

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF MAY 2, 2018

Finance Committee Members present were Council President Scott Graves and Councillor Ronald Cormier. Councillor James Walsh was absent.

Other Officials Participating: Mayor Mark Hawke; City Auditor John Richard; and, City Clerk Alan Agnelli.

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 Councillor James Walsh, it was voted to approve the Minutes of the April 11, 2018 Meeting, as printed.

2-1 A Measure Authorizing Prior Year Salary Expenditures.

City Auditor John Richard informed the Committee that the paperwork for the DPW salary adjustments was not processed in a timely manner and that the payroll sheets for the City Hall Maintenance contained an error. He said that the employee worked on a Sunday and should have been paid double time.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted to recommend that the City Council authorize payment of prior year DPW and City Hall Maintenance Salary Expenditure Accounts for prior years, as follows:

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

2-2 An Order Authorizing the City to Borrow a Sum of Money for Watkins Field Improvements.

The Mayor informed the Committee that this issue has been through the City Council three times – as part of the Capital Improvement Plan; funding for the Feasibility Study; and, the \$346,000 Free Cash appropriation in December. He said that he is awaiting an estimate from Tighe & Bond, but the actual cost will not be known until

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF MAY 2, 2018

the bids come in and that the plans and specifications should be completed by the end of this week. He said that he anticipates that filed sub-bids will take two weeks, another 2 weeks for the general bids, for about 5 to 6 weeks total. He said that he anticipates that construction could start in mid-June and that the project would be substantially complete by mid-September, particularly the stands and fields.

Based on the Mayor's estimates, Councillor Ronald Cormier noted that the entire project should be completed by the end of the construction season.

Mayor Hawke stated that at this time, he is uncertain of the project's estimate, but suggested "around \$3½ million." He said that along with the recently approved \$2.060M Capital Improvement borrowing authorization, the City could potentially pay off both within the next five years through a combination of bond anticipation notes and then roll it into a bond later. He added that the only other general fund debt is for the Police Station and that the City "would maintain debt balance" when the new school bond comes on-line.

Councillor James Walsh stated that if the City Council does not receive the amount of the borrowing by the meeting, then the Committee should recommend that the Loan Order be referred back to the Finance Committee for further study and report.

Councillor Ronald Cormier moved that the Finance Committee recommend that the City Council pass the Loan Order, subject to receiving the Loan amount; other, the Order be referred back to the Finance Committee for further study and report.

ORDER:

That the City of Gardner appropriates the sum of _____ Dollars (\$_____) to pay costs of renovating Watkin's Field, and paying costs incidental or related thereto; to meet said appropriation the Treasurer, with the approval of the Mayor, is authorized to borrow said sum under M.G.L. Chapter 44, Section 7(1), or any other enabling authority. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

Councillor James Walsh seconded the motion.

On questioning by President Graves, Mayor Hawke stated that the City uses two different engineering consulting firms for different projects and has pre-negotiated rates with each. He added that the City typically negotiates lower rates upon receipt of the consulting firm's first cost proposal.

On the motion, it was voted to recommend that the City Council pass the Loan Order, subject to receiving the Loan amount; otherwise, the Order be referred back to the Finance Committee for further study and report.

3-1 A Measure Confirming the Mayor's Appointment of Scott Marigliano to the position of Police Officer, Permanent.

The Mayor informed the Committee that the three appointees will replace retired police officers; have completed Police Academy training and field training.

The Mayor noted that Deputy Chief of Police John Bernard will retire at the end of May and that Chief of Police Neil Erickson plans to retire at the end of the calendar year.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted to recommend that the City Council confirm 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.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted to recommend that the City Council confirm 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.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted to recommend that the City Council confirm 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).*

Councillor Graves stated that the Committee is awaiting an opinion from the Law with respect to advising the Council as to the best way to handle the dilemma associated with donations being collected by the City without an authorized gift fund.

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.

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 it has twice heard back in communications from the City Solicitor regarding the proposed Ordinance and that it is time to submit the Ordinance to the Council.

Councillor James Walsh moved to recommend to the City Council to order the following Ordinance to First Printing.

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.

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF MAY 2, 2018

Councillor Ronald Cormier seconded the motion.

On the motion, the Mayor stated that the Ordinance made no sense because the City has two attorneys that are available to the Council, adding that he doesn't know of any precedent anywhere.

President Graves state that when he recently asked City Solicitor John Flick about the opioid legislation, Mr. Flick advised him that he [Flick] is personally opposed.

Continuing, President Graves stated that the Law Department cited the City Charter which gives the Council the authority to abolish entire departments.

The Mayor asked what would happen if the City Council's legal counsel disagrees with the City Solicitor.

President Graves stated that sometimes the City Solicitor is wrong.

Councillor Walsh added that the City Solicitor "gives us an opinion, it's not the law."

The Mayor asked how the Council would procure legal counsel, since "only the Mayor can bind the City." He said that if the Council President hires counsel, it is an unenforceable contract, then "we don't have to pay it."

President Graves stated that, in the City Solicitor's opinion concerning Charter provisions, he said that Chapter 30B "trumped the Charter." Councillor Graves also noted that the City Council is not a board, commission, or department like the DPW, but an elected branch of government.

Councillor Walsh noted that in the late 1980's, the City Council engaged the services of Counsel because there was no City Solicitor, as then-Mayor Deveau did not have one. Mr. Walsh said that the reason that the City did not have a City Solicitor is because the City could not pay Kopelman and Paige hourly, since it was a W-2 employee position. He added that Len Kopelman refused to sign the W-9 because he wanted to bill by the hour. Therefore, Councillor Walsh said, there is precedent since the City Council engaged legal services on its own.

The Mayor stated that the City Council could take a stance by not approving the Assistant City Solicitor and added that the City has two attorneys that the Council is free to use, both highly-paid lawyers.

President Graves stated, "In the future when there is another City Solicitor, and everyone agrees that the legal opinion is wrong; then what does the City Council do at that time?"

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF MAY 2, 2018

Councillor Walsh added that the adoption of the City Council Legal Counsel Ordinance would provide formality to the situation.

Directing a question to the Mayor, President Graves asked, “You have to entertain the notion that your lawyer could be wrong?” He then cited his case with the City concerning the EMS Service Zone Plan and added that “it is not foolishness to say that another attorney is wrong. Then who is right? A Court of law would then decide.”

On the motion, it was voted unanimously to recommend that the Ordinance be sent to First Printing.

ADJOURNMENT

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, it was voted to adjourn at 12:33 p.m.