the provisions of Section 16(D) of the Montachusett Regional Vocational Technical School District Agreement.

Further in accordance with the provisions of Section 107 of Chapter 41 of the General Laws of Massachusetts **James S. Boone** was administered the Oath of Office for the faithful performance of duties on the 19th day of January in the Year Two Thousand Sixteen.

A true copy Attest:

Alan L. Agnelli
City Clerk

10248

GARDNER CONTRIBUTORY RETIREMENT SYSTEM

CITY HALL 95 PLEASANT ST. GARDNER, MA 01440-2691
PHONE 978-630-4006 • FAX 978-630-4012

RECEIVED
2020 JAN 29 PM 12:10
CITY CLERK'S OFFICE
GARDNER, MA

January 29, 2020

City of Gardner
City Council
City Hall
Gardner, MA 01440

RE: FY 2021 Cost of Living Adjustment (COLA)

Dear Councilors:

The Retirement Board wishes to notify you that a public meeting for the purpose of determining whether or not to grant a cost of living adjustment for the retirees and survivors receiving retirement benefits has been posted for March 26, 2020, at 3:35 P.M. in the Mayor's Conference Room, City Hall, Room 128.

The COLA, pursuant to Chapter 32, Section 103(c), will be 3.00%, effective July 1, 2020. The Social Security Administration's latest COLA is 1.6%. In accordance with Chapter 32, Section 103(i), the Board may elect a maximum 3.0% increase. The COLA is calculated on the first $13,000 of retirement allowance only.

If you have any questions, please contact the retirement board office.

Very truly yours,

Denise M. Merriam

Denise M. Merriam
Board Chairperson

cc: Acting Mayor J. Walsh
S. Mullins, GHA Director

10216

ORDINANCE

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

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

Section 1. Section 560-3 of the Code of the City of Gardner, is hereby amended by striking the sentence: "The annual fee for the collection and handling of rubbish, garbage, ashes and source-separated materials is set at $200 per apartment unit per building, effective July 1, 2013," and by inserting in place thereof, the sentence: "Effective July 1, 2020, the annual fee for the collection and handling of rubbish, garbage, ashes and source-separated materials is set at $230 per household and each unit of apartment buildings containing eight or fewer units in the City.

Section 2. Effective date.

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

10216

City of Gardner, *Executive Department*

Mark Hawke, Mayor

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

November 20, 2019

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

RE: Trash Fee Ordinance Change

Dear President Graves and Councilors,

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

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

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

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

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

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

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

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

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

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

Respectfully,

Mark Hawke
Mayor, City of Gardner

City of Gardner, MA
Monday, November 25, 2019

Chapter 560. Solid Waste

Article I. Collection and Disposal

§ 560-3. Solid waste collection program.

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

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

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

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

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

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

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

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

#1

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

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

#2

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

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

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

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

10207

CITY OF GARDNER

DEPARTMENT OF COMMUNITY DEVELOPMENT AND PLANNING

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

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

February 3, 2020

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

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

Dear President Walsh:

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

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

   Currently reads as:

   F. Corner clearance

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

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

   F. Corner clearance

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

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

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

F. Corner clearance

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

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

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

Currently reads as:

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

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

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

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

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

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

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

Sincerely,

Mark M. Schafron
Chairman

10207

ORDINANCE

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

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

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

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

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

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

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

10207

CITY OF GARDNER

DEPARTMENT OF COMMUNITY DEVELOPMENT AND PLANNING

November 4, 2019

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

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

Dear President Graves:

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

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

   Currently reads as:

   F. Corner clearance

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

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

   F. Corner clearance

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

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

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

10207

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

Currently reads as:

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

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

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

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

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

Sincerely,

Mark M. Schafron
Chairman

Cc: Mayor
Planning Board
Building Commissioner
City Engineer
Director DPW

/0207

City of Gardner

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

October 2, 2019

Dear Planning Board:

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

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

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

Respectfully,

Roland Jean Jr.

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

Mission Statement

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

10217

City of Gardner, MA
Thursday, November 14, 2019

Chapter 675. Zoning

Article VI. Density and Dimensional Regulations

§ 675-610. General requirements.

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

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

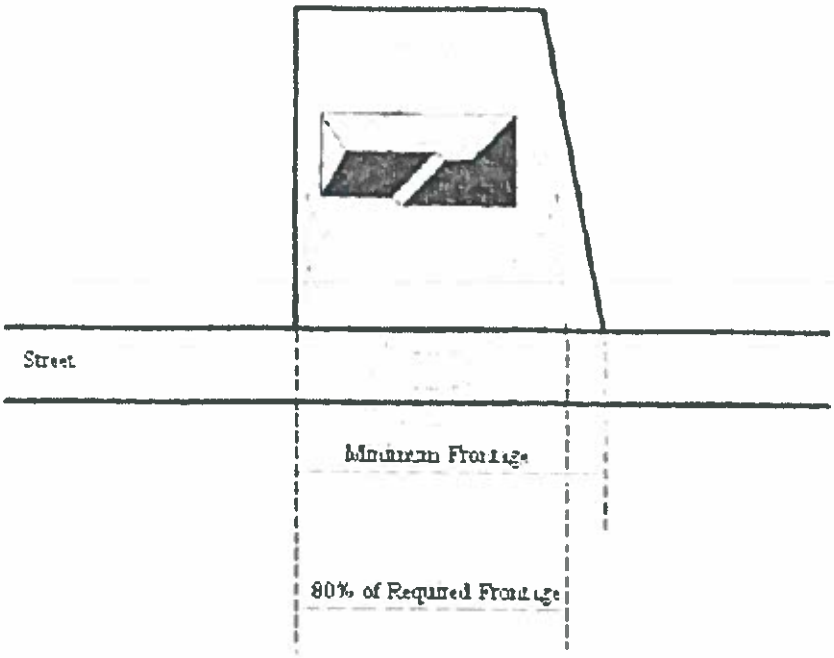
B. A lot or parcel of land having an area or a frontage of lesser amounts than required in the following schedule may be considered as coming within the area and frontage requirements of this section, provided that, at the time of building, such lot has an area of more than 5,000 square feet, has a frontage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

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

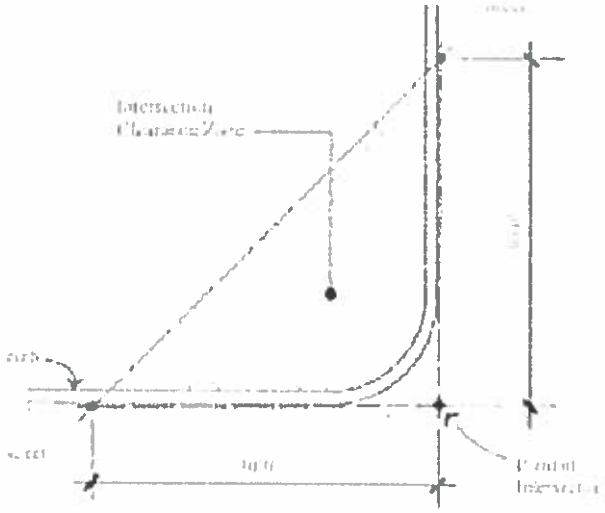
D. The limitation of height of buildings and structures in the following schedule shall not apply in any district to chimneys, ventilators, towers, spires, or other ornamental features of buildings, which features are in no way used for living purposes.

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

10207



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



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

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

§ 675-630. Infill development.

10207

City of Gardner, MA
Thursday, November 14, 2019

Chapter 675. Zoning

Article X. Supplemental Regulations

§ 675-1050. Fences and hedgerows.

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

10237

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CITY CLERK'S OFFICE
GARDNER, MA

§ 171-34. Police Officer

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

A. Regularly employed for one to four years shall be entitled to two weeks (14 calendar days).

B. Regularly employed from five to nine years shall be entitled to three weeks (21 calendar days).

C. Regularly employed from 10 to 14 years shall be entitled to four weeks (28 calendar days).

D. Regularly employed for over 15 years shall be entitled to 31 calendar days.

E. Employees shall have two consecutive days off with each five days of vacation. Each two-week vacation period shall consist of 10 paid vacation days and four regular days off. One vacation week shall consist of fi working days plus two days off.

§ 171-35. Firefighter

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

A. Regularly employed for one to four years shall be entitled to two weeks (14 calendar days).

B. Regularly employed from five to nine years shall be entitled to three weeks (21 calendar days).

C. Regularly employed from 10 to 14 years shall be entitled to four weeks (28 calendar days).

D. Regularly employed for 15 years or more shall be entitled to 31 calendar days.

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

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

A. Regularly employed for one to four years shall be entitled to two weeks or 10 working days.

B. Regularly employed from five to nine years shall be entitled to three weeks or 15 working days.

C. Regularly employed from 10 years to 14 years shall be entitled to four weeks or 20 working days.

D. Regularly employed for 15 years or more shall be entitled to fi weeks or 25 working days.

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

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

A. To be eligible a part-time worker must have worked 27 weeks in the aggregate during the 12 months preceding the fi day of June in each year and must meet the eligibility requirements of part-time employees as defined in Article XII, § 171-50A.

B. They shall be entitled to the same vacation increments as full- time employees as defined in § 171-36 based upon an eligible part-time employee's specific work hour schedule. One day will be equivalent to the total number of hours worked per week divided by five days (i.e., one day for 25 hours per week will be equivalent to five hours).

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

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

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

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

First day of Employment	*Number of Vacation Days*
January 1 to April 30	*15*
May 1 to August 31	*10*
September 1 to December 31	*5*

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

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

§ 171-39. Determination of regular employment.

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

§ 171-40. New employees.

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

§ 171-41. Accumulation of vacation time.

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

§ 171-42. Minimum increments.

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

§ 171-43. Payment for accumulated vacation time.

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

10238

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2020 JAN -8 AM 10:47
CITY CLERK'S OFFICE
GARDNER, MA

§ 171-53. Vacation.

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

(1) Employed for one to four years shall be entitled to two weeks (14 calendar days).

(2) Regularly employed five to nine years shall be entitled to three weeks (21 calendar days).

(3) Regularly employed 10 to 14 years shall be entitled to four weeks (28 calendar days).

(4) Regularly employed for over 15 years shall be entitled to 31 calendar days.

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

(1) Employed for one to ~~nine~~ ***four*** years of regular employment shall be entitled to three weeks or 15 working days.

(2) Regularly employed from ~~10~~ ***five*** years to ~~14~~ fourteen years shall be entitled to four weeks or 20 working days.

(3) Regularly employed ~~15~~ fifteen years to nineteen years ~~or more years~~ shall be entitled to five weeks or 25 working days.

(4) Regularly employment for twenty or more years shall be entitled to 6 weeks or thirty working days.

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

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

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

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

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

Alan Agnelli

10240

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

Alan,

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

Thank you,
Jeff

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

10240

RESOLUTION

FY 2020 COMMUNITY DEVELOPMENT BLOCK GRANT
Mini-Entitlement Plan

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

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

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

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

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

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

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

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

FY2018 – FY2021 COMMUNITY DEVELOPMENT STRATEGY

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

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

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

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

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

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

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

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

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

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

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

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

10240

FY2018 – FY2021 COMMUNITY DEVELOPMENT STRATEGY
PRIORITY LIST

1. Reconstruct or alter streets, sidewalks, and public buildings to allow for handicap accessibility and to encourage pedestrian travel. – Year 1-3. Additional funding potential through the Complete Streets program as well as local City funding.

2. Upgrade existing infrastructure, particularly in the Downtown Urban Renewal Area and Mill Street Corridor Urban Renewal Area. Year 1-3.

3. Apply Complete Streets Standards to Target Areas, Timpany Boulevard Corridor, and safe route to school areas to accommodate all modes of travel and help facilitate economic growth. Year 1-3. See above.

4. Apply appropriate "Smart Parking" standards and strategies and increase availability of parking in the Downtown Urban Renewal Area. Year 1-3.

5. Implement the approved Downtown and Mill Street Corridor Urban Renewal Plans. Years 1-3.

6. Restore, enhance, build and support diverse recreational facilities and/or activities. Year 2/3. Additional funds through Trails Grant and other recreational sources.

7. Implement the Open Space and Recreation Plan including, but not limited to, acquiring, protecting, and maintaining open space and environmentally sensitive lands. Years 1-3. See #6.

8. Support and expand economic security and self-sufficiency programs. Year 1-3

9. Work cooperatively with all area for-profit, non-profit and service agencies to implement the CDS. Years 1-3.

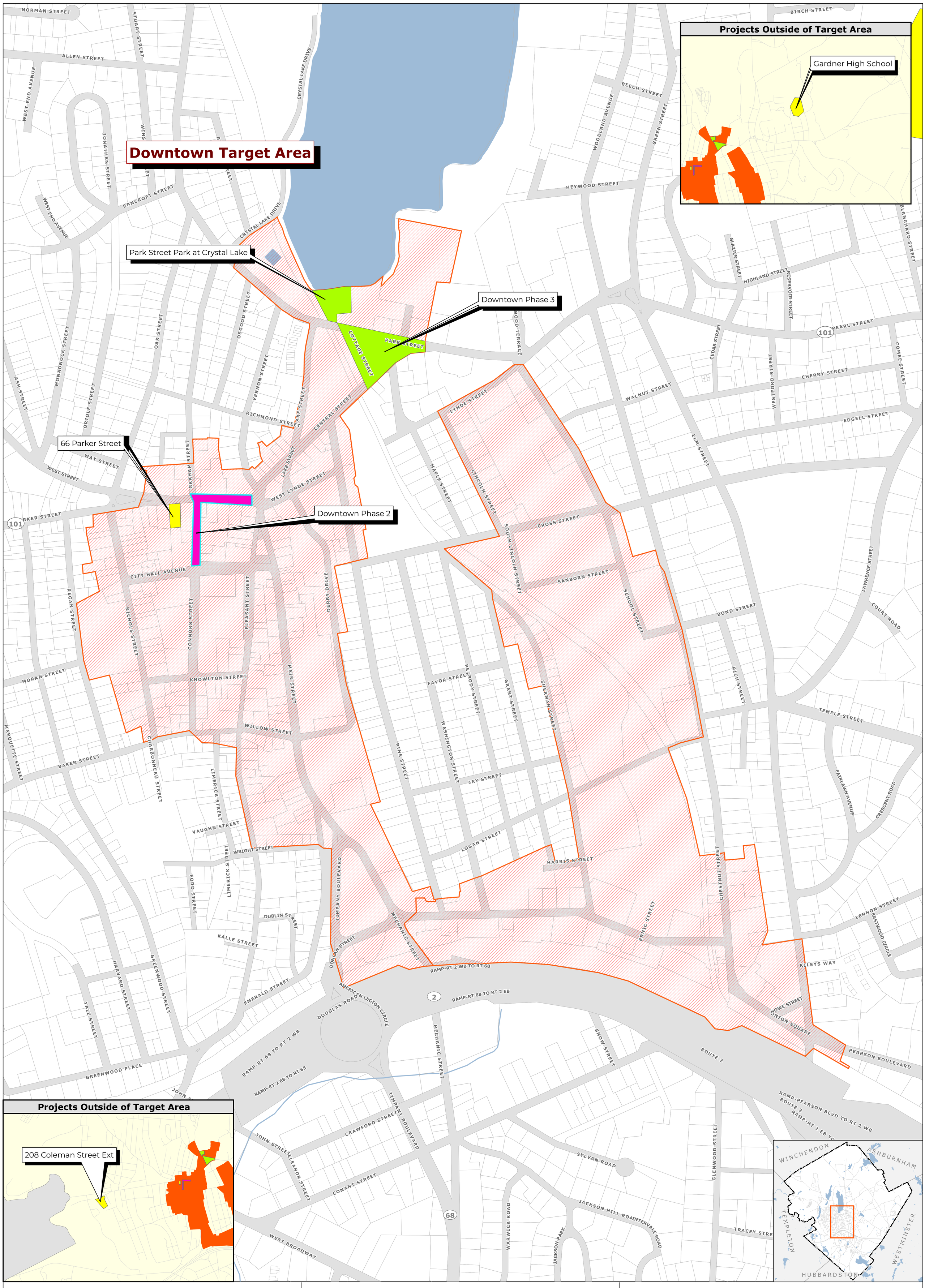
10. Selectively demolish buildings that are beyond reuse in the Target Area. Year 2

11. Rehabilitate dilapidated buildings within the Target Area (Downtown Urban Renewal Area and Mill Street Corridor Urban Renewal Area). Year 1-3

12. Attract and assist businesses opening in, relocating to, or already existing in, Gardner. Years 1-3.

13. Redevelop vacant or underutilized land and buildings, particularly in the Urban Renewal Areas. Year 3.

14. Rehabilitate non-code compliant, and/or construction of, affordable single and multi-family homes.



Legend

- Downtown Target Area
- Surface Water
- Streams
- Town Boundary

2020 Project Types

Project

- Design Project
- Construction
- Public Social Services

2020 CDBG APPLICATION

TARGET AREA AND PROJECTS

CITY OF GARDNER

95 Pleasant Street
Gardner, MA 01440

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

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

Data Sources

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

0 250 500 Feet

G:\Projects\CDBG\CDBG\CDBG.aprx 1/9/2020