

**REGULAR MEETING OF JULY 2, 2018**

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Regular Meeting of the City Council was held in the City Council Chamber, Room 219, City Hall, on Monday evening, July 2, 2018.

**CALL TO ORDER**

Council President Scott Joseph Graves called the meeting to order at 7:30 o'clock p.m.

**CALL OF THE ROLL**

City Clerk Alan Agnelli called the Roll of Members. Eleven (11) Councillors were present including President Scott J. Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson and James Johnson, Elizabeth Kazinskas, and James Walsh.

**OPENING PRAYER**

President Graves led the Council in reciting the Opening Prayer.

**PLEDGE OF ALLEGIANCE**

President Graves led the Council in reciting the "Pledge of Allegiance".

**OPEN MEETING RECORDING & PUBLIC RECORDS ANNOUNCEMENT**

President Graves announced to the assembly that the Open Meeting Recording and Public Records Announcement is posted at the entrance to the Chamber, and that any person planning to record the meeting by any means should identify themselves.

**READING & ACCEPTANCE OF MINUTES**

On a motion by Councillor James Walsh and seconded by Councillor Edward Gravel, it was voted viva voce, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, and Elizabeth Kazinskas, to waive reading and to accept the Minutes of the June 18, 2018 Regular Meeting, as printed.

**COMMUNICATIONS FROM THE MAYOR****APPOINTMENT**

**#9960**

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on recommendation of the Finance Committee, it was voted viva voce, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson,

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Elizabeth Kazinskas, and James Walsh, to confirm the Mayor's Appointment of Richard Braks to the position of Deputy Chief of Police, effective July 21, 2018, for the term expiring July 21, 2021.

Worcester, ss.

July 2, 2018

Then personally appeared **RICHARD BRAKS** 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,  
/s/ Alan L. Agnelli, City Clerk

**ORDER**

**#9961**

Reporting for the Finance Committee, Councillor James Walsh informed the Council that the Committee voted favorably, saying that the Council was aware that the Order would be forthcoming and cited "an unwritten agreement with the Mayor" that the Council would support an appropriation from the Stabilization Fund. He noted that the Committee's endorsement was due to the Council's decision to delay the Proposition 2½ override vote until November, the funding to become effective on July 1, 2019. He added that it is the Mayor's intent to restore the amount of money contained in the Order to the Stabilization Account, once Free Cash is certified in FY2019.

Councillor Christine Johnson stated that the Budget was approved by a majority of the City Council at its last meeting; therefore, there is no recourse "but to vote 'Yes'."

Councillor Nathan Boudreau said that he would support the Order "with a heavy heart," noting his disagreement in the [override election] approach that the Council took.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on recommendation of the Finance Committee, it was voted on call of the roll, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh, to adopt the following Order:

AN ORDER APPROPRIATING FROM CITY STABILIZATION FUND TO THE SCHOOL DEPARTMENT.

ORDERED: That there be and is hereby appropriated the sum of Six Hundred One Thousand Nine Hundred Forty-Seven Dollars and No Cents (\$601,947.00) from City Stabilization Fund to the School Department.

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Presented to Mayor for Approval – July 3, 2018

Approved – July 7, 2018

MARK P. HAWKE, Mayor

**PETITIONS, APPLICATIONS, ETC.**

**#9962**

On a motion by Councillor James Johnson and seconded by Councillor Edward Gravel, it was voted viva voce, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh, to refer an *Application by Folgar Salvage and Export Company for a License to Buy and Sell Second Hand Motor Vehicles, Class 2, at Rear 27 Hill Street* to the Public Safety Committee for study and report.

**#9963**

On a motion by Councillor James Johnson and seconded by Councillor Edward Gravel, it was voted viva voce, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh, to refer an *Application by Folgar Salvage and Export Company for License to Deal in Motor Vehicle Junk, Class 3, at Rear 27 Hill Street* to the Public Safety Committee for study and report and to schedule a public hearing at the next regular meeting.

**#9964**

On a motion by Councillor James Johnson and seconded by Councillor Edward Gravel, it was voted viva voce, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh, to refer an *Application by Rob's Dyno Service, LLC for a License to Buy and Sell Second Hand Motor Vehicles (Motorcycles), Class 1, at 268 Coleman Street* to the Public Safety Committee for study and report.

**#9965**

On a motion by Councillor Nathan Boudreau and seconded by Councillor James Boone, it was voted viva voce, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh, to refer *A Petition by National Grid for permission to install 1 JO Pole on West Broadway beginning at a point 170' northwest of the centerline of the intersection of Airport Road* to the Public Service Committee for study and report and to schedule a public hearing at the next regular meeting.

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REPORTS OF STANDING COMMITTEESPUBLIC SERVICE COMMITTEE & PUBLIC WELFARE COMMITTEE**#9905**

Councillor Christine Johnson, Chairperson of the Public Welfare Committee, informed the Council that on that day, the Committee received the Legal Opinion from the Law Department, but that the Committee had not yet reviewed the Opinion. Councillor Nathan Boudreau, Chairman of the Public Service Committee, concurred. There being no objections, the Committees were granted more time for study and report on *An Ordinance to Amend the Code of the City of Gardner by Adding a New Chapter to Be Entitled "Scenic Roads."*

FINANCE COMMITTEE**#9954**

Reporting for the Finance Committee, Councillor James Walsh informed the Council that the Committee would need more time to review the Ordinance, since neither the Mayor nor the Human Resources Director were present at the Finance Committee's recent meeting to respond to the Committee's questions. There being no objections, the Finance Committee was granted more time to study and report on *An Ordinance to Amend the Code of the City of Gardner, Chapter 171, Thereof, Entitled "Personnel," to Change Compensation Schedule "Exhibit E – Non-Union Employees."*

COUNCIL AS COMMITTEE OF THE WHOLE**#9899**

Councillor James Walsh stated that at its last informal meeting, it was the sense of the Council that there should be another meeting with the [Zoning Code Update] Consultant and that all questions from Councillors should be transmitted to the City Clerk for forwarding to the Consultant. There being no objections, the Committee was granted more time to study and report on *An Ordinance to Amend the Code of the City of Gardner by Deleting and Repealing Chapter 675 Thereof, "Zoning," and Replacing it With a New Chapter 675, to be Entitled "Zoning."*

**#9909**

Councillor Ronald Cormier moved to Order the following Ordinance to First Printing:

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 675 THEREOF, ENTITLED "ZONING," BY AMENDING THE ZONING MAP DESIGNATING CERTAIN PARCELS OF LAND SOUTHWESTERLY OF WEST STREET AS A LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC OVERLAY DISTRICT.

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



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Section 1. Chapter 675 of the Code of the City of Gardner, the Zoning Map, is hereby amended by designating the following parcels southwesterly of West Street as a Large-Scale Ground-Mounted Solar Photovoltaic Overlay District:

H27-7-3	H27-00019-00023	H27-00013-00050	H27-00023-00077
H27-7-6	H27-00019-00024	H27-00013-00051	H27-00023-00078
H32-19-2	H27-00019-00025	H27-00013-00052	H27-00023-00079
C32-14-18	H27-00019-00026	H27-00013-00053	H27-00024-00080
H27-00013-00106	H27-00024-00027	H27-00013-00054	H27-00024-00081
H27-00025-00001	H27-00024-00028	H27-00013-00055	H27-00024-00082
H27-00025-00002	H27-00023-00029	H27-00017-00056	H27-00024-00083
H27-00020-00022	H27-00023-00030	H27-00017-00057	H27-00024-00084
H27-00020-00021	H27-00023-00031	H27-00017-00058	H27-00019-00085
H27-00020-00020	H27-00018-00032	H27-00017-00059	H27-00019-00086
H27-00019-00006	H27-00018-00033	H27-00017-00060	H27-00019-00087
H27-00019-00007	H27-00018-00034	H27-00017-00061	H27-00020-00088
H27-00019-00008	H27-00013-00035	H27-00017-00062	H27-00025-00089
H27-00019-00009	H27-00018-00036	H27-00017-00063	H27-00025-00090
H27-00019-00010	H27-00018-00037	H27-00017-00064	H27-00025-00091
H27-00019-00011	H27-00018-00038	H27-00017-00065	H27-00025-00092
H27-00019-00012	H27-00018-00039	H27-00017-00066	H27-00025-00093
H27-00019-00013	H27-00023-00040	H27-00017-00067	H27-00025-00094
H27-00019-00014	H27-00023-00041	H27-00017-00068	H27-00025-00095
H27-00019-00015	H27-00022-00042	H27-00017-00069	H27-00025-00096
H27-00014-00016	H27-00017-00043	H27-00022-00070	H27-00025-00097
H27-00014-00017	H27-00017-00044	H27-00022-00071	H27-00025-00098
H27-00014-00018	H27-00017-00045	H27-00023-00072	H27-00025-00099
H27-00014-00019	H27-00017-00046	H27-00023-00073	H27-00014-00101
H27-00014-00020	H27-00017-00047	H27-00023-00074	H27-00014-00102
H27-00015-00021	H27-00013-00048	H27-00023-00075	H27-00014-00103
H27-00014-00022	H27-00013-00049	H27-00023-00076	H27-00015-00105

Section 2. This Ordinance shall become effective upon passage and publication as required by law. Any claims of invalidity by reason of any defect in the procedure of adoption may only be made ninety days after the posting or the second publication.

Councillor James Walsh seconded the motion.

On the motion, Councillor Christine Johnson suggested that the Council look to the State [EOER] Guidelines. Noting that a large area of the proposed overlay district has already been cleared, she said that there would need to be a significant amount of tree clearing to be performed. She said that the City has Large Scale Ground-Mounted Solar Overlay Districts in commercially and industrially-zoned areas, so the City must consider protecting residentially-zoned areas. She cited a concern that residents would choose to leave the

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community if solar arrays are constructed in residential areas and said that a public well exists in the proposed overlay district. Accordingly, she said, she does not support solar arrays in residential areas.

Councillor James Boone suggested that the revenue potential to the City through the siting of solar arrays “is tempting and might lessen the burden to the taxpayers.” Secondly, he said, the “property is commercial which is going to rural residential,” and “we are sending the wrong message if we are going to do this in the rural residential areas.” Finally, he said, a resident told him that “going green is not cutting down trees.”

Councillor Edward Gravel stated that from his recollection, the property has been dormant for ten years and that “the developer basically gravel-mined the whole property – removed soil and cut down trees illegally.” He said that the residents “kept on him,” so that the developer wasn’t able to make any money from the land. He expressed opposition to siting solar arrays in residential areas.

Councillor James Walsh stated that he would support the motion, citing the proposed site as “a failed residential area.” He said that there was an effort to develop the land for residential purposes and, in the process, there was “substantial change in the grades, and trees [were] removed, and [the property] has been a problem from a public safety perspective.” He said that the State’s [EOER] Guidelines suggest “siting in commercial, industrial, and other areas that have been substantially changed,” which “falls within those guidelines, as I see it.”

Continuing, Councillor Walsh said that he agrees that the Council must look carefully at overlay districts [sited] in rural residential areas; however, if the proposed solar array was in another area, he might be reluctant to support it. He noted that when the solar array is closed in twenty to thirty years, the panels would be removed and the land would be available for development once again, adding that “it would not be changed forever” and that “it would be used for a purpose favored by the Commonwealth.” Given the particular circumstances of this parcel, he said, [then] he would support the motion.

Councillor Elizabeth Kazinskas stated that she is not in favor of the overlay district, citing the enormity of the size of the proposed project. She said that a big problem is that six different concerns or companies, which the Council does not know who they are, seem shady and that there is no need for it.

Councillor Edward Gravel stated that the failed [housing] development’s infrastructure “is still there,” citing roads, hydrants, telephone, and electricity. He added that his biggest concern ‘is getting these five entities to come into this – they’re unknown.”



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Councillor Nathan Boudreau said that he “is conflicted about this” and that “it is quite shady.” “We don’t know how many companies [or] how many trees will be coming down. There is not enough security and none of us know what’s going on,” he added.

On the motion, on call of the roll, four (4) yeas, Councillors Craig Cormier, Ronald Cormier, Karen Hardern, and James Walsh; seven (7) nays, President Scott Graves and Councillors James Boone, Nathan Boudreau, Edward Gravel, Christine Johnson, James Johnson, Elizabeth Kazinskas, the Order to First Printing was not adopted.

**UNFINISHED BUSINESS****#9898**

Leading to a motion, Councillor James Walsh stated that the City Council received correspondence dated June 28 from the Petitioner’s Counsel seeking to amend the petition by reducing the size of the overlay district from multiple parcels to a single parcel owned by the Dubzinski Family Trust. He said that correspondence was also received from the developer and the owner of the property indicating that this overlay project would be the only one that will be pursued in this [overlay] district, if approved.

Councillor James Walsh then moved to Order the following to First Printing, as amended at the request of the Proponent:

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 675 THEREOF, ENTITLED “ZONING,” BY AMENDING THE ZONING MAP DESIGNATING CERTAIN PARCELS OF LAND EASTERLY OF LOVEWELL STREET AS A LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC OVERLAY DISTRICT.

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

Section 1. Chapter 675 of the Code of the City of Gardner, the Zoning Map, is hereby amended by designating Parcel R07-3-11 easterly of Lovewell Street as a Large-Scale Ground-Mounted Solar Photovoltaic Overlay District.

Section 2. This Ordinance shall become effective upon passage and publication as required by law. Any claims of invalidity by reason of any defect in the procedure of adoption may only be made ninety days after the posting or the second publication.

Councillor Ronald Cormier seconded the motion.

On the motion, Councillor James Walsh noted that this solar overlay project is also in a Rural Residential District and questioned the reason that additional parcels were [first] proposed for an Overlay District when no other solar arrays are proposed. He said that the proponent appears to have addressed most of the concerns raised by the Council and that the final solar

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array plan encompasses only 30 acres of the 127-acre parcel, adding that most of the land will be preserved in its current state.

Councillor Nathan Boudreau stated that the proposed solar overlay site has one owner, the owner is willing to compromise, and has answered all of the Council's questions. He added that the project is different than the previous project, so then he would support it.

Councillor James Boone said that he has the highest respect for the Dubzinski Family and their efforts to minimize the overlay district and its impact, but that the proposed project is in a Rural Residential area and therefore, he cannot support it.

Councillor Christine Johnson stated that this project is different from the other project in that it has more cleared areas, but is still in a residentially-zoned area. She said that the area is very active with people who oppose the project and "those are the people that I have to listen to." She said that she spoke with some people who plan to file a complaint should the overlay pass, [in order] to challenge the overlay "as spot zoning." She added that the City needs to stop solar overlay districts in residentially-zoned areas and that the City's zoning laws allow solar overlays in commercial and industrial districts.

Councillor James Johnson stated that, he too, is opposed to the overlay district. He said that he spoke with a few dozen people that would be directly affected by the solar array, which would be sited directly behind their homes along Lovewell Street and also alongside Wright's Pond. He added that he could not support one overlay district but then support another.

Councillor Karen Hardern stated that each of the proposed overlay districts is located in different parts of the City and that a portion of the West Street site had been disturbed, but that the Lovewell Street array is in a residential area and would be sited next to the pond. Therefore, she said, she could not support the amendment.

Councillor Edward Gravel read aloud a *Letter to the Editor* that appeared in *The Gardner News*, which was written by Scott Michael Graves, a resident of 92 Ash Street and a former Economic Development Coordinator for the City of Gardner.

Councillor James Walsh noted that, in his opinion, the points made by Scott Michael Graves were not the basis for any of the issues being discussed by the Council.

Councillor Elizabeth Kazinskas stated that she agreed with comments that were made in support of the proposed overlay district and that she would support it.

On the motion, on call of the roll, five (5) yeas, Councillors Nathan Boudreau, Craig Cormier, Ronald Cormier, Elizabeth Kazinskas, and James Walsh; six (6) nays, President



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Scott Graves and Councillors James Boone, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, the Order to First Printing was not adopted.

**#9922**

President Graves relinquished the Chair to Councillor Ronald Cormier.

President pro-tem Ronald Cormier recognized Councillor Scott Graves.

Councillor Scott Graves moved to again pass the following Ordinance, notwithstanding the Mayor's Disapproval:

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.

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Councillor James Walsh seconded the motion.

On the motion, Councillor Graves stated that since the City Council voted twice to approve the Ordinance, by unanimous votes on both occasions, then “the veto itself is a slight on the City Council.” The issue, in his opinion, is “about the sanctity, integrity, and the importance and independence of the City Council,” and that in his [Graves] opinion, “the Mayor has based his disapproval on bottomless nonsense.”

Continuing, President Graves said, “The Mayor is not a lawyer and has tried to formulate some legal issues, but that his threat to do away with oaths of office does not deserve comment,” adding “It is not about the loyalty of the City Solicitor, but about the independence of the City Council.” He said that Councillors are eleven persons elected by the citizens and its role as a branch of elected government “is supremely important to the health and ongoing benefit of the citizens,” and “the Council’s role differs from the Mayor. He is one person and can hire ten lawyers if he wants to, [and] which he recently hired an outside counsel.”

Continuing, President Graves said, “The Mayor makes transfers behind closed doors without City Council approval, despite the fact that Chapter 44, section 32 requires City Council approval” and “makes transfers now with the blessing of his legal department.” “Don’t be conned,” he said “by what the Mayor says, as there will still be only one City position.” “If we [Council] were to hire our own legal counsel for a second opinion and we have an opinion from this attorney [City Council Legal Counsel], the City’s position will still be entailed in the City Solicitor’s opinion, but then we will know where we stand and know that what we are doing is right or wrong, or whether we should pursue legal action, because a Court can say, ‘Yes, Mr. Mayor, or Mr. Solicitor, you are incorrect about that as people are incorrect from time to time.’”

Continuing, President Graves noted that the City Council recently received a legal opinion that “did not even cite the correct statute.” He said that there is a statute that states that any contract over \$5,000.00 requires the signature of the Mayor, but [that] the “City Charter states “\$1,000.00,” adding that the City Council ‘is not subject to that statute’ which, he said, he [Graves] “made that argument, but that the City Solicitor completely glossed over and did not address.”

Continuing, President Graves informed the Council that recently, he asked the City Solicitor whether he, as Council President, could come to his [Solicitor’s] office to review a file relating to the [Solicitor’s] use of outside legal counsel which, he added, corresponds with a \$12,000 appropriation that the Council recently approved. The City Solicitor, President

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Graves said, would not allow him to look at the file and that he [Graves] raised other issues on the subject that the City Solicitor had not addressed and would not respond.

Continuing, President Graves stated, "... the Mayor can hire outside legal counsel; the City Solicitor can hire outside legal counsel; and, the School Committee can hire outside legal counsel, but the City Council can't." Citing the additional \$12,000 spent on outside counsel, in addition to \$2,500 that was budgeted and expended, President Graves stated that according to the City Ordinance, the Solicitor cannot retain outside legal counsel without proper appropriations, noting that the City Council was not made aware and that the issue was brought to the Council's attention only after the legal expenses were incurred. "So," he said, "they thought to keep it from us that they needed outside legal counsel, but that it was a good idea to come to us when the bill had to be paid."

Continuing, President Graves cited a comment that was made by Councillor Christine Johnson at a prior meeting concerning benefits [for the Council] and noted the Mayor's "use of crazy analogies" to justify denying such benefits. Mr. Graves said that he will be seeking a legal opinion from the Law Department in the immediate future since he believes that the Mayor's [health benefits] decision "is not within the law."

In conclusion, President Graves said that he "does not know what the fear is by getting a second opinion from another Attorney [as] sometimes there is a legal issue that has a novel aspect to it and sometimes you do need two opinions." He said that the Mayor believes that this effort "is to just to be able to sue the City," which "is not the case." "When the City Solicitor rules, then it is the end of the road and that there is nothing that the City Council can do about it, such as the appropriations transfers," he added.

Councillor Nathan Boudreau stated that his decision was made when the Public Service Committee sent a request to the City Solicitor and it got back to him from an employee that "Don't they have their own Attorney? So, sometimes we might," he added.

Councillor James Boone said that he was told that the City Council does not have the authority to sign a contract, so it has to be signed by the CEO on its behalf and, secondly, he was told that only the Boston City Council has [its own] legal representation in the entire State.

Councillor James Walsh stated that the Council President argued persuasively that the authority of the Mayor to sign contracts exclusively applies to matters within the executive department and that the Council is the Legislative Department; therefore, has separate authority to do that. "I believe that the Council's authority to adopt the Ordinance was passed by the City Solicitor" and "the assertion that only the Boston City Council has legal



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representation separate from the Executive Department is not true,” he said. Councillor Walsh then cited a limited solicitation that was conducted by the City Clerk’s Association, the findings of which indicated that several City Councils have their own legal counsel.

President pro-tem Ronald Cormier informed the Council that the Cities of New Bedford, Leominster, Chicopee, and Newburyport have legislative counsel.

Councillor James Walsh said that the Mayor suggests in his recent correspondence that “this is something of an effort to be divisive.” “I don’t see it that way, at all. It is an effort to re-establish and confirm the independence of the Council to take positions that may be in conflict with a City Solicitor’s opinion, a City Solicitor being solely appointed by the Mayor who is not subject to Council approval,” he said. “And, he added, “the best example of that is when there was a challenge to initiating the Ambulance service a few years ago when an interpretation of the applicable statute was necessary and the Mayor sought, with the approval of the City Solicitor, a particular way [to proceed] which, in his [Walsh] mind, “made no sense at all.” He said that Councillor Graves sought Court intervention for an interpretation of the statute and that the primary reason that the challenge failed is that the Court found that Councillor Graves did not have standing. “If we [Council] had separate legal counsel, we could have been in a much better position to assert those arguments and to get a ruling on the merits of that particular matter,” he said. “This is not a divisive issue at all, but a measure that provides the Council with a tool to use sparingly,” he added.

Council James Johnson echoed Councillor Walsh’s comments, saying that “this is not the City Council hiring a separate Solicitor, but [a situation] which [the Council] would continue to follow the regular [legal opinion] process, “but only when there is a disagreement between the Council and the opinion of the City Solicitor.” He added that a vote of the City Council would be required to seek the opinion of outside counsel.

Continuing, Councillor James Johnson said that having served in the Navy for 22 years and as a City Councillor, he has taken multiple oaths and questioned the Mayor for raising the issue of [the Council] questioning the City Solicitor’s oath. Councillor Johnson said that the “oath” has nothing to do with the Council Legal Counsel issue. He added that anyone can take an oath and still have biases when renderings decisions.

Addressing the Mayor’s correspondence, Councillor Karen Hardern stated, “There is no malintent here. We are just here to have a unified Council; it is a great idea and I will support it.”

In response to Councillor Boone’s inquiry, Council President Scott Graves stated that he specifically wrote in one of his letters, to which the City Solicitor responded, that the statute



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that says any contract of \$5,000.00 or more, has to be signed by the Mayor. He said that he pointed out [to the Solicitor] how that [statutory] provision does not apply to the legislative branch of government (City Council). The statute, he said, applies to boards, commissions, and other entities, but not to this [elected] branch of government. “So, the City Solicitor responded to that letter by completely glossing over the issue. This is illustrative of the reason why the City Council needs legal counsel,” he added.

Councillor Christine Johnson stated she was happy to see the Ordinance filed, since during her previous term on the City Council, there was an issue that arose from a legal opinion and at the close of that opinion, it said, “It may not hold up in Court.” “Well,” she added, “If it may not hold up in Court, then why are we getting a legal opinion that way?”

On the motion, it was voted viva voce, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh, to again pass the following Ordinance, notwithstanding the Mayor’s Disapproval:

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

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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.

In City Council – May 7, 2018

Ordered Printed – May 7, 2018

First Printing – May 11, 2018

Ordinance Passed – May 21, 2018

Presented to Mayor for Approval – May 22, 2018

Disapproved by the Mayor – May 30, 2018

Ordinance Again Passed, Notwithstanding the Mayor's Disapproval – July 2, 2018

Final Printing – July 9, 2018

President pro-tem Councillor Ronald Cormier relinquished the Chair and President Scott Graves reassumed the Chair.

**NEW BUSINESS**

On a motion by Councillor James Walsh and seconded by Councillor James Johnson, it was voted viva voce, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskis, and James Walsh, to consider New Business.

**ANNOUNCEMENTS AND COMMENTARY**

Councillors extended well wishes for the Independence Day holiday.

Councillor James Johnson commented on the signing of the Declaration of Independence on July 4, 1776 and the intervening 12 years until the Constitution was ratified, saying "It is one thing to declare something, but takes an effort to make something a reality." He added that this is something that the Council strives for in its actions and looks forward to progress in the future.

Councillors reminded residents to be cognizant of the effects of the recent heat wave on senior citizens, children, and pets.



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Councillor Nathan Boudreau commented on the harried activities of the City Council over the past six months as being one of the tougher times since he has served. He added that the Councillors “all have served their constituents admirably.”

Councillor Edward Gravel announced that the “Movies in the Park” program will commence on Friday, July 6<sup>th</sup> through the end of August and that the “Concerts in the Park” series will commence on Saturday, July 7 through September 29.

Citing remarks that were made by Councillor Nathan Boudreau, President Scott Graves added that the last six months have been especially active with a lot of issues, as well as new and novel issues, requiring a lot of research, homework, and site visits. He expressed his appreciation to the Councillors for their hard work and diligence and for meeting their obligations as elected representatives of the citizens of Gardner.

Council President Graves expressed his appreciation to the Councillors for their support for his initiative, the City Council Legal Counsel Ordinance. He said that it is his hope that the Council never has to avail itself of the law and added “If something [the law] is present,” it has a certain [intended] effect.” I look at it like an insurance policy without a premium – it is there in case something happens, but that we do not have to pay for it,” he added.

Council President Graves remarked that the City Council deals with applicants that are corporations, LLCs, or Limited Partnerships, which are perfectly legal. Citing, for example, a “99 Restaurant” that elects to locate in the City, operated by an LLC, he said, “I don’t think any of us would have a problem with or be disturbed by its particular legal status,” and cautioned that “when a particular applicant is not a human being, but a business entity, which is perfectly legal,” there “should not be any suspicions based on the fact that the business entity is an LLC.” He added that it is quite easy to identify who the people are that make up the business entity.

**CLOSING PRAYER**

President Graves led the Council in the Closing Prayer.

**ADJOURNMENT**

On a motion by Councillor Christine Johnson and seconded by Councillor Nathan Boudreau, it was voted viva voce, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh, to adjourn at 8:37 p.m.

Accepted by the City Council: *August 6, 2018*