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CITY OF GARDNER
MASSACHUSETTS 01440-2630

OFFICE OF THE
CITY COUNCIL



August 16, 2018

PUBLIC SERVICE COMMITTEE MEETING NOTICE

Date: Monday, August 20, 2018
Time: 4:15 p.m.
Location: DPW Office, 50 Manca Drive

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 Clerk of the Committee, pursuant to the Open Meeting and Public Records Law. All documents shall become part of the official record of the meeting.

AGENDA

- I. Review and Approval of the Minutes of the previous meeting.
- II. Department Updates:
 - Public Works/Sewer/Water – Dane Arnold, DPW Director
 - Survey/Engineering – Chris Coughlin, City Engineer
 - Conservation Commission – Jeffrey Legros, Conservation Agent
- III. #9905 – An Ordinance to Amend the Code of the City of Gardner by Adding a New Chapter to Be Entitled “Scenic Roads.” (In City Council and Referred jointly to Public Service Committee and Public Welfare Committee, 3/19/2018).
- IV. Amend the Code of the City of Gardner, Chapter 600 Thereof, Entitled “Vehicles and Traffic” Section 23, All Night Parking.
- V. Abatements Water/Sewer:
 - a. PACC
 - b. 244 East Broadway
- VI. Adjournment.

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

Nathan R. Boudreau

Councillor Nathan R. Boudreau
Chairman, Public Service Committee

CITY OF GARDNER
LAW DEPARTMENT

9905

John M. Flick
City Solicitor

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June 28, 2018

VIA HAND DELIVERY

Christine A. Johnson, Chair
City of Gardner Public Service Committee
Gardner City Hall
95 Pleasant Street
Gardner, MA 01440

Re: Proposed Gardner Scenic Road Ordinance

Dear Councilor Johnson:

The City of Gardner Law Department is in receipt of the proposed "Gardner Scenic Roads Ordinance" and your request for a legal review of this proposed ordinance. As understood by the Law Department, the purpose of the proposed ordinance is "to maintain the rural, natural, historic, and scenic character of the City's roadways."

In general, a municipality may adopt an ordinance regarding a power or function of its government if it is not inconsistent with the laws of the Commonwealth. (*See Board of Appeals of Hanover v. Housing Appeals Committee in Dept. of Community Affairs*, 363 Mass 339 (1973)). In this case, Chapter 40, Section 15C of the Massachusetts General Laws (hereafter "M.G.L. c. 40, §15C") provides a procedure by which a municipality may designate a road as scenic and would preempt any municipal ordinance inconsistent with its provisions. M.G.L. c. 40, §15C allows a municipality to designate a road as "scenic" upon the recommendation or request of the municipality's planning board, conservation commission, or historical commission. The statute's only restriction on which roads may be designated as "scenic" is a prohibition on designating numbered routes or state highways which are not contained entirely within the boundaries of the municipality desiring to make the "scenic" designation. As a matter of law, this process is currently available to the City should it wish to designate an eligible road as "scenic."

Once a road has been designated as "scenic" by a municipality, the statute prohibits repair, maintenance, reconstruction or paving of the road in question if such work involves the cutting

or removal of trees, or the tearing down or destruction of stone walls or portions thereof without prior written consent of the planning board and a public hearing. (*See* M.G.L. c. 40, §15C). The statute allows a municipality to make violations of M.G.L. c. 40, §15C punishable by a fine of not more than three hundred dollars (\$300.00) and to consolidate, if necessary, hearings held under M.G.L. c. 40, §15C with those held under M.G.L. c. 87, §3, which applies to the cutting of public shade trees. Thus, any interest the public may have in preserving the rural, natural, historic, and scenic character of eligible roads in the City can be accomplished by operation of M.G.L. c. 40, §15C.

The proposed ordinance (hereafter cited as “Gardner Scenic Roads Ordinance”) appears to be derived directly from that of another Massachusetts municipality and, in large part mimics M.G.L. c. 40, §15C. The proposed ordinance is meant to provide criteria for the designation of scenic roads and to ensure that trees and stone walls within designated scenic roads will not be altered without public hearing or without following the procedures outlined within the same. (*See* Gardner Scenic Roads Ordinance, Section 1). The proposed ordinance, after defining certain terms contained within M.G.L. c. 40, §15C, lists criteria for designating a road as “scenic”. (*See* Gardner Scenic Roads Ordinance, Sections 2-3). The proposed ordinance also requires that before a road be designated as scenic, certain notice requirements must be met and a joint public hearing held by Gardner’s City Council and Planning Board. (*See* Gardner Scenic Roads Ordinance, Section 4).

The remainder of the proposed ordinance simply sets forth the rules and regulations for implementation of the authority already conferred on the City by M.G.L. c. 40, §15C and provides exceptions when the City Forester acts in an emergency in accordance with M.G.L. c. 87. (*See* Gardner Scenic Roads Ordinance, Section 5). Again, this is consistent with the current legislative authority given to the City by virtue of M.G.L. c. 40, §15C and M.G.L. c. 87, §3. Lastly, the proposed ordinance sets forth certain requirements as to road and driveway design standards (*See* Gardner Scenic Roads Ordinance, Section 7) and provides for restoration in the event of a violation (*See* Gardner Scenic Roads Ordinance, Section 8).

The proposed ordinance is generally consistent with M.G.L. c. 40, §15C. Certain provisions of the proposed ordinance, however, may be interpreted as frustrating the purposes of the applicable statute, which would render the proposed ordinance invalid. There are only a few substantive differences between the proposed ordinance and M.G.L. c. 40, §15C. First, the proposed ordinance would allow a group of ten (10) citizens to petition the City Council to designate a road as “scenic” (*See* Gardner Scenic Roads Ordinance, Section 4). Under M.G.L. c. 40, §15C, citizens are not prohibited from petitioning the City to designate a road as “scenic”; however, if such a petition is made, the City may exercise discretion as to whether to move forward with the petition in seeking scenic road designation of a proposed road. Further, under the proposed ordinance, any designation of a scenic road by the City Council would require a full public hearing, which is not required under M.G.L. c. 40, §15C. (*See* Gardner Scenic Roads Ordinance, Section 4). Lastly, the proposed ordinance requires that the City Council consider certain criteria in determining whether a road should be designated as “scenic”. M.G.L. c. 40, §15C does not require a public hearing by the City Council, nor does it include criteria which must be used to determine if a proposed road is “scenic”, or otherwise define the term “scenic road.” Thus, the boards and commissions of the City which possess expert and actual knowledge (i.e. a local


planning board, conservation commission, or historical commission) have the discretion to confer with other City officials, if necessary, and to then render an opinion. In effect, the proposed ordinance would limit the City's discretion as to what may be considered a scenic road by setting a narrow list of criteria to consider when making such a designation. This limitation may be construed as frustrating the broad discretion afforded to the City by M.G.L. c. 40, §15C, thus leading to a conclusion that the proposed ordinance is inconsistent with state law and, therefore, invalid. In other words, the proposed ordinance could be interpreted as making it more difficult for the City to designate a road as "scenic" than if the City acted pursuant to M.G.L. c. 40, § 15C because it sets specific, limited reasons to designate a road as "scenic".

Further, the addition of public hearings – which include a two-week notice period as well as a sixty-day window for issuance of a Planning Board decision – could unnecessarily delay needed road improvements. Given the short paving season in New England, coupled with the fact that some roads are paved with short notice due to availability of funding, the added administrative processes could significantly hinder the City's ability to timely perform necessary repairs. It is also important to note that the terms "repair" and "maintenance" in both the statute and the proposed ordinance are broadly defined and would include the filling of potholes. If a public hearing were required every time basic road maintenance was needed on certain roads, it would unnecessarily burden the City's DPW and Planning Board, as well as any utility company seeking to do work on a road designated as "scenic."

Accordingly, it is the opinion of the City of Gardner Law Department that the proposed ordinance, as drafted, may frustrate the purpose of an existing state law, and if passed may place an unwarranted administrative burden and delay of the City's efforts to maintain the City's roads. Further, as the proposed ordinance provides no more protection than M.G.L. c. 40, §15C once a road has been designated as "scenic", it is redundant.

Please do not hesitate to contact the City of Gardner Law Department with any additional questions with regard to this matter. Thank you for your time and attention.

Very Truly Yours,



Priya Gandbhir, Esq.
Assistant City Solicitor

Gardner Scenic Roads Ordinance

Section 1. AUTHORITY AND PURPOSE

Section 1.1 AUTHORITY

This ordinance is adopted under authority of Chapter 40, Section 15C of Massachusetts General Law.

Section 1.2 PURPOSE

The purpose of this ordinance is to maintain the rural, natural, historic and scenic character of the City's roadways. The ordinance ensures that:

1. City ways will be recommended for designation as scenic roads in accordance with the criteria stated in this ordinance; and
2. Trees and stone walls within the rights-of-way or layouts of all designated scenic city roads will not be altered without the public hearing required by, nor without following the other procedures set forth in, this ordinance.

Section 2. DEFINITIONS

For terms not qualified or defined in Chapter 40, Section 15C of the Massachusetts General Laws the following meanings shall apply for the purposes of this ordinance:

- A. "Cutting or removal of trees" shall mean the removal of one or more trees, trimming of major branches, or cutting of roots sufficient in the City Forester's written opinion to cause eventual destruction of a tree.
- B. "Repair, Maintenance, reconstruction, or paving work" shall mean any work done within the right-of-way by any person or agency, public or private. Construction of new driveways, roads or alteration of existing ones is included, insofar as it takes place within the right-of-way. Construction or alteration of water, sewer, electric, telephone, cable TV, or other utilities within the right-of-way is also included.
- C. "Road" shall mean the entire right-of-way of a vehicular traveled right-of-way including any necessary appurtenances including bridge structures, drainage systems, retaining walls, traffic control devices, and sidewalks, but not intersecting streets or driveways. The right-of-way includes the area on and within the boundaries of the public way. If the boundaries are not officially known, any affected tree or stone wall shall be presumed to be within the public right-of-way until shown to be otherwise.

D. "Tearing down or destruction of stone walls" shall mean the destruction of more than ten linear feet of stone wall involving more than one cubic foot of wall material per linear foot above existing grade. Temporary removal and replacement at the same location with the same materials is permitted without Planning Board approval if the City's Highway Department is notified before the work begins so that it can confirm that the wall is properly replaced. Repair of a stone wall, not involving tearing down or destruction of the wall, is not covered by this ordinance.

E. "Trees" shall include a tree whose trunk has a diameter of one and one half inches or more as measured four feet above the ground. Nothing in this definition shall be construed to permit a person, other than the City Forester or his designee, to trim, cut down or remove a public shade tree more than one and one-half inches in diameter one foot from the ground.

Section 3. CRITERIA FOR DESIGNATION AS A SCENIC ROAD

In determining which roads or portions of roads should be recommended to the Gardner City Council for designation as scenic roads, the following criteria shall be considered:

1. overall scenic beauty;
2. contribution of trees to scenic beauty;
3. contribution of stone walls to scenic beauty;
4. age and historic significance of roads, trees, and stone walls;
5. built features such as historic buildings, historic monuments, historic burial grounds, historic structures, farm buildings and fencing; and
6. road features such as historic layout, surface, carriage width, use restrictions, non-historic bridges.

Roads that have previously been designated as scenic roads may be re-evaluated using the foregoing criteria.

Section 4. PROCEDURE FOR DESIGNATING SCENIC ROADS

The Planning Board, the Gardner City Council, the Conservation Commission, the Historical Commission, or a petition of ten (10) citizens of the City may propose "scenic road" designation for any Gardner road other than a numbered route or state highway as a scenic road. The City Council then shall hold a joint Public Hearing with the Planning Board notifying the City Forester, the Highway Department, the Conservation Commission and the Historical Commission and the public by advertising twice in a newspaper of general circulation, the first advertisement to appear at least fourteen (14) days prior to the date of the public hearing. A majority vote of the Gardner City Council is required for designation as a scenic road. Following designation by the Gardner City Council, the Planning Board shall:

1. notify all municipal departments that may take any action with respect to such road;
2. notify the Massachusetts Department of Highway;
3. indicate such designation on all maps currently in use by municipal departments;
and
4. notify all utility companies or other such parties which may work or be working on the border of such road.

Section 5. PROCEDURES

Section 5.1 FILING

Any person or organization or agency seeking the consent of the Planning Board under M.G.L. Chapter 40, Section 15 C regarding road repair, maintenance, reconstruction, or paving work that may involve the cutting or removal of trees or the tearing down of stone walls, or portions thereof shall file a request with the Planning Board and submit the following information:

1. the text of the legal notice identifying the location of the proposed action in terms enabling the readers to locate it with reasonable specificity on the ground without the need for additional plats or references, and describing in reasonable detail the proposed changes to trees and stone walls;
2. a statement of the purpose, or purposes, for the proposed action;
3. plans, drawings or other explanatory reference material showing the specific design or engineering details;
4. except in the case of City departments, a fee sufficient for the cost of advertising and notification shall be paid by the applicant.
5. any further explanatory material useful to adequately inform the Planning Board.

Section 5.2 NOTICE

The Planning Board shall, as required by statute, give notice of its public hearing by twice advertising in a newspaper of general circulation in the area, with the first publication of the notice to be at least fourteen (14) days prior to the hearing and the last at least seven (7) days prior to the hearing. Copies of the notice shall be sent to the City Council, Conservation Commission, Historical Commission, City Engineer, City Forester and Highway Department

Section 5.3 TIMING OF THE HEARING

The Planning Board shall hold a public hearing within 30 days of receipt of a properly filed request, and shall make a decision within 60 days of that receipt, unless a longer time is agreed to by the applicant.

Section 5.4 REPORTING OF DECISION

The Planning Board shall, within 60 days of receipt of a properly filed request, submit a written determination of consent or denial to the applicant.

Section 5.5 PUBLIC SHADE TREES

Notice shall be given and Planning Board hearings shall be held in conjunction with those held by the City Forester acting under M.G.L. Chapter 87. Consent to an action by the Planning Board shall not be construed as consent by the City Forester or vice versa. A Planning Board decision shall contain a condition that no work shall take place until all applicable provisions of M.G.L. Chapter 87 have been complied with.

Section 5.6 EMERGENCY REPAIR

The procedures of this ordinance shall not apply when the City Forester acts in an emergency in accordance with M.G.L. Chapter 87 to remove fallen trees, diseased trees, or limbs which cause an obstruction to public travel or a dangerous situation with respect to utility lines.

Section 6. CONSIDERATIONS

In acting on applications concerning scenic roads, the Planning Board shall take into consideration the following:

1. preservation of natural resources;
2. preservation of historic resources;
3. scenic and aesthetic characteristics;
4. environmental values;
5. public safety;
6. local residential traffic patterns and overall traffic volume and congestion;
7. compensatory actions proposed, such as tree and wall replacement;
8. functional importance and urgency of repair, maintenance, reconstruction, or paving;
9. additional evidence contributed by abutter, City departments, and other interested parties;
10. existence or absence of reasonable alternatives; and
11. other planning information.

Section 7. ROAD AND DRIVEWAY DESIGN STANDARDS

At a minimum, driveways shall be consistent with Gardner regulations for residential driveways and curb cuts and shall comply with this ordinance.

Only one driveway cut per lot onto any scenic road shall be allowed. A new driveway on a scenic road shall not exceed twelve feet in width.

Stone wall sections to be removed for a driveway shall not exceed the driveway width by more than one foot.

Stone wall sections to be removed for a new road shall not exceed the road width by more than ten feet.

No tree with a trunk exceeding eight inches in diameter four feet above the ground or cluster of trees within six feet of one another with trunks six inches in diameter four feet above the ground shall be removed for a new driveway or road unless the curb cut cannot be safely located elsewhere.

SECTION 8. ENFORCEMENT

Failure to file with the Planning Board for permission to cut or remove trees or for destruction of any portion of a stone wall within the layout of any scenic road will require an immediate filing as detailed above and the applicant shall be required to restore the features if required by the Planning Board. This restoration shall consist of replacing the stone wall as necessary and replacing the trees cut on a square-inch per square-inch basis (combined area of the replacement trees measured one foot above ground level to equal total area of the original tree trunk as measured at the stump) at locations specified by the Planning Board.

Failure to comply with a duly issued decision of the Planning Board shall be subject to restoration as detailed above and other remedial measures that the Planning Board deems necessary, including, but not limited to the enforcement of the restoration measures as stated above. Any decision not carried out within two years of issue shall be void and shall require a new filing.

The Planning Board and the City Forester, where appropriate, shall have the authority to enforce the provisions of this ordinance.

Any violation of this Ordinance, M.G.L. Chapter 40, Section 1 5C, or a Planning Board decision issued under this Ordinance or M.G.L. Chapter 40, Section 1 5C, shall be punishable by a fine not to exceed three hundred dollars per violation.

CITY OF GARDNER
LAW DEPARTMENT

John M. Flick
City Solicitor

2018 JUN 13 PM 12:34



Priya Gandbhir
Assistant City Solicitor

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Writer's Email:

June 13, 2018

VIA HAND DELIVERY

Nathan R. Boudreau, Chair
Public Service Committee
Gardner City Council
95 Pleasant Street
Gardner, MA 01440

Re: Proposed Parking Ban Ordinance

Dear Chairman Boudreau:

The Law Department has reviewed the proposed parking ban ordinance. The Law Department has no objection to the passage of this Ordinance and sees no legal impediment as drafted.

Please let me know if you have any additional questions.

Very truly yours,

John M. Flick

Cc: Mark P. Hawke, Mayor

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 600, ENTITLED "VEHICLES AND TRAFFIC," ARTICLE VI: STOPPING, STANDING, AND PARKING, SECTION 23: ALL-NIGHT PARKING

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

Section 1.

Section 600-23(a) of the Code of the City of Gardner be repealed and replaced by the following:

§600-23(a): Parking Ban

- i. The Mayor, or designee, after consultation with the Police Department and the Department of Public Works, may order a parking ban to be put in place and enforced by the Gardner Police Department.
- ii. During the parking ban, no vehicles will be permitted to park on any public way, highway or parking lot under the control of the City between the hours of 11:00 pm and 7:00 am.
- iii. Notification to residents about the ban will occur by posting the information through social media, the City's emergency alert system, notification to the local newspaper and/or by any other technology deemed fit for this purpose.
- iv. The Parking Ban shall expire upon notice from the Mayor, or designee, stating the date and time that the ban will expire. The Mayor, or designee, may choose to issue this notice at a separate date and time from when the ban is declared.
- v. Fines issued by the Police Department by those in violation of this ordinance shall be set according to the provisions of Chapter 390 of the Code of the City of Gardner.

Section 2.

Section 600-23(d) of the Code of the City of Gardner be amended by striking the following:

"(November 15 to April 1)"

Section 3: Effective Date.

This ordinance shall become effective July 1, 2018 after passage and publication as required by law.