

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF MARCH 14, 2018

Finance Committee Members present were Council President Scott Graves and Councillor Ronald Cormier with Councillor James Walsh participating remotely. Assistant City Clerk Titi Siriphan was also in attendance.

Other Officials Participating included Mayor Mark Hawke; Dane Arnold, Director, Department of Public Works; and, Robert Oliva, Assistant Director, Department of Public Works.

The meeting was called to order by Council President Scott Graves at 12:00 p.m. in the Mayor's Conference, Room 128, 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?

The Assistant City Clerk announced that the meeting is being recorded.

1-1 Reading and Approval of Minutes of Prior Meeting(s).

On a motion by Councillor Ronald Cormier and seconded by President Graves, it was voted to approve the Minutes of the Meeting of February 20, 2018, as printed.

2-1 An Order Transferring \$260,000.00 from Water Surplus to Water, Acadia Road Water Main Improvement Account.

Robert Oliva, Assistant Director, Department of Public Works, informed the Committee that the Department seeks funding to replace the water main on Acadia Road, since it is prone to break and that plans are underway to repave the roadway. He distributed a schematic outlining the locations of the proposed water main extension. He said that the Department plans to replace hydrants and related infrastructure along with the water mains.

President Graves noted that the funds for the project would be drawn from the Water Enterprise Fund. Mr. Oliva concurred.

Councillor Walsh said that he recognizes the two water main replacement projects "as capital improvement projects" and views them similarly to road paving projects, noting many needs and not enough money to satisfy all the needs." He questioned whether a list exists that prioritizes all of the water main replacement needs throughout the City, or whether this project is being prioritized because of the planned paving project.

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DPW Director Dane Arnold stated that the DPW has a map listing all water mains that need to be replaced throughout the City, but that the list is not prioritized. He said that the proposed water main replacement is being expedited because the roadway is planned to be paved.

Councillor Walsh stated that he is in agreement to replace the water main on Acadia Road, citing comments made by a former Ward Councillor that the water main situation “is like a bowl of spaghetti in that area,” adding that “services are connected to other services instead of a direct connection to the water main.” He then asked that a copy of the map that identifies the locations of the water mains be provided to the Committee.

Mr. Arnold stated that he would provide the Committee with a listing.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted to recommend to the City Council that the following Order ought to pass:

AN ORDER APPROPRIATING FROM WATER SURPLUS TO WATER – ACADIA ROAD WATER MAIN IMPROVEMENT.

ORDER: That there be and is hereby appropriated the sum of Two Hundred Sixty Thousand Dollars and No Cents (\$260,000.00) from Water Surplus to Water – Acadia Road Water Main Improvement.

2-2 An Order Transferring \$50,000.00 from Water Surplus to Water, Clark Street Water Main Improvement Account.

Mr. Oliva informed the Committee that the Department seeks funding “to create a loop/redundant system” for the residents of Century Way, Brookside Drive, Fernwood Drive, Leo Drive, and Holly Drive, by installing a main on Clark Street. He noted that if the water main breaks on Clark Street, the neighborhoods would lose water service because “the system isn’t looped.” He added that the Department has \$100,000 encumbered and the additional funds would help to bolster the project.

Councillor Ronald Cormier moved to recommend to the City Council that the Order ought to pass. Councillor James Walsh seconded the motion.

On the motion, Councillor Walsh questioned the impact that this appropriation and the previous appropriation would have on the Water Surplus Account and whether there are plans to utilize additional Water Surplus funds for the remainder of the fiscal year.

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Mayor Hawke stated that John Richard sent out the typical e-mail describing the impact, which would leave a balance of \$1,964,137.00, if both appropriations pass. Councillor Walsh again asked whether there are plans for additional appropriations from the Water Surplus Account for the remainder of the fiscal year.

Mr. Arnold replied, "Not at this time."

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted to recommend to the City Council that the following Order ought to pass:

AN ORDER APPROPRIATING FROM WATER SURPLUS TO WATER – CLARK STREET WATER MAIN IMPROVEMENT ACCOUNT.

ORDER: That there be and is hereby appropriated the sum of Fifty Thousand Dollars and No Cents (\$50,000.00) from Water Surplus to Water – Clark Street Water Main Improvement Account.

4-1 **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.**

Councillor Ronald Cormier moved to request that a letter be sent to the Legal Department asking for a review of the legality of the proposed Ordinance. President Graves seconded the motion.

Councillor Walsh asked if the Council President drafted the Ordinance.

President Graves responded that he drafted the Ordinance. He said that he informed the Mayor weeks ago of his plan to pursue [Legislative] Legal Counsel and that it would behoove the Council to obtain legal input.

Councillor Walsh agreed that "it is something that should be considered," adding that "it's a great idea." He said that he is hopeful that the referral to the Legal Department "will not give rise to the reason why it is needed," but that "time will tell." He commended the Council President for putting forth the matter and for advancing it.

President Graves said that he "will not start out with the presumption that the Legal Department will disagree with me," and that "reasonable minds can disagree." Citing Gardner's two branches of its government, President Graves said that when the Legal Department doesn't agree with the Mayor or the City Council, it creates a situation where the other branch of government has no recourse to have its voice heard, and "that has happened a few times in the past." He continued saying, "It doesn't happen all that often, but when it does over an important matter, the proposal would be

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something that would just be there for the rare occasion when it happens that the Legal Department doesn't agree with what the City Council thinks."

Councillor Walsh stated that he agrees that those occasions arise from time to time and added that it is worthy of note that both he and President Graves served in the capacity of City Solicitor and "know where our primary loyalty lies." "And," he said, "There is a reason and an inference to be taken from the fact that the City Solicitor is appointed by the Mayor and is not subject to Council approval." "And," he continued, "I think that is further reason why this is worthy of consideration and look forward to receiving the City Solicitor's point of view on it."

Councillor Ronald Cormier stated that he was not looking for an opinion from the City Solicitor, but whether it is legal in form and substance and a proper way of setting it up.

On the motion, it was voted unanimously to transmit the following Ordinance to the City Solicitor for review and legality:

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

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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.

5-1 A Measure Authorizing the City to Enter into a Contract for a Period Not-to-Exceed Five (5) Years with PM AM Corporation for Human Capital Management Services for the Police Department.

Mayor Hawke informed the Committee that there is a multitude of rules, regulations, and training that the Police Department must comply with and that the proposed software program would align all Public Safety programs – Police, Fire, and Dispatch – into a single software program. He said that the software would be very useful for verifying that officers received proper training when participating in court cases. He noted that the Police Chief advised him that there is a 15% discount off the price of the software if the City enters into a five-year contract agreement and that the cost is \$11,137.50, with the outlay spread across five years.

Councillor Ronald Cormier suggested that the software features are unique to public safety functions and purposes, addressing Fire, Police, and Dispatch functions.

Mayor Hawke noted that implementing the proposed software package is timely since the City is moving to combine Police and Fire dispatching.

Councillor Ronald Cormier moved to recommend to the City Council that the Measure ought to pass. Councillor James Walsh seconded the motion.

On the motion, Councillor Walsh questioned the source of funding for the contract.

Mayor Hawke responded, saying that the cost of the software program would be included in the Police Department's Budget, with a cost of just over \$2,000 for each fiscal year.

Councillor Walsh asked if funds have been appropriated in the current fiscal year's budget to cover the first year's cost of the software.

The Mayor responded, saying that the cost in the current fiscal year would be a couple hundred dollars and that the Police Chief is confident that he has the money in his budget.

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Councillor Walsh said that from what he read about the Contract, it appears that there is a License Agreement for the use of the software which is owned by the contracting party. He asked if the Mayor is aware of any other departments that have utilized this particular software program and “if we are aware that it would achieve the Department’s objective.” “Secondly,” he asked, “that since the software program encompasses human resource-related functions, has the Director of Human Resources weighed in on its functionality and is in agreement that it will obtain its intended objective?”

Mayor Hawke responded, saying that the Police Chief found it [software] through his contacts at conferences, but that he [Mayor] could not tell the Committee “off the top of his head” which other departments are using it. He said that the software is not really human resources-related because it tracks mandatory training, such as firearms training and specialized training to deal with the types of individuals and situations encountered by the three Departments, such as emergency response. He added that the Police Chief informed him that the Police Department is required to track “a couple hundred trainings.”

Councillor Walsh stated that the Contract is being interpreted according to the laws of the State of Texas and that he is unsure that as a municipality in the Commonwealth of Massachusetts, the City of Gardner is able to enter into a Contract that is interpreted in accordance with the laws of a different State. He then asked the Mayor if he would obtain an opinion from the City Solicitor both with respect to whether it is acceptable to enter into the Agreement and if it is wise to do so.

Mayor Hawke responded, saying “You are correct,” saying that the Agreement would have to be changed to read “Massachusetts.” He said that the License Agreement presented was provided by the vendor to describe the program, but that the City would execute an Agreement that was reviewed and approved by the Law Department.

President Graves suggested that the Mayor proposes to obtain an Agreement that provides for language that replaces “State of Texas” with “Commonwealth of Massachusetts” in paragraph 18. He added that “the Indemnification [clause, paragraph 17] seems very unilateral” and expressed hope that the Law Department would look at that clause, as well. He noted that the Indemnification Clause “indemnifies PM AM from doing anything wrong.”

On the motion, it was voted to recommend to the City Council that the following Measure ought to pass:

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AUTHORIZING A FIVE-YEAR CONTRACT WITH
PM AM CORPORATION FOR
HUMAN CAPITAL MANAGEMENT SERVICES
FOR THE POLICE DEPARTMENT

VOTE: To authorize the City to enter into a contract for a period not to exceed five (5) years with PM AM Corporation for Human Capital Management Services for the Police Department, pursuant to the provisions of Massachusetts General Law, Chapter 30B, section 12 and in accordance with the PM AM Corporation Human Capital Management – SaaS License Agreement dated February 20, 2018, and the Mayor's Correspondence dated March 6, 2018, attached and made a part hereto.

ADJOURNMENT

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted to adjourn at 12:22 p.m.