

PRESIDENT
Elizabeth J. Kazinskas
COUNCILLORS AT LARGE
James S. Boone
Craig R. Cormier
Ronald F. Cormier
Scott Joseph Graves, Esq.
Judy A. Mack
George C. Tyros

CITY OF GARDNER
MASSACHUSETTS 01440-2630

OFFICE OF THE
CITY COUNCIL



WARD 1 COUNCILLOR
James M. Walsh, Esq.

WARD 2 COUNCILLOR
Elizabeth J. Kazinskas

WARD 3 COUNCILLOR
Nathan R. Boudreau

WARD 4 COUNCILLOR
Karen G. Hardern

WARD 5 COUNCILLOR
Alek Dernalowicz, Esq.

April 13, 2020

FINANCE COMMITTEE MEETING NOTICE

Date: Wednesday, April 15, 2020
Time: 12:00 P.M.
Location: Remotely*

ANNOUNCEMENT - 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 referenced or used during the meeting must be submitted in duplicate to the Chair, pursuant to the Open Meeting and Public Records Law. All documents shall become part of the official record of the meeting.

SCHEDULE OF BUSINESS
(Agenda attached)

1. Acceptance/Corrections to Minutes of Prior Meeting(s).
2. Budget and Orders (Money orders, loan orders, revolving funds, other financial).
3. Appointments, vacancies and other personnel matters.
4. Ordinances and Acceptance of General Laws and Special Acts.
5. Authorizations Required by Statute (Contracts, Election Orders, Grants, etc.).
6. Land Acceptance, Disposal, Easements, etc.
7. Claims, Legal, Rules and Salaries.
8. Departmental Management and organizational matters.
9. Report from the Mayor on the State of the City.

NOTICE: The listing of Agenda items are those reasonably anticipated by the Chairman which may 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 COUNCIL OF GARDNER
Elizabeth J. Kazinskas
ELIZABETH J. KAZINSKAS
Chair, Finance Committee

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

**CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE MEETING
Wednesday – April 15, 2020 – 12:00 PM
*Remotely***

AGENDA

CALL TO ORDER

ANNOUNCEMENT OF OPEN MEETING RECORDINGS

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

- 1-1 Review and Approval of the April 1, 2020 Regular Meeting Minutes.

- 2-1 #10250, An Order Appropriating \$52,788.00 from Free Cash to FY2019 Firefighters Salary and Wages Account *(In City Council and Referred to Finance, 3/2/2020).*

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

- 4-1 A Measure Adopting Various Provisions of Chapter 53 of the Acts of 2020.

- 5-1 A Measure Discontinuing Use of AccuVote ES2000 Optical Scan Tabulators and Implementing use of ImageCast® Precinct Optical Tabulators, effective for the September 1, 2020 State Primary.

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

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

ADJOURNMENT

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

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF APRIL 1, 2020

The Finance Committee meeting was called to order by Council President James Walsh at 12:00 p.m. in the City Council Chamber, Room 219, City Hall. Finance Committee Members Councillors Ronald Cormier and Elizabeth Kazinskas participated remotely.

Others participating were City Auditor John Richard and City Clerk Alan Agnelli, who were present in the Chamber.

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

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

No one responded.

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

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, on call of the roll, it was voted to approve the Minutes of the March 11, 2020 Regular Meeting, as printed.

2-1 #10250, An Order Appropriating \$52,788.00 from Free Cash to FY2019 Firefighters Salary and Wages Account (In City Council and Referred to Finance, 3/2/2020).

President Walsh stated that the Order covers the cost of the proposed contract with the Firefighter's Union for FY2019, but that the Contract has not been signed by the City. He said that at his request as Acting Mayor, the Law Department has commenced legal proceedings in the Worcester Superior Court to determine whether he, as Acting Mayor and the limitations associated with that under the City Charter, has the authority to enter the Agreement on behalf of the City. He said that there is a significant slowdown in the judiciary due to the pandemic, particularly on the civil side, so it is unclear when the determination will be made. He noted that there was a submission of correspondence from Matt Bettez on behalf of the Union and from the former Mayor. Given the fact that the contract is unsigned, even if this Order was passed, it wouldn't be distributed because the contract is unsigned. He recommended that the Committee ask for more time

Councillor Ronald Cormier agreed that any recommendation by the Committee should wait until the City hears from the Court. Councillor Kazinskas concurred.

The Committee agreed to request more time on the following Order:

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

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF APRIL 1, 2020

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

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

President Walsh said that in his role as Acting Mayor, he received correspondence from the Auditor noting an error in the computation for FY2020 FF wages. In his capacity as Acting Mayor, he submitted a substitute Order to the Finance Committee and Council with the corrected amount.

City Auditor John Richard stated that in the first computation, only 2% was used to compute FY2020 wages, as opposed to 4%, which should have incorporated the 2% from FY2019 and another 2% for FY2020. The recomputed amount is now \$113,159.74.

President Walsh noted that when the matter comes before the Council, the substitute Order would be taken up, since the Order presently before the Council is inaccurate.

The Committee agreed to request more time on the Substitute Order:

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

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

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

President Walsh stated that Items 6-1 and 6-2 are not pending before the City Council, but only with the Finance Committee.

The Committee postponed action until Attorney Phillips completes her research.

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

President Walsh stated that Atty. Phillips communicated with him on March 25 and advised that Heywood Hospital Win Brown informed her that Heywood would indemnify the City against costs to Massachusetts Electric (MECO) up to a very reasonable dollar limit and that she would reach out again to MECO.

The Committee postponed action until Attorney Phillips completes her research.

NEW BUSINESS

A Ruling from the Attorney General Relative to an Open Meeting Law Complaint.

Citing Assistant Attorney General Elizabeth Carnes Flynn Ruling of March 13, 2020, concerning an Open Meeting Law Complaint previously filed, President Walsh read aloud the Conclusion from the Ruling, as follows:

“For the reasons stated above, we find the Council violated the Open Meeting Law by improperly deliberating via email on September 4. We order immediate and future compliance with the Open Meeting Law, and caution that similar violations in the future may be considered evidence of intent to violate the Law. 940 CMR 29.02. We also order that the Council release the September 4 email referenced in this letter to the public within 30 days following its receipt of this determination.”

President Walsh said that the Ruling would appear on the Council’s April 6, 2020 Calendar.

Continuing, President Walsh stated that he communicated with Attorney Flynn and questioned the method by which release of the e-mail to the public would satisfy the ruling. He said that she indicated that releasing it by including it with the Minutes, would constitute sufficient release to the public, as it would be available upon request and posted on the City’s website. He suggested that the Committee recommend that the Council vote to place the communication on file and that former Councillor Christine Johnson’s September 4, 2019 e-mail be included in the Minutes of the April 6, 2020 Meeting.

Councillor Ronald Cormier requested that a motion be drafted by the City Clerk for presentation by the Finance Committee at Monday’s meeting.

ADJOURNMENT

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, on call of the roll, it was voted to adjourn at 12:14 p.m.

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

ORDERED:

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

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

ORDERED:

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

REVISED



CITY of GARDNER

Office of the City Auditor

John Richard, City Auditor

95 Pleasant Street, Room 114

Gardner, MA 01440

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

Email: jrichard@gardner-ma.gov

Date: 03/19/2020

To: Acting Mayor James M. Walsh

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

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

Sincerely

John Richard
City Auditor

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

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

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

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

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

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

ESTIMATE FY20 FIREFIGHTS RETO PAY	
TOTAL	\$ 113,159.74

10250-10251

City of Gardner, *Executive Department*

James M. Walsh, Acting Mayor

RECEIVED



2020 FEB 26 PM 2:57

CITY CLERK'S OFFICE
GARDNER, MA

February 26, 2020

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

RE: *Firefighters Contract Funding*

Dear Council Members,

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

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

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

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

Very truly yours,

James M. Walsh
Acting Mayor

City of Gardner, *Executive Department*



James M. Walsh, Acting Mayor

February 24, 2020

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

Good Morning,

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

1. As I understand it, the proposed contract covers the period from July 1, 2018 through June 30, 2021. Please provide me with a history of contract negotiations. Please also include a summary of any material changes from the existing contract, and of any state agency involvement and the binding effect, if any, of that involvement. I'd also appreciate a listing of all participants in each negotiating team.
2. As you know, as Acting Mayor, my authority is limited to matters "not admitting of delay". Please provide any factual basis which would justify my execution of this contract rather than deferring it to evaluation and consideration by the newly elected Mayor in mid-May 2020.

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

Thank you for your prompt consideration of this request.

Very truly yours,

James M. Walsh
Acting Mayor

JMW/rjs

cc: John Richard

2-1-2-2

CITY OF GARDNER LAW DEPARTMENT

John M. Flick
City Solicitor

Priya Gandbhir
Assistant City Solicitor

March 2, 2020



Writer's Email:

144 Central Street, Suite 201
Gardner, MA 01440

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

VIA HAND DELIVERY

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



Re: Fire Department Negotiations Timeline:

Dear Acting Mayor Walsh:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Cases might arise where it would be apparent as matter of law upon the face of the papers that the approval of the order was ‘a matter not admitting of delay.’ Such an inference might be drawn respecting a warrant for an election or an appropriation of money to be used for a Fourth of July celebration or a corporate anniversary, or like orders where time appears to be of the essence of the subject.” *Id.* at 167.

“Appropriations necessary for immediate payment of fixed charges of various municipal departments would come within this rule.” *Id.*

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

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

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

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

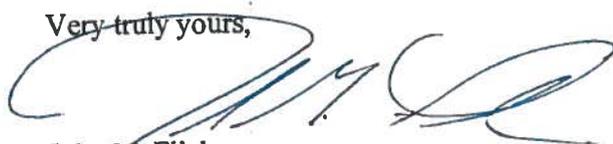
When considering the fact that the final terms of the CBA were negotiated during a protracted mediation process with the Joint Labor Management Commission, involved Mayor Hawke, and ultimately resulted in a signed MOA during Mayor Hawke's term of office, supports a conclusion that Mayor Hawke would have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

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

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

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

Very truly yours,

A handwritten signature in blue ink, appearing to read "John M. Flick", written over a circular stamp or seal.

John M. Flick

Cc: Debra Pond, Human Resources

ADOPTING VARIOUS PROVISIONS OF
CHAPTER 53 OF THE ACTS OF 2020

VOTED:

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

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

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

4-1

Alan Agnelli

From: Jennifer Dymek
Sent: Thursday, April 9, 2020 12:44 PM
To: John Flick
Cc: Dane Arnold; Susan Byrne; John Richard; Mayor; Alan Agnelli
Subject: City Council Vote
Attachments: BUL-2020-2 .pdf

Hi John,

As you probably know, the State has adopted some new legislation with regard to COVID-19. From what I've read, these new policies (all or in part), need to be adopted at the local level.

In simple terms, under Section 10 of Chapter 53 of the Acts of 2020, we would need to extend the due date of Real Estate and Personal Property taxes from May 1 to June 1.

Section 11, of that same Chapter, allows us to waive penalties and fines for excise taxes, water, sewer, and trash payments, for invoices that have a due date of March 10 or later, provided the bill is paid no later than June 30. There is also a provision that services cannot be terminated, if it can be demonstrated that the inability to pay is COVID-19 related.

There is a gray area about the penalties and fines on RE and PP taxes. Some communities believe that residents can pay up to June 30, interest free. That logic defeats the purpose of giving a June 1 due date. I think interest should begin accruing on RE and PP taxes if the June 1 deadline is missed. To my knowledge, banks will still submit payments for their mortgage holders by the May 1 deadline.

There are also other areas that we may want to consider adding to a vote (dog licenses comes to mind).

If this needs to be approved by the City Council, I'd like to get it on the agenda for the next Finance Committee meeting on Wednesday. There may be a loophole that would allow the Mayor to make the decision to adopt, but I'm not sure it's appropriate based on our current situation.

Would you be able to offer your interpretation of this law and advise us on the correct vote language?

I look forward to hearing from you.

Thanks,
Jen

*Jennifer Dymek
Treasurer/Collector
City of Gardner
95 Pleasant Street, Room 118
Gardner, MA 01440
978-630-4016
jdymek@gardner-ma.gov
www.gardner-ma.gov*

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4-1

Alan Agnelli

From: Susan Byrne
Sent: Thursday, April 9, 2020 1:03 PM
To: Jennifer Dymek; John Flick
Cc: Dane Arnold; John Richard; Mayor; Alan Agnelli
Subject: RE: City Council Vote

Just a note on the part VII section B – (the only one that affects my department) my opinion – does not need to be included in the vote. All the elderly and veterans who qualify have already received their exemptions for this year.

Sue
Susan Byrne, MAA
City Assessor, Gardner
978-632-1900x8034

From: Jennifer Dymek <jdymek@gardner-ma.gov>
Sent: Thursday, April 9, 2020 12:44 PM
To: John Flick <jflick@flicklawgroup.com>
Cc: Dane Arnold <darnold@gardner-ma.gov>; Susan Byrne <sbyrne@gardner-ma.gov>; John Richard <jrichard@gardner-ma.gov>; Mayor <Mayor@gardner-ma.gov>; Alan Agnelli <aagnelli@gardner-ma.gov>
Subject: City Council Vote

Hi John,

As you probably know, the State has adopted some new legislation with regard to COVID-19. From what I've read, these new policies (all or in part), need to be adopted at the local level.

In simple terms, under Section 10 of Chapter 53 of the Acts of 2020, we would need to extend the due date of Real Estate and Personal Property taxes from May 1 to June 1.

Section 11, of that same Chapter, allows us to waive penalties and fines for excise taxes, water, sewer, and trash payments, for invoices that have a due date of March 10 or later, provided the bill is paid no later than June 30. There is also a provision that services cannot be terminated, if it can be demonstrated that the inability to pay is COVID-19 related.

There is a gray area about the penalties and fines on RE and PP taxes. Some communities believe that residents can pay up to June 30, interest free. That logic defeats the purpose of giving a June 1 due date. I think interest should begin accruing on RE and PP taxes if the June 1 deadline is missed. To my knowledge, banks will still submit payments for their mortgage holders by the May 1 deadline.

There are also other areas that we may want to consider adding to a vote (dog licenses comes to mind).

If this needs to be approved by the City Council, I'd like to get it on the agenda for the next Finance Committee meeting on Wednesday. There may be a loophole that would allow the Mayor to make the decision to adopt, but I'm not sure it's appropriate based on our current situation.

Would you be able to offer your interpretation of this law and advise us on the correct vote language?

I look forward to hearing from you.

Thanks,
Jen

*Jennifer Dymek
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Alan Agnelli

From: John Flick <jflick@flicklawgroup.com>
Sent: Friday, April 10, 2020 10:50 AM
To: Jennifer Dymek
Cc: Mayor; Alan Agnelli
Subject: RE: City Council Vote

Jen,

The votes should read:

1. The City of Gardner hereby adopts Section 10(a)(i-iii) of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to extend the due dates of property tax bills from May 1, 2020 to no later than June 1, 2020.
2. The City of Gardner hereby adopts Section 10(a)(iv) of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to extend the due date for exemptions filed in accordance with M.G.L. c. 59, sec. 59 from April 1, 2020 to no later than June 1, 2020.
3. The City of Gardner hereby adopts Section 11 of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to waive interest and other penalties for late payments of any excise, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to a tax for any payments with a due date on or after March 10, 2020 where payment is made after its respective due date but before June 30, 2020.

I think this is all we need. I will prepare a separate letter providing the basis for legal authority for the Acting Mayor to exercise these authorities upon acceptance by the City Council.

Regards,
John

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

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From: Jennifer Dymek <jdymek@gardner-ma.gov>
Sent: Friday, April 10, 2020 10:27 AM
To: John Flick <jflick@flicklawgroup.com>
Subject: City Council Vote

<="" span="">

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Hi John,

I spoke with Alan and he indicated that he would need some language for the vote.

Is this appropriate (short and simple)?

Under "An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19," Chapter 52 of the Acts of 2020, the following local options should be adopted.

1. The due date of real and personal property taxes will be extended to June 1, 2020. Interest will begin to accrue if payment is not made by June 1, 2020 (Chapter 53, Section 10b).
2. The City of Gardner will waive interest and other penalties for late payment of any excise, water, sewer, and/or trash bill, with a **due date on or after March 10, 2020**, where payment is made late but before June 30.

Thanks,
Jen

Jennifer Dymek
Treasurer/Collector
City of Gardner
95 Pleasant Street, Room 118
Gardner, MA 01440
978-630-4016
jdymek@gardner-ma.gov
www.gardner-ma.gov

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4-1

CITY OF GARDNER LAW DEPARTMENT

John M. Flick
City Solicitor

Priya Gandbhir
Assistant City Solicitor



144 Central Street, Suite 201
Gardner, MA 01440

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

Writer's Email:

April 10, 2020

**VIA FIRST CLASS MAIL
AND ELECTRONIC DELIVERY**

Elizabeth Kazinskas, Council President
City of Gardner
95 Pleasant Street
Gardner, MA 01440

Re: Acting Mayor Authority as Chief Executive Officer

Dear President Kazinskas:

As you know, Governor Baker recently signed Chapter 53 of the Acts of 2020. Part of the purpose of this Act is to grant local municipalities, through their respective chief executive officers, to provide some relief from timely payments of taxes and other municipal fees. These statutory allowances require local acceptance and the Treasurer is submitting the appropriate request for adoption of these local option statutes. The proposed language for adoption is as follows:

1. The City of Gardner hereby adopts Section 10(a)(i-iii) of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to extend the due dates of property tax bills from May 1, 2020 to no later than June 1, 2020.
2. The City of Gardner hereby adopts Section 10(a)(iv) of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to extend the due date for exemptions filed in accordance with M.G.L. c. 59, sec. 59 from April 1, 2020 to no later than June 1, 2020.
3. The City of Gardner hereby adopts Section 11 of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to waive interest and other penalties for late payments of any excise, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to a tax for any payments with a due date on or after March 10, 2020 where payment is made after its respective due date but before June 30, 2020.

Upon adoption by the City, the authority set forth in the statute is given to its Chief Executive Officer. As the Acting Mayor, and given that the authorities granted by the local adoption legislation can only be exercised during a limited period of time, i.e. April 1, 2020 through June

1, 2020, it is my legal opinion that you, as Acting Mayor, have the legal authority to consider and act on any requests which may be forthcoming to the City pursuant to these local option statutes.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John M. Flick', written over a circular stamp or seal that is mostly illegible.

John M. Flick



Bulletin

BUL-2020-02

An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19

TO: Local Officials
FROM: Patricia Hunt, Chief, Bureau of Municipal Finance Law
DATE: April 3, 2020
SUBJECT: **An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19**

This Bulletin provides guidance to local officials regarding changes in municipal finance laws included in [An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19, Chapter 53 of the Acts of 2020](#), (the Act). Unless otherwise noted below, these changes became effective on April 3, 2020, upon Governor Baker’s signing the Act into law.

I. Town Meeting Delays

A. Power of Boards of Selectmen and Town Councils to Delay Annual Town Meeting

Section 1 of the Act - Before its amendment, [G.L. c. 39, § 9](#) provided that an annual town meeting must take place during the months of February, March, April, May or June; however, a board of selectmen or town council, by vote, could delay the annual town meeting as long as the town meeting completed its business on or before June 30th. Section 1 adds the following exception to the June 30th deadline “in the event of an emergency that poses an immediate threat to the health or safety of persons or property that prevents the completion of the business of the delayed town meeting on or before June 30 if the governor has declared a state of emergency with respect to such emergency.”

This exception is available, if necessary, to towns that must delay their town meetings beyond June 30, 2020 due to the COVID-19 outbreak and the declaration of a state of emergency by the governor. Towns are advised to consult with their local counsel regarding the form of vote. See Section I-B of this Bulletin for recess and continuation of town meetings by a town moderator where the town meeting warrant has already been issued.

B. Power of Moderator to Continue Scheduled Town Meetings in Event of Public Health Emergency (Application to Districts)

Sections 2 through 4 of the Act - These sections amend [G.L. c. 39, § 10A](#) by adding “public health” emergencies as a reason for a moderator to recess and continue town meetings already scheduled by warrant. Prior to the amendment, section 10A applied to weather-related and public safety emergencies. Under the amended section 10A, during and for a period of five days after a weather-related, public safety or public health emergency, a town moderator may, in consultation with public safety or public health officials and the board of selectmen, declare a recess and continuance of the town meeting to another time, date and place certain; however, the continuance is limited to a period of 30 days. There are notice, posting and other requirements regarding the time, date and place of the recessed and continued meeting. Additionally, within 10 days after the initial declaration by the moderator of recess and continuance, a local public safety or public health official designated by the board of selectmen must submit a report to the Attorney General providing the justification for the moderation’s continuance.

These amendments also clarify that a moderator may invoke section 10A more than once to recess and continue a town meeting during the same emergency; however, each continuance period must not exceed 30 days and the moderator may not continue the meeting more than 30 days after the rescission of the declaration of emergency by the governor. Additionally, if a town does not have a moderator, the board of selectmen may recess and continue the town meeting under the amended section 10A.

Under [G.L. c. 41, § 119](#) and [c. 48, § 66](#) (fire districts only), the moderator of a district meeting has the powers of a moderator of a town meeting. As a result, a district moderator may recess and continue scheduled district meetings under [G.L. c. 39, § 10A](#). For purposes of section 119, a district means a fire, water, sewer, water pollution abatement, refuse disposal, light, or improvement district, or any other district formed for the purpose of carrying out any of these functions, whether established under general law or special act. [G.L. c. 41, § 1A](#).

Because several town moderators had already invoked Section 10A to recess and continue a scheduled town meeting due to the outbreak of COVID-19, the amendments to section 10A were made retroactive to March 10, 2020. (See Section 19 of the Act.)

II. Emergency Liabilities in Excess of Appropriation if the COVID-19 Emergency Prevents the Adoption of an Annual Budget

Section 5 of the Act - Under [G.L. c. 44, § 31](#), no department financed by municipal revenue, or in whole or in part by taxation, of any city, town or special purpose district, except Boston, may incur liabilities in excess of appropriation “except in cases of major disaster, including, but not limited to, flood, drought, fire, hurricane, earthquake, storm or other catastrophe, whether natural or otherwise, which poses an immediate threat to the health or safety of persons or property, and then only upon a declaration by the governor of a state of emergency with respect to the disaster ...” On March 10, 2020, the Governor declared a state of emergency regarding COVID-19. As a result, cities, towns and special purpose districts may, with the approval of the Director of Accounts (director) of the Division of Local Services (DLS), expend from any available funds in the treasury in relation to the emergency without an appropriation by following the procedure described in [Bulletin 2020-1](#).

Section 5 amends [G.L. c. 44, § 31](#) by inserting the following:

If the declared emergency prevents the adoption of an annual budget by a town or district by the June 30 preceding the start of the fiscal year, the board of selectmen, town council or district commissioners shall notify the director and the director may approve expenditures, from any appropriate fund or account, of an amount sufficient for the operations of the town or district during the month of July not less than 1/12 of the total budget approved by the town or district in the most recent fiscal year pursuant to a plan approved by the board of selectmen, town council or district commissioners and such authority shall continue for each successive month while the emergency continues to prevent the adoption of a budget. The director may promulgate and revise rules or regulations regarding the approval of emergency expenditures described in this section and accounting with regard to such expenditures.

This amendment will allow deficit spending, with the approval of the director, on a month-to-month basis in fiscal year 2021 if the town or district was prevented from adopting a budget for fiscal year 2021 due to Governor Baker's Declaration of Emergency issued on March 10, 2020. Additional guidance will be issued by the director, like that contained in [Bulletin 2020-01](#), that will explain the procedure to follow to obtain the director's approval to deficit spend under this provision.

III. Director's Authority to Allow Appropriations after June 30, 2020 from Free Cash Certified as of July 1, 2019

Section 6 of the Act provides:

"...[I]f the adoption of an annual budget in a city, town or district is delayed beyond June 30, 2020, as a result of the governor's March 10, 2020 declaration of a state of emergency or the outbreak of the 2019 novel coronavirus, also known as COVID-19, the director of accounts of the department of revenue may authorize the appropriation from the available balance of the city's, town's or district's undesignated fund balance or "free cash" certified by the director under section 23 of chapter 59 of the General Laws as of July 1, 2019, as a funding source for the city's, town's or district's fiscal year 2021 expenditures, including, but not limited to any such undesignated fund balance in an enterprise fund or special revenue account...."

Ordinarily, under [G.L. c. 59, § 23](#), appropriations from certified free cash may only be made until the June 30th following its July 1 certification date. As a result, free cash certified by the director as of July 1, 2019 is available for appropriation only up to and including June 30, 2020. This section allows the director to authorize the appropriation from free cash certified as of July 1, 2019 after June 30, 2020 where the city, town or district has been prevented from adopting its FY 2021 annual budget by June 30, 2020 due to the Governor's March 10, 2020 declaration of a state of emergency or the outbreak of the 2019 novel coronavirus. Once a city, town or district can meet and adopt its FY 2021 budget, this section will allow the director to permit appropriations from free cash certified as of July 1, 2019 as a funding source for its FY 2021 expenditures. Pursuant to Section 6, the director will issue additional guidance regarding the implementation of this provision.

IV. Amortization of Deficit Resulting from COVID-19 Over a Three-year Period

Section 7 of the Act - Under [G.L. c. 44, § 31](#), deficit expenditures not otherwise provided for must be funded in full when setting the tax rate for the next fiscal year. Section 7 of the Act permits the amortization over a three-year period of the amount of a city, town or district's fiscal year 2020 deficit resulting from the outbreak of the 2019 novel coronavirus also known as COVID-19, as described in the governor's March 10, 2020 declaration of a state of emergency. This applies to both expenditure deficits and revenue deficits related to the emergency. Examples of revenue deficits that could result from the emergency are reduced meals tax and room occupancy revenues. This legislation is similar to [St. 2015, c. 10, § 58](#) which, due to the extreme snow removal costs incurred the previous winter, permitted amortization of snow and ice expenditure deficits over three years. Again, the director will issue additional guidance on the implementation of this section.

V. Continuation of Expenditure Authorization for Departmental Revolving Funds under [G.L. c. 44, § 53 E ½](#) in FY 2021

Section 8 of the Act - Under [G.L. c. 44, § 53 E ½](#), a city or town may authorize by bylaw or ordinance one or more revolving funds and must annually before July 1 vote the limit on the total amount that may be expended from each revolving account. Section 8 of the Act allows the continued expenditure in FY 2021 from these departmental revolving funds at the same level of expenditure authorized by the city or town for FY 2020 until the city or town adopts its FY 2021 annual budget at which time the legislative body of the city or town must adopt the FY 2021 expenditure limits for each departmental revolving fund.

VI. Suspension of Time Period for Cities and Towns to Exercise Right of First Refusal to Purchase Lands Classified under G.L. c. 61, 61A and 61B

Section 9 of the Act - Section 9 suspends the time periods that require a city or town to "act, respond, effectuate or exercise an option to purchase" under [G.L. c. 61, § 8](#), [c. 61A, § 14](#) and [c. 61 B, § 9](#). The suspension is during and for a period of 90 days after the termination of the governor's March 10, 2020 declaration of a state of emergency. If a city or town receives notice of intent to convert or sell classified land during this period, we advise that local counsel be contacted for advice.

VII. Due Dates of Real and Personal Property Tax Bills and Applications for Exemptions and Waiver of Interest on Certain Late Payments

Sections 10 and 11 of the Act include several provisions regarding local tax bills.

A. Local Option to extend the Due Dates of Property Tax Bills

Sections 10(a)(i-iii) include a local option to extend the due dates of property tax bills under [G.L. c. 59, §§ 57](#) and [57C](#) from April 1, 2020 (for semi-annual billing communities with annual

preliminary bills) or May 1, 2020 to a date not later than June 1, 2020. This local option applies to semi-annual tax billing communities and quarterly tax billing communities. The local option is exercised by the chief executive officer of a city, town or district. The chief executive officer is a mayor in a city and the board of selectmen in a town unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter. In a district, the chief executive officer is the prudential committee or commissioners.

B. Local Option to Extend the Due Date for Exemption and Deferral Applications

Section 10(a)(iv) includes a local option to extend the due date under [G.L. c. 59, § 59](#) for applications for exemptions from April 1, 2020 to a date not later than June 1, 2020. This due date extension, if exercised, will automatically apply to deferrals under [G.L. c. 59, § 5\[18A\] and \[41A\]](#), residential exemptions under [G.L. c. 59, § 5C](#) and small commercial exemptions under [G.L. c. 59, § 5I](#). This second local option is exercised in the same manner described in Section VII-A of this Bulletin.

C. Local Option to Waive Interest on Certain Payments Made After Due Dates

Section 11 includes a local option to waive interest and other penalty for late payment of any excise, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to a tax for any payments with a due date on or after March 10, 2020 where payment is made after its respective due date but before June 30, 2020. This third local option is also exercised in the same manner described in Section VII-A of this Bulletin.

This section allows the waiver of interest and penalties regarding late payments of bills with a due date of March 10, 2020 or after, when such bills are paid late but paid on or before June 30, 2020. This section does not permit waiver of interest and penalties regarding bills with due dates before March 10, 2020 or if the bill is not paid by June 30, 2020.

Section 11 also provides that a city or town shall not terminate an essential service of a resident, including but not limited to, water, trash collection or electricity, for nonpayment of taxes or fees with due dates on or after March 10, 2020 if paid on or before June 30, 2020, if the inability to pay resulted from circumstances related to the outbreak of COVID-19 or the governor's March 10, 2020 declaration of a state of emergency.

D. Clarification of Due Dates When Municipal Office is Closed Due to COVID-19

Section 10(b) - Under [G.L. c. 59, §§ 57, 57C](#) and [59](#), there is an automatic extension of due dates for tax payments and applications for exemptions when a municipal office is closed for a weather-related or other public safety emergency until the next day that the municipal office is open. Section 10(b) of the Act clarifies that these automatic extensions do not apply if municipal offices are closed as a result of the outbreak of the 2019 novel coronavirus or the declaration of a state of emergency issued by the governor on March 10, 2020 and that due dates shall only be extended by the exercise of the local options described in Sections VII- A and B of this Bulletin.

E. Notice to Taxpayers

Tax bills (with due dates of April 1, 2020 or May 1, 2020) should have already been mailed in the formats described in [IGR 2019-1](#), [IGR 2019-2](#), [IGR 2019-3](#) or [IGR 2019-4](#), as applicable. Where

tax bills have been mailed, the attached Notice must be sent to taxpayers by separate mailing if any of the local options described above are exercised. If a city or town has not adopted all three local options or June 1, 2020 due dates, the attached Notice must be amended, as appropriate, by the city or town to reflect its exercised options.

If the tax bills have not been mailed and any of the above local options are exercised, the format and content of the tax bills themselves should not be changed. Instead, tax bills should be issued in the form described in [IGR 2019-1](#), [IGR 2019-2](#), [IGR 2019-3](#) and [IGR 2019-4](#), as applicable, and the mailing must include the attached Notice (worded to reflect the local options and due dates approved by the city/town) in the same mailing as the tax bill. (See Sections IV-B-1 of [IGR 2019-1](#), [IGR 2019-2](#) and [IGR 2019-3](#) and Section V-B-1 of [IGR 2019-4](#) for insertion by collector of tax billing information in same envelope as a tax bill.)

VIII. Waiver for Hours Worked and Earnings Received During State of Emergency Regarding Services Performed by Certain Retirees Under [G.L. c. 32](#)

Section 14 of the Act includes a waiver for hours worked and earnings received by certain retirees during the state of emergency. Cities and towns are advised to contact the Public Employee Retirement Administration Commission (PERAC) for more information regarding this section.

IX. Other Provisions of the Act

The Act also includes other non-finance provisions related to cities and towns, including **Section 17** regarding the suspension of certain deadlines affecting local permits and local permitting authorities. Cities and towns are advised to review the Act with their local counsel.

SAMPLE NOTICE TO TAXPAYERS
TO BE INCLUDED WITH TAX BILL OR SEPARATELY MAILED
(Samples should not be used without the advice of municipal counsel.)

Town/City of _____

Important information Regarding Your Tax Bill

Under “An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19,” Chapter 53 of the Acts of 2020, the town/city has adopted local options to extend due dates for real and personal property tax payments and applications for exemptions and a waiver of interest on certain municipal tax and other bills paid by June 30, 2020. See below.

1. **The due date of your real and personal property tax bill has been extended to June 1, 2020.** June 1, 2020 is the new due date even if the due date for payment on your enclosed or previously mailed tax bill is April 1, 2020 or May 1, 2020.
2. **The due date for applications for property tax exemptions has also been extended to June 1, 2020.** June 1, 2020 is the new due date even if the due date for applications on your enclosed or previously mailed tax bill is April 1, 2020.

This extension applies to applications for the exemptions listed in the third paragraph of G.L. c. 59, § 59, including exemptions under clauses 17, 17C, 17C1/2 and 17D (seniors, surviving spouses, minor children of deceased parent); 18 (financial hardship – activated military, age and infirmity); 22, 22A, 22B, 22C, 22D, 22E, 22F and 22H (veterans, surviving spouses and surviving parents); 37 and 37A (blind persons); 41, 41B, 41C and 41C1/2 (seniors); 42 and 43 (surviving spouse and minor children of firefighter/police officer killed in line of duty); 52 (certain eligible seniors); 53 (certain eligible properties with septic systems); 56 (National Guard and reservists on active duty in foreign countries); and 57 (local option tax rebates). This extension also automatically applies to applications for residential exemptions under G.L. c. 59, § 5C, for small commercial exemptions under G.L. c. 59, § 5I and for deferrals under G.L. c. 59, § 5, clauses 41A (seniors) and 18A (poverty or financial hardship due to change to active military).

3. The town/city has also voted to waive interest and other penalty for late payment of any excise, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to a tax for any payments with a due date on or after March 10, 2020 where payment is made late but before June 30, 2020. This applies to late payments of bills that have a due date of March 10, 2020 or after, when such bills are paid late but paid on or before June 30. This waiver of interest does not apply to bills with due dates before March 10, 2020 or if the bill is not paid by June 30.

NOTE - If the municipal offices are closed on the June 1, 2020 extended due date for tax payments or filing of exemption applications as a result of the outbreak of the 2019 novel coronavirus or the declaration of a state of emergency issued by the governor on March 10, 2020, the due dates for tax payments and applications for exemptions are not extended – they will be due on June 1, 2020 even if the municipal offices are closed. (See section 10(b) of the Act.)

[City/town should add information on how/where to make tax payments and file applications for exemptions, for example, by mail, through an on-line payment system or dropping payment into a lockbox (with the location). The city/town should also provide a telephone number where questions to local officials can be directed and the address of any relevant website information.]

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

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

Part I ADMINISTRATION OF THE GOVERNMENT**Title VIII** ELECTIONS**Chapter 54** ELECTIONS**Section 34** USE OF VOTING MACHINES BY CITIES AND TOWNS

Section 34. A city or town may, by vote of a majority of the city council or by vote of a majority of the board of selectmen, at a meeting held at least one hundred and twenty days before the primary, preliminary election or election at which voting machines are to be used, determine upon and purchase, lease, or lease with an option to purchase, one or more voting machines approved as provided in section thirty-two, and order the use thereof at primaries, preliminary elections and elections of state, city or town officers in such city or town; and thereafter at all primaries and elections of state, city or town officers in that city or town, until otherwise ordered by the city council in a city and the selectmen in a town, said machines shall be used at primaries and preliminary elections and for voting for the officers to be elected at such elections and for taking the vote upon questions submitted to the voters. Notice of such determination to use voting machines, or to discontinue the use thereof, shall be sent to the state secretary by the city or town clerk within five days after such determination; provided, however, that no such discontinuance shall take

place later than ninety days prior to a state or presidential primary or state election, nor later than thirty days prior to a city or town primary, preliminary election or election at which it is to become effective.

A city or town may, by vote of a majority of the city council or by vote of a majority of the board of selectmen, at a meeting held not later than one hundred and twenty days prior to a state or presidential primary or state election, and not later than sixty days prior to a municipal primary, preliminary election or election at which an electronic voting system is first to be used, determine upon the use of, and may lease, purchase, or lease with an option to purchase, the marking units or automatic tabulating equipment necessary to any electronic voting system approved for use in the commonwealth in accordance with section thirty-two. Thereafter, at all primaries, preliminary elections and elections held in said city or town, until otherwise ordered by vote of the city council in a city or of the selectmen in a town, said electronic voting system shall be used in those polling places designated by the city council or board of selectmen.

Notice of determination to use an approved electronic voting system, or to discontinue its use, shall be sent to the state secretary by the city or town clerk within five days after such determination; provided, however, that no such discontinuance shall take place later than ninety days prior to a state or presidential primary or state election, nor later than thirty days prior to a city or town primary, preliminary election or election at which it is to become effective; and, provided further, that no such discontinuance shall prevent the state secretary from selecting appropriate voting machines and vote tally systems pursuant to section thirty-two.

Ref: 5-1
10204

AN ORDER APPROPRIATING FROM FREE CASH TO ELECTIONS &
REGISTRATION – NEW VOTING EQUIPMENT.

ORDERED:

That there be and is hereby appropriated the sum of Seventy Thousand and No Cents (\$70,000.00) from Free Cash to Elections & Registration – New Voting Equipment.

Order

In City Council

November 18, 2019

Order Passed

November 18, 2019
10 years, 1 absent.

Mark Lynell Clerk

Presented to Mayor for approval

November 19, 2019

Approved on November 19, 2019



Mayor's Signature

Mayor

6-1 : 6-2

RECEIVED

NICKLESS, PHILLIPS AND O'CONNOR

ATTORNEYS AT LAW
625 MAIN STREET

FITCHBURG, MASSACHUSETTS 01420

2020 JAN 28 PM 12: 00

CITY CLERK'S OFFICE
GARDNER, MA

DAVID M. NICKLESS
C. DEBORAH PHILLIPS
JAMES L. O'CONNOR, JR.

Telephone: (978) 342-4590
Facsimile: (978) 343-6383

January 28, 2020

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

Re: City of Gardner and Heywood Memorial Hospital

Dear Committee Members:

I am writing to summarize the conclusions set forth in a detailed letter to the Mayor in September of 2019 regarding the lengthy history of a lease arrangement between the City and Heywood Memorial Hospital (the hospital). At that time, the Mayor wanted to know; 1) if the hospital is occupying City-owned land not covered by the current iteration of the lease and if so, 2) how it may be remedied.

After an extensive review of the many documents recited in that letter, I advised the Mayor that, in my opinion, the hospital is currently occupying land that is not included in the current version of the Lease.

Under the original 1968 lease, the hospital leased two parcels of City owned land; one consisting of (8.02 acres) located on the north side of the hospital and another consisting of 1.40 acres located on the south side of the hospital. A series of amendments to the original lease were negotiated and agreed to by and between the parties over the years.

In 1998, the City sold three (3) parcels of land to the hospital. The land sold included all of the 1.40 acre parcel referenced in the original 1968 Lease and other City owned land. The hospital's recent suggestion that the description of the leased land in the 1998 Amendment reducing its leasehold to 2.16 acres was in error and is not supported by the documents or the record of the 1998 transactions. In fact, the hospital's own Resolution, set forth in its Clerk's Certificate of the vote for the hospital's acquisition of the City owned parcels specifies that, "[i]n consideration of a grant by the City...of title to certain land... the Hospital ... shall release to the City the Hospital's leasehold interest in approximately 5.86 acres of land..." (emphasis supplied). The leasehold interest released to the City was a portion of the 8.02 acre parcel. The 1998 Amendment specifies that the reduced size of the original 8.02 acre parcel would continue to be leased by the hospital and "will thereafter contain 2.16 acres." (emphasis added). The hospital's own records support the conclusion that the acreage released to the City and the acreage that would continue to be leased (5.86 + 2.16) equaled the entirety of the original 8.02 acre parcel. I have been

Ref: 6-1 E 6-2

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2020 FEB 10 AM 10:17

CITY CLERK'S OFFICE
GARDNER, MA

NICKLESS, PHILLIPS AND O'CONNOR
ATTORNEYS AT LAW
625 MAIN STREET
FITCHBURG, MASSACHUSETTS 01420

DAVID M. NICKLESS
C. DEBORAH PHILLIPS
JAMES L. O'CONNOR, JR.

Telephone: (978) 342-4590
Facsimile: (978) 343-6383

February 7, 2020

Winfield S. Brown, President and CEO
Heywood Healthcare
242 Green Street
Gardner, MA 01440

Re: Green Street Parking Lot Land Lease

Dear Mr. Brown:

I was retained by the City of Gardner to review certain issues raised in your May 20, 2019, letter to the City Council regarding the "Green Street Parking Lot Land Lease." Your letter concerned, among other things, the number of acres being leased to the hospital by the City, and the related matter of the hospital's encroachment on a utility easement the City granted to Massachusetts Electric Company (MEC) in 1973 on the same property.

I reviewed relevant documents, including all amendments to the hospital's original 1968 Lease with the City, as well as the information provided in your letter concerning whether the land described in a 1998 Amendment leasing 2.12 acres of land to the hospital was an error. I have concluded that it was not a mistake, and I am happy to set forth my reasons in detail. I am also happy to address concerns regarding the easement granted to MEC. Currently, a package of materials provided to the City by MEC to affect a relocation of this easement is under review in my office.

There are several matters that need to be resolved between the City and the hospital before the lease can be amended and MEC's relocation plan endorsed by City officials. Would you please direct me to the person with whom I should be speaking to resolve these issues?

~~Please do not hesitate to contact me with any questions.~~

Very truly yours,

C. Deborah Phillips /ST

C. Deborah Phillips

CDP/st

cc: Acting Mayor

RECEIVED
FEB 10
By _____

unable to reconcile the hospital's current view that the City intended to allow it to retain a leasehold in 3.13 acres, or that the hospital did not realize it was retaining only 2.16 acres with these documents.

Regardless, the occupation of City-owned land not governed by the lease may be remedied on terms agreed to by and between the parties. A proposed amendment to remedy the matter between the City and the hospital (the Eight Amendment) is enclosed.

The situation is complicated by the rights of a third party, Massachusetts Electric Company (MEC). This public utility holds an easement over a portion of the land currently being occupied by the hospital and not subject to the lease. The hospital was informed of this easement in 1973 and assented to it (see Book 5396, Page 228 in the Worcester County Registry of Deeds; Plan Book 389, Page 38). The hospital was reportedly reminded by MEC of the easement's location during the planning phase for construction of its new parking facility. Nevertheless, the construction and resulting facility encroaches on MEC's easement.

To avoid more costly remedies, MEC has agreed to relocate its easement, and developed and provided to the City a complete package of documents to reflect this relocation.

The proposed Easement Relocation Agreement with MEC requires the City to pay all of MEC's relocation costs, and it includes an estimate of less than \$2,000.00 for these costs. The proposed Agreement also requires the City to guarantee payment for any and all costs, known or unknown, associated with the relocation. I am in the process of seeking some modifications to this proposed Agreement.

To advance this matter, with your approval, I would like to contact the hospital and identify an individual with whom I may correspond regarding the situation, with an eye towards negotiating a payment or reimbursement agreement with the hospital for any financial obligations the City may have under the final Easement Relocation Agreement with MEC.

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

Very truly yours,


C. Deborah Phillips

CDP/st
Enclosure

EIGHTH AMENDMENT TO LEASE

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

Recitals

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

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

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

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

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

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

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

WHEREAS the Parties now desire to resolve this pretermission;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONTAINING 3.13 Acres.

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

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

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

See Vote of the City Council attached hereto as Exhibit A.

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

CITY OF GARDNER

By: James M. Walsh, Esq., Acting Mayor

HENRY HEYWOOD MEMORIAL
HOSPITAL

By: Winfield S. Brown, CEO/President

Robert Crosby, CFO
As auth. (See Book 58824, Page 305)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss _____, 2019

Then personally appeared the above named, James M. Walsh, Esq., Acting Mayor, duly authorized and declared that he executed the foregoing instrument as the free act and deed of the City of Gardner, before me,

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss _____, 2019

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

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss _____, 2019

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

Notary Public
My Commission Expires: