

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE MEETING
Wednesday – May 2, 2018 – 12:00 PM
City Council Chamber - City Hall

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 11, 2018 Meeting Minutes.
- 2-1 A Measure Authorizing Prior Year Salary Expenditures.
- 2-2 An Order Authorizing the City to Borrow a Sum of Money for Watkins Field Improvements.
- 3-1 A Measure Confirming the Mayor’s Appointment of Scott Marigliano to the position of Police Officer, Permanent.
- 3-2 A Measure Confirming the Mayor’s Appointment of Lucas Paine to the position of Police Officer, Permanent.
- 3-3 A Measure Confirming the Mayor’s Appointment of Shawn Riggins to the position of Police Officer, Permanent.
- 4-1 An Ordinance to Amend the Code of the City of Gardner by Adding New Chapter 295, to Be Entitled “Community Bandstand Committee.” *(Continued from 4/11/2018).*
- 4-2 An Ordinance to Amend the Code of the City of Gardner, Chapter 45 Thereof, Entitled “City Council,” to Add a New Article and Section Providing for Legal Counsel. *(Continued from 4/11/2018).*

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 11, 2018

Finance Committee Members present were Council President Scott Graves and Councillor Ronald Cormier. Councillor James Walsh was absent. City Clerk Alan Agnelli was also in attendance.

Other Officials Participating: Mayor Mark Hawke; City Auditor John Richard; Superintendent of Schools Mark Pellegrino; School Business Administrator Robert Detweiler; School Committee Chairman Robert Swartz.

Other in Attendance/Not Participating: School Committee members Jennifer Z. Pelavin and Melody Phelps; and, Executive Assistant Michael Nicholson.

The meeting was called to order by Council President Scott Graves at 12:00 p.m. in the City Council Chamber, Room 219, City Hall.

President Graves 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(s).

On a motion by Councillor Ronald Cormier and seconded by President Scott Graves, it was voted to approve the Minutes of the March 28, 2018 Meeting, as printed.

2-1 FY2019 School Department Budget

Mayor Hawke informed the Committee that his Budget Recommendations are in the process of being finalized and that he hopes to file it with the City Council by the end of May, if not sooner.

Opening his budget presentation, Superintendent of Schools Mark Pellegrino cited changing demographics in the school system since 2003 that show significant increases in “high-needs groups” such as 19% English Language Learners (“ELL”), socioeconomically disadvantaged students, and 23% SPED. He added that these factors greatly impact the District’s educational costs.

He outlined the impact of “Choice-In” and “Choice-Out” students.

- Choice-Out costs the District \$5,000 per student.
- Choice-Out SPED at \$6,500 per student.
- Out-of- District SPED placements cost from \$70,000 to \$100,000 per student.

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CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF APRIL 11, 2018

- In FY2018, Gardner lost \$1.6M to out of district students (300 students) and that, for the first time, no students left for out-of-district placements - “stopped the exodus.” The goal is to stop the outflow permanently – may take 4 to 5 years to accomplish.

Budget process began with meeting with all Directors and School Principals – process was “data driven” – getting the “best bang for the buck.” Salary budget reduced by \$1.2M from initial proposals.

Budget Additions

- BCBA – Board Certified Behavioral Analyst to train Registered Behavioral Therapists (“RBT’s”).
- SPED Paraprofessional

Cuts made to other areas in order to fund these positions. He noted that two critical positions were added during the current fiscal year.

Adjustments

Retirements by the end of the current FY will result in a reduction to the budget gap – hiring new staff at lower salaries (\$96,500 savings). Budget Impact \$114,000.

Salaries

Administration up \$104k with the addition of a third administrator at GMS, a Dean of Students. Need to improve culture for students in grades 5-7 – huge transition period for kids – focus on changing behaviors – engaging the students. Positive culture affects school’s relationships with parents.

Increase in substitutes salaries – to pay competitive wages to attract and retain subs.

Expenses

Other Programs – Out-of-District Placements – up \$115k.

Information Services – up \$44k to implement a replacement schedule– not nearly adequate – no replacement cycle for technology/IT equipment – need \$300k to get caught up.

Transportation – Rob Detweiler reported 8% increase due to transporting foster children and for transporting homeless children to Gardner schools under McKinney-Vento

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Bottom Line - \$1.1M increase over FY2018. \$50,600 increase in Chapter 70 Aid. City contribution up \$306,000 (minimum).

Mayor Hawke reported only \$100k available for municipal budget; \$200k pension obligation increase; \$150,000 increase in Monty Tech Assessment with fewer students than in current year.

Mr. Pellegrino – Budget gap of \$848,059. The Schools rely heavily on State Aid. Additional funding through an override would help with school's programs and could turnaround schools and “stop the bleeding” in a few years.

Rob Detweiler – If the School Department loses art and music, then students interested in these disciplines with choice-out to other school districts.

Proposition 2½ Override Ballot Question and Special Municipal Election.

Citing Councillor Walsh's e-mail to the Mayor, President Graves stated the importance of knowing the Mayor's Budget Plan for FY2019 before determining whether an override is necessary.

Councillor Ronald Cormier suggested that in order to keep the process moving, he recommended that the Committee recommend that the Council refer the Measure to the Council as Committee of the Whole for further study.

On a motion by Councillor Ronald Cormier and seconded by President Scott Graves, it was voted to recommend that the Council refer the Measure to the Council as Committee of the Whole for further study.

The Mayor informed the Committee that the City will increase the base by the full 2½% in FY2019. He suggested that the override amount be less than the projected school budget deficit, or \$700,000.

President Graves questioned the reason for seeking less than the projected school budget deficit.

The Mayor said that the proposed amount is “what may be feasible for the average homeowner – about \$100 per year.” He added that the City is trying to do its share to help the schools.

Mr. Pellegrino noted that the proposed override amount would retain all 18 teaching positions.

4-1 **An Ordinance to Amend the Code of the City of Gardner by Adding New Chapter 295, to Be Entitled “Community Bandstand Committee.”** *(Continued from 3/28/2018).*

The Mayor informed the Committee that donations for the concerts are required to be deposited into a gift fund.

City Auditor John Richard stated that there is no record of a gift fund having been authorized for the band concert receipts and that the Department of Revenue advised that the donations must be placed in a gift account.

The Mayor added that he is unaware as to when the donations started for the concerts.

The Mayor suggested that the Bandstand Committee be handled by the Municipal Grounds Commission.

Councillor Graves stated that he asked the Law Department to advise the Council as to the best way to handle the dilemma.

On a motion by President Scott Graves and seconded the Councillor Ronald Cormier, it was voted to request that the Law Department issue an advisory opinion concerning the appropriate municipal entity to oversee the Bandstand Committee and concerts.

The Committee agreed to keep AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER BY ADDING NEW CHAPTER 295, TO BE ENTITLED “COMMUNITY BANDSTAND COMMITTEE,” on its Agenda until it receives appropriate legislation from the Law Department and/or City Auditor.

4-2 **An Ordinance to Amend the Code of the City of Gardner, Chapter 45 Thereof, Entitled “City Council,” to Add a New Article and Section Providing for Legal Counsel.**

President Graves informed the Committee that a letter was received today from the Law Department in response to the Council President’s request for review of the proposed Ordinance that would create the position of Legal Counsel to the City Council. Since the Committee received the letter today and has not had time to study it, the Agenda item will remain on the Committee’s future Agenda.

Mayor Hawke said that only the City Solicitor can bind the City.

President Graves responded, saying that the City Solicitor does not represent the City

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CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF APRIL 11, 2018

Council, adding that if the City Council disagrees with the Executive Department, the Law Department would never agree with the City Councils' position.

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 45 THEREOF, ENTITLED "CITY COUNCIL," TO ADD A NEW ARTICLE AND SECTION PROVIDING FOR LEGAL COUNSEL.

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

Section 1. Chapter 45 of the Code of the City of Gardner is hereby amended by adding thereto a new Article, to be Article II, and a new section 45-3, to read as follows:

§ 45-3. Legal counsel.

- A. The City Council shall have the authority to retain independent legal counsel of its own selection from time to time by majority vote, and legal counsel shall be a member of the Bar of the Commonwealth of Massachusetts in good standing.
- B. Legal counsel shall assist the City Council in the preparation and formulation of legislation and in the rendering of opinions concerning legal matters, either of a substantive or procedural nature, the provisions of § 140-2 of the Code of the City of Gardner notwithstanding.
- C. Any invoice or charge for payment from said legal counsel shall be paid from the City Council budget.

Section 2. Severability

The provisions of this ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses, or part of this ordinance.

Section 3. Effective date.

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

AN ORDER APPROPRIATING FROM FREE CASH TO ELECTIONS AND REGISTRATIONS, WAGES.

On a motion by Councillor Ronald Cormier and seconded by President Scott Graves, it was voted to recommend that the City Council refer the following Order to the Council as Committee of the Whole for further study:

AN ORDER APPROPRIATING FROM FREE CASH TO ELECTIONS AND REGISTRATIONS, WAGES.

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CITY COUNCIL FINANCE COMMITTEE
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ORDER: That there be and is hereby appropriated the sum of Fourteen Thousand One Hundred Fifty Dollars and No Cents (\$14,150.00) from Free Cash to Elections and Registrations, Wages.

AN ORDER APPROPRIATING FROM FREE CASH TO ELECTIONS AND REGISTRATIONS, EXPENSES.

On a motion by Councillor Ronald Cormier and seconded by President Scott Graves, it was voted to recommend that the City Council refer the following Order to the Council as Committee of the Whole for further study:

AN ORDER APPROPRIATING FROM FREE CASH TO ELECTIONS AND REGISTRATIONS, EXPENSES.

ORDER: That there be and is hereby appropriated the sum of Four Thousand Two Hundred Fourteen Dollars and No Cents (\$4,214.00) from Free Cash to Elections and Registrations, Expenses, detailed below:

Communications	\$ 445.00
Professional Services	3,369.00
Office Supplies	400.00

ADJOURNMENT

On a motion by Councillor Ronald Cormier and seconded by President Scott Graves, it was voted to adjourn at 1:13 p.m.

AUTHORIZING PAYMENT OF PRIOR
YEAR SALARY EXPENDITURE

VOTED: To authorize payment of prior year DPW and City Hall Maint. salary expenditure.
- Account for prior years, as follows:

FY2017	DPW Salary Account	\$795.35
FY2015-FY2017	City Hall Maint. Sal Account	\$323.85



CITY of GARDNER

Office of the City Auditor

John Richard, City Auditor

95 Pleasant Street, Room 125

Gardner, MA 01440

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

Email: jrichard@gardner-ma.gov

May 2, 2018

Scott Graves, President

95 Pleasant Street

Gardner, MA 01440

RE: Requesting approval to spend current FY18 budget appropriations for prior period expenditures.

Dear President Graves and Councilors,

It has come to my attention that back pay is owed to the following employees:

DPW employee Scott Kendall for pay period 02/22/17 thru 06/30/17. A step increase was never processed in which the total amount owed to the employee is \$795.35 acct #14421-51013. Calculation is attached.

City Hall Maint employee Dean Phaneuf for various pay periods in FY15-FY17 Sunday double time OT pay was never noted on the time sheets and only time and a half was paid in which the total amount owed to the employee is \$323.85 acct #11192-51016. Calculation is attached.

The current FY18 appropriated budget for each department has funds available to cover these expenditures. To pay prior year expenditures with FY18 funds council approval is needed. No additional appropriation transfers would be necessary.

Sincerely

John Richard

City Auditor

Copies: Mayor
City Clerk

Retro Pay for Scott Kendal 2/22/17 thru 6/30/17

Emp #	Last Name	First Name	MI	Position	Pay	Desc	Org Code	Obj Code	Old Rate	New Rate	Diff	Hrs.	Amount	Period
9109	KENDALL	SCOTT	V	55421	100	Reg	14421	51013	16.8600	17.6300	0.7700	864	\$ 665.28	02/22/17-06/30/17
9109	KENDALL	SCOTT	V	55421	200	Reg OT 1.5	14421	51030	25.3400	26.4955	1.1555	41.75	\$ 48.24	02/22/17-06/30/17
9109	KENDALL	SCOTT	V	55421	225	Snow OT 1.5	14421	52210	25.3400	26.4955	1.1555	51	\$ 58.93	02/22/17-06/30/17
9109	KENDALL	SCOTT	V	55421	250	Reg OT 2.0	14421	51030	33.7867	35.2600	1.4733	0	\$ -	02/22/17-06/30/17
9109	KENDALL	SCOTT	V	55421	255	Snow OT 2.0	14421	52210	33.7867	35.2600	1.4733	3	\$ 4.42	02/22/17-06/30/17
9109	KENDALL	SCOTT	V	55421	620	Sleep Time	14421	52210	16.8600	17.6300	0.7700	24	\$ 18.48	02/22/17-06/30/17
												Total	\$ 795.35	

Retro Pay for Dean Phaneuf 01/01/15 thru 6/30/17

Week Start	01/04/15											Week End	01/10/15	Rec'd OT Pay	Rate	
Day	Date	Time In	Time Out	Time In	Time Out	Time In	Time Out	Reg Hrs.	OT Hrs.	DT Hrs.						
Sunday	01/04/15			1:00 PM	4:00 PM				3.00			\$117.53	\$220.35	\$19.59		
Monday	01/05/15	2:30 PM	8:00 PM	8:30 PM	11:00 PM			8.00								
Tuesday	01/06/15	2:30 PM	8:00 PM	8:30 PM	11:00 PM			8.00								
Wednesday	01/07/15	2:30 PM	6:30 PM	4 Hours of personal				8.00								
Thursday	01/08/15	9:30 AM	2:00 PM	2:30 PM	6:00 PM			8.00								
Friday	01/09/15	10:00 AM	3:00 PM	3:00 PM	4:30 PM			5.00	1.50			\$44.07				
Saturday	01/10/15	5:00 PM	????	- 3 Hr. Min per contract					3.00			\$88.14				
		Total:										37.00	4.50	3.00	\$249.74	Owe \$29.39
Week Start	01/25/15											Week End	01/31/15	Rec'd OT Pay	Rate	
Day	Date	Time In	Time Out	Time In	Time Out	Time In	Time Out	Reg Hrs.	OT Hrs.	DT Hrs.						
Sunday	01/25/15	11:30 AM	2:30 PM							3.00		\$117.53	\$190.98	\$19.59		
Monday	01/26/15	1:30 PM	9:30 PM					8.00								
Tuesday	01/27/15	City Hall Closed			6:00 PM	9:30 PM			3.50			\$102.84				
Wednesday	01/28/15	1:30 PM	8:30 PM	9:00 PM	10:00 PM			8.00								
Thursday	01/29/15	10:00 AM			6:00 PM			8.00								
Friday	01/30/15	10:00 AM			3:00 PM			5.00								
Saturday	01/31/15												Owe \$29.38			
		Total:										37.00	3.50	3.00	\$220.36	
Week Start	02/22/15											Week End	02/28/15	Rec'd OT Pay	Rate	
Day	Date	Time In	Time Out	Time In	Time Out	Time In	Time Out	Reg Hrs.	OT Hrs.	DT Hrs.						
Sunday	02/22/15	1:00 AM	3:30 PM							2.50		\$97.93	\$73.45	\$19.59		
Monday	02/23/15	2:30 PM	8:00 PM	8:30 PM	11:00 PM			8.00								
Tuesday	02/24/15	2:30 PM	8:00 PM	8:30 PM	11:00 PM			8.00								
Wednesday	02/25/15	2:30 PM	8:00 PM	8:30 PM	11:00 PM			8.00								
Thursday	02/26/15	10:00 AM			6:00 PM			8.00								
Friday	02/27/15	10:00 AM			3:00 PM			5.00								
Saturday	02/28/15												Owe \$24.48			
		Total:										37.00	0.00	2.50	\$97.93	

Retro Pay for Dean Phaneuf 01/01/15 thru 6/30/17

Total:											37.00	0.00	4.00	\$159.62	Owe	\$41.85
Week Start	01/15/17	Week End	01/21/17	Day	Date	Time In	Time Out	Time In	Time Out	Reg Hrs.	OT Hrs.	DT Hrs.	Rec'd Pay	Rate		
Sunday	01/15/17	Monday	01/16/17	Holiday - MILK Day	7 am - 12 pm/1 - 4:30					8.00		8.50	\$309.14	\$19.95		
Tuesday	01/17/17	Wednesday	01/18/17	Personal Day	11:30 AM to 8:30 AM	4:30 AM	8:30 PM			8.00	2.00					
Thursday	01/19/17	Friday	01/20/17		12:00 PM	7:30 PM	8:30 PM			8.00						
Saturday	01/21/17				10:00 AM		3:00 PM			5.00						
Total:											37.00	2.00	8.50	\$399.05	Owe	\$89.91

Week Of	Amount
01/04/15	\$29.39
01/25/15	\$29.38
02/22/15	\$24.48
01/17/16	\$19.89
12/18/16	\$88.93
01/08/17	\$41.85
01/15/17	\$89.91
Total:	\$323.85

RECEIVED

April 26, 2018

2018 APR 27 AM 8:02

CITY CLERK'S OFFICE
GARDNER, MA

Commonwealth of Massachusetts

Worcester County

City of Gardner

CERTIFICATE OF APPOINTMENT

I appoint Scott Marigliano, to the position of Police Officer, Gardner Police Department and I certify that in my opinion he is a person specially fitted by education, training, or experience to perform the duties of said office and that I make the appointment solely in the interests of the City.



Mayor

Mark P. Hawke

Confirmed by City Council: _____

City Clerk

Alan L. Agnelli

Expires: PERMANENT

Worcester, ss., _____ 2018

Then personally appeared the above named Scott Marigliano and made oath that he would bear true faith and allegiance to the United States of America and the Commonwealth of Massachusetts and would support the Constitution and laws thereof.

Before me,

City Clerk

Chapter 303 Acts of 1975
and
Chapter 409 Acts of 1983

Received _____

RECEIVED

April 26, 2018

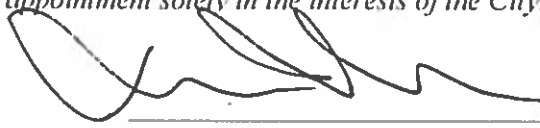
2018 APR 27 AM 8:02
CITY CLERK'S OFFICE
GARDNER, MA
Worcester County

Commonwealth of Massachusetts

City of Gardner

CERTIFICATE OF APPOINTMENT

I appoint Lucas Paine, to the position of Police Officer, Gardner Police Department
and I certify that in my opinion he is a person specially fitted by education, training, or experience
to perform the duties of said office and that I make the appointment solely in the interests of the City.



Mayor
Mark P. Hawke

Confirmed by City Council: _____

City Clerk
Alan L. Agnelli

Expires: PERMANENT

Worcester, ss., _____ 2018

Then personally appeared the above named Lucas Paine and made oath that he would bear
true faith and allegiance to the United States of America and the Commonwealth of Massachusetts and
would support the Constitution and laws thereof.

Before me,

City Clerk

Chapter 303 Acts of 1975
and
Chapter 409 Acts of 1983

Received _____

RECEIVED

April 26, 2018

2018 APR 27 AM 8:02

CITY CLERK'S OFFICE
GARDNER, MA

Commonwealth of Massachusetts

Worcester County

City of Gardner

CERTIFICATE OF APPOINTMENT

I appoint Shawn Riggins, to the position of Police Officer, Gardner Police Department
and I certify that in my opinion he is a person specially fitted by education, training, or experience
to perform the duties of said office and that I make the appointment solely in the interests of the City.



Mark P. Hawke

Mayor

Confirmed by City Council: _____

_____ City Clerk

Alan L. Agnelli

Expires: PERMANENT

Worcester, ss., _____ 2018

Then personally appeared the above named Shawn Riggins and made oath that he would
bear true faith and allegiance to the United States of America and the Commonwealth of Massachusetts
and would support the Constitution and laws thereof.

Before me,

_____ City Clerk

Chapter 303 Acts of 1975
and
Chapter 409 Acts of 1983

Received _____

4-1

PRESIDENT
Scott J. Graves, Esq.
COUNCILLORS AT LARGE
James S. Boone
Craig R. Cormier
Ronald F. Cormier
Edward A. Gravel
Scott J. Graves, Esq.
Christine A. Johnson

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
James D. Johnson

April 17, 2018

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

Re: Bandstand Committee Ordinance

Dear Attorney Flick:

At the April 11, 2018 Finance Committee Meeting, the Committee decided to present to the Legal Department a small dilemma facing the City Council and Finance Committee regarding the Bandstand Committee. The proposed Ordinance is attached for your review.

The Bandstand Committee, as far as anyone can tell, is not a formal municipal committee. This raised various concerns as to fund-raising, liability for events held on municipal property, personal liability of its members, etc. So, our goal is to make the Bandstand Committee a formal City committee (e.g., the Youth Commission, et al) with legal municipal existence.

Instead of creating a stand-alone Bandstand Committee, the Mayor and the Finance Committee Members believe that it would be more appropriate if the Bandstand Committee is formally subsumed under the auspices of the Department of Public Works. We are presenting this to your Department for your assistance as to how this may be accomplished – most likely with your opinion as to how the language of the proposed Ordinance might be revised accordingly.

Atty. John M. Flick, City Solicitor
City of Gardner Law Department
April 17, 2018
Page 2

The Mayor mentioned that the Bandstand Committee could be placed under the domain of the Parks and Recreation branch of the DPW. But, then we grappled with the fact that the City Council reorganized the DPW in 1983 and that the Parks and Recreation is no longer in existence.

Also, neither the Auditor nor anyone else can tell that the Bandstand Committee's donations have ever been approved by the City Council pursuant to M.G.L. c. 44, sec. 53A. So, we also need the Legal Department's input on that.

No one wants to disturb what the Bandstand is doing right now, we just want it properly placed within the governmental gamut, if you will, as a formal and legal City committee or board or commission, etc. We all believed that it would make the most sense to remain within the purview/auspices of the DPW.

Thank you in advance for your attention and assistance in this matter.

Sincerely,



SCOTT J. GRAVES, ESQ.
City Council President

Enclosure

ORDINANCE

1 AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER BY ADDING
2 NEW CHAPTER 295, TO BE ENTITLED "COMMUNITY BANDSTAND COMMITTEE."

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

6 Section 1.

8 The Code of the City of Gardner is hereby amended by adding thereto a new Chapter, to
9 be Chapter 295, Community Bandstand Committee, to read as follows:

11 § 295-1 Committee established; membership; terms of office.

13 A. There shall be established a Community Bandstand Committee for the City of
14 Gardner consisting of not less than five nor more than seven members, legal voters of
15 said City, who shall be appointed by the Mayor, subject to confirmation by the City
16 Council.

18 B. The terms of the first members of said Committee shall be for one, two, or three years
19 and so arranged that the term of 1/3 of the members expires each year, and their
20 successors shall be appointed for terms of three years each. Any member of said
21 Committee may, after a public hearing, if so requested, be removed for cause by the
22 appointing authority. A vacancy occurring otherwise than by expiration of a term
23 shall be filled for the unexpired term in the same manner as an original appointment.

25 C. Before entering the discharge of their duties, the members shall be sworn to the
26 faithful discharge thereof.

28 § 295-2 Officers, meetings and records.

30 The Committee shall meet once annually to organize and elect a Chairperson, Vice
31 Chairperson, Treasurer, and Clerk. The Chairperson of the Committee shall be chosen
32 by a majority vote of said Committee members. The Committee shall hold meetings
33 each month of the year. It shall keep accurate records of its meetings and actions and
34 shall file an annual report.

ORDINANCE

35 § 295-3 Powers and duties.

36

37 The Committee shall have the following powers and duties:

38

39 A. Its purpose shall be to develop and carry out programming and fundraising activities
40 for concerts and other forms of entertainment at Monument Park.

41

42 B. The Committee may appoint such clerks or other employees as it may from time to
43 time require, subject to appropriation of funds therefor.

44

45 C. The Committee may receive gifts of property, both real and personal, in the name of
46 the City, subject to the approval of the City Council, such gifts to be managed and
47 controlled by said Committee for the purposes of this section.

48

49 Section 2. Effective date.

50 This Ordinance shall become effective upon passage and publication as required
51 by law.

4-2

PRESIDENT
Scott J. Graves, Esq.

COUNCILLORS AT LARGE
James S. Boone
Craig R. Cormier
Ronald F. Cormier
Edward A. Gravel
Scott J. Graves, Esq.
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WARD 5 COUNCILLOR
James D. Johnson

CITY OF GARDNER
MASSACHUSETTS 01440-2630

OFFICE OF THE
CITY COUNCIL



April 20, 2018

To The City of Gardner City Councillors (to each under separate cover, by U.S. Postage)

Re: Proposed Amendment to Legal Department Ordinance
City Council – Independent Legal Counsel

Dear Councillor:

As you all know, the Finance Committee requested the Legal Department to provide its opinion as to whether the City Council is legally permitted to amend the Legal Department Ordinance in order to provide that the City Council have the authority to retain independent legal counsel.

So, we have Atty. Flick's response (enclosed). The answer from him is that the City Council can indeed pass such an Ordinance as I have proposed. This is because the City's Charter (the City's Constitution, if you will) provides the City Council with such power – as set forth in Mr. Flick's response.

If passed, the decision as to whether, or not, to request input, second opinions and/or legal advice on City Council matters from a neutral, independent attorney would be the City Council's decision only, the decision of a majority of 11 persons elected by the voters of the City of Gardner - not the Mayor's or the Legal Department's decision as is now the case.

In all other aspects of American government, the Legislative branch of government (the City Council in Gardner, Mass.) has this necessary and critical authority – and in many Massachusetts municipalities this is the case. The sentiment that there is something extraordinary or nefarious or suspicious or odd, or unique, etc. is simply the product of conspiracists or alarmists. This authority is just as simple as saying that the City Council is an independent branch of government – beholden to no one other than the electorate and the citizens we represent. It is not more complicated, or simple, than that. I have another package going out to you all under separate cover of the legal research I have done that provides all this information to you all.

The Mayor has said, “I disagree with Atty. Flick all the time, so I will just get my own lawyer as well.” First of all, no one with a straight face believes that such a disagreement has ever existed – certainly never if that means that Atty. Flick sided with the legal position of the City Council over that of the Mayor.¹ Second, the Mayor does not need his “own lawyer” because the Mayor can do what he wants, and can simply disregard what Atty. Flick thinks or says. The City Council cannot do that. This is because the Mayor is the Executive, and has control over all day to day decisions, and power. He is a power of ONE, one person – and is at the controls. He does not need the City Solicitor’s approval, or anyone’s. The only way the City Council can get any of that day to day power, or control, is for 6 out of 11 elected Councillors to ask the Mayor to act accordingly. When he refuses to do so, the City Council is at the end of the road. The Mayor does not need his own lawyer. We do.

Regardless, let the Mayor hire “his own lawyer,” if he actually takes that position seriously and was not just being sarcastic. The City Council does not shrink from the legal opinion of *any* lawyer licensed to practice law in this Commonwealth. Lawyers are bound by their oaths of office, and the Board of Bar Overseers ensures that all legal opinions be made ethically, competently, in good faith and with the absence of frivolity. Bring it on, the more legal opinions, the better.

As for Atty. Flick’s response, I trust that you note with special interest Mr. Flick’s blatantly dismissive attitude toward the City Council. Believe me, I am not sensitive in this regard – I was actually surprised by this unnecessary and unprovoked insult (the second paragraph of his opinion). That is, Atty. Flick, apparently in a display of his lack of self-control and out of his subservience to the Executive Department, sophomorically took the position that Scott Graves, Esq., James Walsh, Esq. and long-standing City Councillor Ronald Cormier, i.e. the City Council’s Finance Committee was actually asking Mr. Flick “can the City Council amend an Ordinance as a general principle?” Atty. Flick actually writes, “[i]t is unclear from the context of your letter the exact nature of the legal opinion that is being sought from the Legal Department.” It is “unclear.” If that was not designed to be an insult, then there can only be a much more disturbing reason for the remark.

¹ Just for an example read the political and philosophical nature of Mr. Flick’s legal review of the City’s Charter – which was his response to the request of the City Council for his legal review of the City Charter.

Please keep in mind that the Mayor, with a straight face, will say that we can expect a fair, neutral, balanced and independent legal opinion from a City Solicitor with such an attitude toward the City Council? I sincerely do not mean to disparage the City Solicitor, but I have to point out this insulting aspect of his response from him because the proposed Ordinance is a supremely serious matter – it seeks to amend an Ordinance.² It was as if the fact that he HAD TO agree with me was so distasteful to him that he had to serve it cold, replete with the unnecessary insult to the Finance Committee, in order to allow him to render it at all with any level of self-felt palatability.

I only mention it in this way because it speaks volumes about why we need independent counsel in the first place!

Atty. Flick only agrees with me in this case because he simply MUST - the City Charter is glaringly clear that the City Council has the vast authority to create and extinguish entire City Departments – never mind simply adding to them as the proposed Ordinance seeks to do. I believe that this power reserved to the City Council by our Founding Legislators in 1923 was the overwhelming impetus behind the charade that became the “independent” Charter Review – an issue for another day. Suffice it to say that the City Council has this power, and it is irrefutable.

I will not go into all nuances of Mr. Flick’s response, but I feel the Councillors should know this about my thoughts regarding his opinion:

1. Mr. Flick cites the law as G.L. 53, section 59 (twice). That is a law about elections, so it is not applicable, at all. The Assistant City Solicitor apparently did not proofread this opinion.
2. Mr. Flick cites the case of Boston City Council v. Menino in order to support his opinion that the Gardner City Council, by Charter, has the power to do what my proposed Ordinance seeks to do. That is, the City Council is empowered to amend the Legal Department Ordinance to add in the ability to retain its own Independent Legal Counsel. He is correct.
3. His opinion also points out that, without the amendment that I propose, the Legal Department’s duty and responsibility is to handle all City legal matters. He is correct. But, why outside legal counsel is ever used, including Flick Law Group, or why the Legal Department has outside legal counsel expenses in its Budget, is curious.
4. He points out that Section 35 of the City Charter “requires (sic) the Mayor to agree to any contract for an amount in excess of \$1,000.” This is incorrect, in a number of ways.

² I trust that he will appreciate the fact that that insult was not lost on me, for I am sure he did not stick it in there by mistake and would have been disappointed, I suppose, if I did not accept it as intended.

First of all, Mr. Flick has already rendered a legal opinion which provides without equivocation or ambiguity that Charter Section 35 is controlled by M.G.L. c. 30B, and, therefore, that “[a]ll contracts which the City seek to enter into (sic), whether for goods or services (sic, no comma) are governed by M.G.L. c. 30B.” That is important because M.G.L. c. 30B requires that all such contracts have a monetary trigger of \$10,000 or more, not \$1,000. So, Mr. Flick has rendered a legal opinion that the City Charter Section 35 is trumped by State Law. So, the proposed Ordinance which gives the City Council the right to expend up to \$5,000 on independent Legal Counsel is well within the \$10,000 limit that Mr. Flick says is the statutory limit applicable. This means that the City Council does not need the Mayor’s signature on a contract with any independent legal counsel (which is not needed anyway, see below) under Section 35 of the Charter.

Second, and most important, Section 35 of the City Charter does not apply to a branch of Government, like the City Council – which is the City’s Legislative Branch of Government. Section 35 only applies to contracts made by a “department, board or commission.” So, even if we were to enter into a contract OVER \$10,000 limit, the City Council would not need the Mayor’s signature. The City Council, with the Ordinance I have proposed, would not need the Mayor’s signature at all because the Legislative Branch of government is not a “department, board or commission.”³

There is more to say, but I will save it for another day (if need be) because this letter is already too long.

Sincerely,


SCOTT J. GRAVES, ESQ.
City Council President

Enclosure

³ I will also point out that Mr. Flick failed to mention G.L. c. 43, section 29. That State Law (on which Section 35 of the Charter is based and worded) raised the amount up to \$5,000 – not the \$1,000 that Mr. Flick states. So, using Mr. Flick’s logic, only contracts over \$5,000 (not \$1,000) need to be signed by the Mayor. Again, the City Council, though, does not need the Mayor’s signature at all.

4-2

**CITY OF GARDNER
RECEIVED LAW DEPARTMENT**

John M. Flick 2018 APR 11 AM 9:47
City Solicitor

Priya Gandhir
Assistant City Solicitor

CITY CLERK'S OFFICE
GARDNER, MA



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Gardner, MA 01440

Telephone (978) 632-7948
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Writer's Email:

April 11, 2018

VIA HAND DELIVERY

Scott J. Graves
Gardner City Council
95 Pleasant Street
Gardner, MA 01440

Re: Request for Opinion

Dear Councilor Graves:

I am writing in response to your request for advice dated March 19, 2018 and was received by the Law Department on March 23, 2018. Your request for advice seeks a legal opinion as to the ability of the City Council to pass a proposed amendment to Chapter 45 of the Code of the City of Gardner. Your request specifically limits the opinion of the Law Department as follows:

"To be clear, the Finance Committee is not asking for the Law Department's opinion as to the the [sic] advisability of passing this Ordinance, or otherwise as to the advantages or disadvantages of such – just as to the actual legality of passing this amended Ordinance."

It is unclear from the context of your letter the exact nature of the legal opinion that is being sought from the Law Department. By asking for an opinion as to the "actual legality of passing this amended Ordinance" is the Finance Committee asking if the City Council has the legal authority to pass an amendment to an existing ordinance, or, if such an amendment were passed, would the proposed amendment to Chapter 45 withstand a legal challenge? In order to avoid further confusion, this letter will seek to answer both.

The proposed amendment to Chapter 45, if passed, will authorize the City Council to hire "independent" legal counsel. Pursuant to M.G.L. c. 53, § 59 and the City Charter, the City Council is endowed with the legislative powers of the City. As such, and subject to the requirements of Sections 24, 26, 27, 28, 29 and 30 of the City Charter, the City Council may consider and pass any proposed ordinance before it. The Council may, therefore, consider and pass any proposed ordinance or amendment to an ordinance brought before it. The Mayor, pursuant to Section 30, may, if the Mayor so chooses, veto any such ordinance passed by the Council and any such veto can be overridden by a two-thirds vote of all its members.

M.G.L. c. 53 strictly limits the City Council's function to performing legislative acts. However, Section 10 of the City Charter gives the City Council the authority to "reorganize, consolidate, or abolish departments, in whole or in part." Typically, such acts are executive not legislative acts.

See Boston City Council v. Menino, 2000 WL 744356 (2000). However, the language in Section 10 modifies the statutory construct of the City of Gardner by endowing the City Council with this authority through the legislative process outlined above.

Chapter 140 of the City Code states that the City of Gardner Law Department shall perform the following:

“Approve contracts, give legal advice and furnish written opinions when so requested by the Mayor, City Council, the chairperson of a City committee or the head of any City department.” Gardner City Code, § 140-2(A);

“Prosecute or defend all cases and proceedings to which the City is a party.” Gardner City Code 140-2(B); and

“Prepare and approve all deeds or other legal instruments relating to the City, consider claims against the City and make recommendation for their resolution to the Mayor or appropriate committee of the City Council, as the case may be, and generally handle all legal affairs pertaining to the City.” Gardner City Code, § 140-2(B).

Both the City Solicitor and Assistant City Solicitor are required to perform the duties of the Law Department in conformity with Chapter 140 which includes providing legal advice and legal opinions to the City Council or a committee thereof. The proposed amendment to Chapter 45 removes these responsibilities from the Law Department and places those responsibilities elsewhere, i.e. with hired legal counsel. In other words, the proposed amendment to Chapter 45 reorganizes the Law Department. However, it must be noted that Section 35 of the City Charter requires the Mayor to agree to any contract for an amount in excess of \$1,000.00. Were the proposed amendment to pass through the legislative process, the hiring of any legal counsel by the City Council would be subject to mayoral approval regardless of any veto or subsequent override.

Very truly yours,

City of Gardner Law Department


John M. Flick

Cc: Mayor

PRESIDENT
Scott J. Graves, Esq.

CITY OF GARDNER
MASSACHUSETTS 01440-2630

COUNCILLORS AT LARGE
James S. Boone
Craig R. Cormier
Ronald F. Cormier
Edward A. Gravel
Scott J. Graves, Esq.
Christine A. Johnson

OFFICE OF THE
CITY COUNCIL



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WARD 2 COUNCILLOR
Elizabeth J. Kazinskas

WARD 3 COUNCILLOR
Nathan R. Boudreau

WARD 4 COUNCILLOR
Karen G. Hardern

WARD 5 COUNCILLOR
James D. Johnson

March 19, 2018

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

Re: Finance Committee – Request for Law Dept. Action

Dear City Solicitor Flick:

At the Wednesday, March 14, 2018 City Council Finance Committee Meeting, the Committee addressed an item that was sponsored by me.

It is "An Ordinance to Amend the Code of the City of Gardner, Chapter 45 Thereof, Entitled 'City Council,' to Add a New Article and Section Providing for Legal Counsel." The proposed Ordinance amendment is attached.

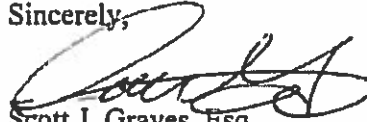
The Finance Committee voted to have the Law Department study this proposed Ordinance amendment, and to report back to the Finance Committee with its comments as to the legality of passing this Ordinance. In other words, given our Charter, the laws of the Commonwealth and whatever other authority to which we are beholden, is the City Council within its power and authority to pass this Ordinance amendment, if it chooses ultimately to do so?

Atty. John M. Flick, City Solicitor
Law Department, City of Gardner
March 19, 2018
Page 2

To be clear, the Finance Committee is not asking for the Law Department's opinion as to the the advisability of passing this Ordinance amendment, or otherwise as to the advantages or disadvantages of such – just as to the actual legality of passing this amended Ordinance.

So, I am respectfully submitting this matter to your attention, and trust that your review and report will be provided at your earliest convenience. If you have any questions or need any clarification, etc., please feel free to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Graves", written over a horizontal line.

Scott J. Graves, Esq.
City Council President

Enclosure

ORDINANCE

1 AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 45
2 THEREOF, ENTITLED "CITY COUNCIL," TO ADD A NEW ARTICLE AND SECTION
3 PROVIDING FOR LEGAL COUNSEL.

4
5 Be it ordained by the City Council of the City of Gardner as follows:

6
7 Section 1. Chapter 45 of the Code of the City of Gardner is hereby amended by adding thereto a
8 new Article, to be Article II, and a new section 45-3, to read as follows:

9
10 § 45-3. Legal counsel.

11
12 A. The City Council shall have the authority to retain independent legal counsel of
13 its own selection from time to time by majority vote, and legal counsel shall be a
14 member of the Bar of the Commonwealth of Massachusetts in good standing.

15 B. Legal counsel shall assist the City Council in the preparation and formulation of
16 legislation and in the rendering of opinions concerning legal matters, either of a
17 substantive or procedural nature, the provisions of § 140-2 of the Code of the City
18 of Gardner notwithstanding.

19 C. Any invoice or charge for payment from said legal counsel shall be paid from the
20 City Council budget.

21
22 Section 2. Severability

23
24 The provisions of this ordinance are declared to be severable, and if any section,
25 subsection, sentence, clause or part thereof is, for any reason, held to be invalid or
26 unconstitutional by a court of competent jurisdiction, such decision shall not affect the
27 validity of any remaining sections, subsections, sentences, clauses, or part of this
28 ordinance.

29
30 Section 3. Effective date.

31
32 This ordinance shall become effective on passage and publication as required by law.