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George C. Tyros

**CITY OF GARDNER**  
**MASSACHUSETTS 01440-2630**

OFFICE OF THE  
CITY COUNCIL



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GARDNER, MA

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Elizabeth J. Kazinskas  
**WARD 3 COUNCILLOR**  
Nathan R. Boudreau  
**WARD 4 COUNCILLOR**  
Karen G. Hardern  
**WARD 5 COUNCILLOR**  
Aleksander Dernalowicz, Esq.

October 8, 2020

**CITY COUNCIL SPECIAL MEETING**

**Date:** Wednesday, October 14, 2020  
**Time:** 6:30 P.M.  
**Location:** Remotely\*

**AGENDA**

#10327, An Ordinance to Amend the Code of the City of Gardner by adding a New Chapter 565, to be Entitled "Stormwater Management."

CITY COUNCIL OF GARDNER

*Elizabeth J. Kazinskas*

ELIZABETH J. KAZINSKAS

Council President

**NOTICE:** *The listing of Agenda items are those reasonably anticipated by the Chair 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.*

*\*Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Gardner City Council will be conducted via Zoom remote participation and broadcast live on Gardner Educational Television, Channel 8, and the City's YouTube Channel. The audio or video recording, transcript, or other comprehensive record of proceedings will be posted on the City's website as soon as possible after the meeting.*

10327

City of Gardner, *Executive Department*

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Michael J. Nicholson, Mayor

2020 OCT -6 PM 4: 28  
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GARDNER, MA

October 6, 2020

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

RE: Special Meeting Request – Item 10327: An Ordinance to Amend the Code of the City of Gardner by adding a New Chapter 565, to be Entitled “Stormwater Management.”

Dear President Kazinskas and Councilors,

Thank you for your discussions regarding the above mentioned agenda item. As was stated during last evening’s meeting of the City Council, the two proposed ordinances are being submitted in conjunction with a federal mandate and consent order that the City has received from the Environmental Protection Agency.

After reviewing the situation further with the Law Department, in order to be compliant with the consent order and subsequent extensions that the City has received, the proposed ordinances would have to be sent to their first printing by October 15<sup>th</sup>, 2020.

At last evening’s meeting, the Council voted to send the proposed ordinances to the Committee of the Whole for study and report at an informal meeting. After speaking with the Council President, Gardner Educational Television, the Law Department, and the City Engineer’s Office, I am writing to request that the informal meeting of the Council be scheduled for the evening of Wednesday, October 14<sup>th</sup>, with a special meeting of the Council scheduled immediately after for vote. This date was suggested by the above group of officials to account for the holiday on Monday, October 12, and the School Committee meeting that was already scheduled for Tuesday, October 13.

Thank you for your attention to this matter.

Respectfully Submitted,

Michael J. Nicholson  
Mayor, City of Gardner

10327



United States Environmental Protection Agency  
Region 1 – New England  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

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CITY CLERK'S OFFICE  
GARDNER, MA

DEC 05 2019

Certified Mail  
Return Receipt Required

Order for Compliance

The Honorable Mark Hawke  
Mayor of the City of Gardner  
95 Pleasant St.  
Room 125  
Gardner, MA 01440

Re: In the Matter of the Gardner, Mass. MS4 (NPDES # MAR041190) Order for Compliance under Section 309 of the Clean Water Act, Docket No. CWA-AO-R01-FY20-08

Dear Mayor Hawke:

Communities subject to the 2003 and 2016 National Pollutant Discharge Elimination System (NPDES) General Permits for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts (2003 and 2016 MS4 Permits) have been required to develop and implement programs to protect the water resources of the Commonwealth of Massachusetts for several years. Adequate legal instruments are among the foundational elements of such programs. Accordingly, the 2003 MS4 Permit required communities to have in place Illicit Discharge Detection and Elimination (IDDE), Construction/Erosion and Sediment Control, and Post-Construction Stormwater Management ordinances, by-laws, or other regulatory mechanisms by May 1, 2008 (see Part II, Subparts B.3(b), B.4(a), and B.5.(a) of 2003 MS4 Permit). The 2016 MS4 Permit continues to require that permittees have adequate legal authorities to implement these programs (see Parts 2.3.4.a (IDDE Program) 2.3.5.c.i (Construction Site Stormwater Runoff Control) and 2.3.6.a.ii. (Post Construction Stormwater Management of 2016 MS4 Permit).

The 2003 and 2016 MS4 Permits have required annual reporting to EPA, including information on the development and implementation of adequate legal mechanisms. Gardner's Notice of Intent (NOI) to be covered by the 2016 MS4 Permit confirmed that the Town did not yet have those regulatory authorities in place and established a June 30, 2019 milestone for doing so. Nonetheless, Gardner's Year 1 MS4 Annual Report (Reporting Period: May 1, 2018-June 30, 2019) stated that the City has still not fulfilled these obligations. This was confirmed during a

recent EPA inspection of the City's MS4 conducted on October 8, 2019, during which City representatives indicated that a draft ordinance related to IDDE was under review.

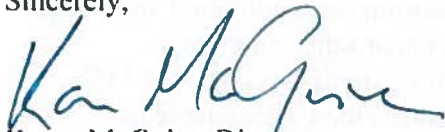
**Order**

Section 309(a)(3) of the Clean Water Act (Act) authorizes EPA's Administrator to order compliance with Sections 301 and 308 of the Act and any permit condition or limitation implementing any NPDES permit. This authority has been delegated to the Director of the Office of Enforcement and Compliance Assurance ("Director") in EPA Region 1. Pursuant to that authority, the City is hereby required by **June 30, 2020** to adopt the ordinances or regulatory authorities necessary under the 2016 MS4 Permit. EPA is establishing this schedule in accordance with Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A). Also, the City must notify Todd Borci, EPA Region 1, when such ordinances or regulatory authorities have been adopted and provide a copy of such authorities via email at [borci.todd@epa.gov](mailto:borci.todd@epa.gov). Doing so will ensure EPA's immediate knowledge of the City's compliance with these requirements.

These obligations are effective upon the City's receipt of this letter, but EPA is not waiving or modifying the terms and conditions of the 2016 MS4 Permit. The 2016 MS4 Permit remains in full force and effect, and EPA reserves the right to seek any remedies available under Section 309 of the Act, 33 U.S.C. § 1319, for any violation identified herein. Also, please be aware that the City may seek federal judicial review of this action pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Finally, please be aware that Section 402(s) of the Clean Water Act, 33 U.S.C. § 1342(s), provides municipalities with the opportunity to develop an integrated plan as defined therein.

As the City undertakes efforts to comply with the 2016 MS4 Permit, it may find the model ordinances available at <https://www.epa.gov/npdes-permits/stormwater-tools-new-england> to be helpful. We are also available to answer any questions that you have related to these matters. Feel free to contact Todd Borci of my staff at 617-918-1358, or your attorney may contact Jeff Kopf, Senior Enforcement Counsel, at 617-918-1796.

Sincerely,



Karen McGuire, Director  
Enforcement and Compliance Assurance Division

cc: (via email)

Chris Coughlin, City Engineer, City of Gardner, Mass.  
Todd Borci, Water Compliance Section, ECAD, EPA Region 1  
Newton Tedder, Water Division, EPA Region 1  
Jeff Kopf, Senior Enforcement Counsel, EPA Region 1  
Lealdon Langley, Director, Division of Watershed Management, MassDEP