

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF SEPTEMBER 26, 2018

The Finance Committee meeting was called to order by President Scott Joseph Graves at 12:00 p.m. in the City Council Chamber, Room 219, City Hall.

Finance Committee Members present were Council President Scott Joseph Graves and Councillors Ronald Cormier and James Walsh.

Others participating included City Assessor Susan Byrne; Community Development and Planning Director Trevor Beauregard; Economic Development Coordinator Maribel Cruz; City Auditor John Richard; Wendy Lee O'Malley, Vice President, PACE Program Manager, MassDevelopment; and, City Clerk Alan Agnelli.

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.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, it was voted to approve the Minutes of the September 17, 2018 Meeting, as printed.

4-1 An Ordinance to Amend the Code of the City of Gardner, Chapter 156 Thereof, Entitled "Municipal Grounds Commission, to Add Various Provisions Relating to Duties (Ordinance Amendment originally filed under "Community Bandstand Committee").
(Continued from 9/17/2018).

President Graves expressed concerns that the proposed Ordinance fails to codify the Bandstand Committee's name and structure, as well as assigning control of the committee to the Public Works Director. He added that donations for the concerts could be used at the discretion of the DPW.

Councillor James Walsh stated that if a donation is specified for a particular purpose, then it must be used accordingly.

City Auditor John Richard informed the Committee that the City has a gift account that the donations are deposited to, assuring the Committee that his office tracks in Munis the donations and authorizes expenditures for only the stated purpose.

President Graves stated that he wants to see that the Bandstand Committee is defined in the Ordinance and not "pigeonholed" within the DPW or Municipal Grounds Commission. He suggested that the Committee postpone action until he

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has the opportunity to prepare edits to the proposed Ordinance, as follows:

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER,
CHAPTER 156 THEREOF, ENTITLED "MUNICIPAL GROUNDS
COMMISSION," TO ADD VARIOUS PROVISIONS RELATING TO DUTIES.

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

Section 1. Chapter 156-3 of the Code of the City of Gardner is hereby amended by adding the following:

B. The Commission may develop and implement seasonal programs to be conducted in the City's parks including but not limited to summer musical concerts, summer camps, and other such seasonal activities in the City's parks and other municipal grounds. The Commission may establish a volunteer committee of no less than three members, one of whom shall be a member of the Commission, to carry out the purposes of this Paragraph. All such members shall be appointed in accordance with § 156-1 A.

C. The Committee may receive gifts of property, both real and personal, in the name of the City to further the purposes of this Ordinance. Upon receipt of any such gift(s) the Committee shall turn the gift or gifts over to the Treasurer who shall deposit said gifts into an account to be named the "Municipal Grounds Program Fund." The Director of Public Works and the Committee shall then spend such funds for their stated purpose.

D. [Re-number the current § 156-3 B to § 156-3 D.]

Section 2. Effective date.

This ordinance shall become effective on passage and publication as required by law.

The Committee agreed to postpone action until the next meeting.

5-1 A Measure Authorizing a Solar Energy PILOT Agreement with West Street Solar 1, LLC.

Councillor Walsh questioned the source of information provided to the Assessor and the method of calculating PILOT payments.

City Assessor Susan Byrne explained that the developers provide her office with lists of equipment and the cost (new). She noted that under the PILOT Agreement, the equipment is depreciated by 5% annually, while taxable personal property is typically depreciated by 10% annually. The total payments reflect 2½% adjustments for each year for twenty years. Equal payments over twenty years are more attractive to investors, she added.

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President Graves stated that the PILOT Agreements are favorable for the City, since they are guaranteed and that the property owner cannot file for an abatement on personal property assessed equipment.

Councillor Walsh agreed, adding that solar developers are eligible for tax credits; however, the value of those credits is declining annually.

Ms. Byrne stated that the DOR Division of Local Services encourages PILOT Agreements, since there is more revenue under a PILOT arrangement. The City's computations for solar equipment are reviewed by DOR and the cost of the equipment is based on full and fair cash value.

The Committee requested that all Exhibits be submitted to the City Clerk for the packet.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted to recommend to the City Council to authorize the Mayor execute a Solar Energy PILOT Agreement with West Street Solar 1, LLC., pursuant to the provisions of Massachusetts General Law, Chapter 59, Section 38H, as negotiated by the Mayor.

5-2 A Measure Authorizing a Solar Energy PILOT Agreement with 978 Solar Development, LLC.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, it was voted to recommend to the City Council to authorize the Mayor to execute a Solar Energy PILOT Agreement with 978 Solar Development, LLC., pursuant to the provisions of Massachusetts General Law, Chapter 59, Section 38H, as negotiated by the Mayor,

5-3 A Measure Authorizing a Solar Energy PILOT Agreement with Otter River Solar, LLC.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, it was voted to recommend to the City Council to authorize the Mayor to execute a Solar Energy PILOT Agreement with Otter River Road Solar, LLC., pursuant to the provisions of Massachusetts General Law, Chapter 59, Section 38H, as negotiated by the Mayor.

5-4 An Order Relative to the November 6, 2018 State Election.

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

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CITY OF GARDNER, MASSACHUSETTS
STATE ELECTION ORDER
TUESDAY, NOVEMBER 6, 2018

VOTE:

It is ordered that meetings of the citizens of this City qualified to vote in the State Election shall be held on TUESDAY, the 6th DAY OF NOVEMBER, 2018 for the purpose of casting their votes in the State Election for the candidates for the following offices and questions:

SENATOR IN CONGRESS.....FOR THIS COMMONWEALTH
GOVERNOR and LIEUTENANT GOVERNOR.....FOR THIS COMMONWEALTH
ATTORNEY GENERAL.....FOR THIS COMMONWEALTH
SECRETARY OF STATEFOR THIS COMMONWEALTH
TREASURER AND RECEIVER GENERAL.....FOR THIS COMMONWEALTH
AUDITOR.....FOR THIS COMMONWEALTH
REPRESENTATIVE IN CONGRESS.....THIRD DISTRICT
COUNCILLOR.....SEVENTH DISTRICT
SENATOR IN GENERAL COURT.....WORCESTER & MIDDLESEX DISTRICT
REPRESENTATIVE IN GENERAL COURT.....SECOND WORCESTER DISTRICT
DISTRICT ATTORNEY.....MIDDLE DISTRICT
CLERK OF COURTSWORCESTER COUNTY
REGISTER OF DEEDS.....WORCESTER DISTRICT

QUESTION 1: LAW PROPOSED BY INITIATIVE PETITION

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives on or before May 2, 2018?

SUMMARY

This proposed law would limit how many patients could be assigned to each registered nurse in Massachusetts hospitals and certain other health care facilities. The maximum number of patients per registered nurse would vary by type of unit and level of care, as follows:

- In units with step-down/intermediate care patients: 3 patients per nurse;
- In units with post-anesthesia care or operating room patients: 1 patient under anesthesia per nurse; 2 patients post-anesthesia per nurse;
- In the emergency services department: 1 critical or intensive care patient per nurse (or 2 if the nurse has assessed each patient's condition as stable); 2 urgent non-stable patients per nurse; 3 urgent stable patients per nurse; or 5 non-urgent stable patients per nurse;

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- In units with maternity patients: (a) active labor patients: 1 patient per nurse; (b) during birth and for up to two hours immediately postpartum: 1 mother per nurse and 1 baby per nurse; (c) when the condition of the mother and baby are determined to be stable: 1 mother and her baby or babies per nurse; (d) postpartum: 6 patients per nurse; (e) intermediate care or continuing care babies: 2 babies per nurse; (f) well-babies: 6 babies per nurse;
- In units with pediatric, medical, surgical, telemetry, or observational/outpatient treatment patients, or any other unit: 4 patients per nurse; and
- In units with psychiatric or rehabilitation patients: 5 patients per nurse.

The proposed law would require a covered facility to comply with the patient assignment limits without reducing its level of nursing, service, maintenance, clerical, professional, and other staff.

The proposed law would also require every covered facility to develop a written patient acuity tool for each unit to evaluate the condition of each patient. This tool would be used by nurses in deciding whether patient limits should be lower than the limits of the proposed law at any given time.

The proposed law would not override any contract in effect on January 1, 2019 that set higher patient limits. The proposed law's limits would take effect after any such contract expired.

The state Health Policy Commission would be required to promulgate regulations to implement the proposed law. The Commission could conduct inspections to ensure compliance with the law. Any facility receiving written notice from the Commission of a complaint or a violation would be required to submit a written compliance plan to the Commission. The Commission could report violations to the state Attorney General, who could file suit to obtain a civil penalty of up to \$25,000 per violation as well as up to \$25,000 for each day a violation continued after the Commission notified the covered facility of the violation. The Health Policy Commission would be required to establish a toll-free telephone number for complaints and a website where complaints, compliance plans, and violations would appear.

The proposed law would prohibit discipline or retaliation against any employee for complying with the patient assignment limits of the law. The proposed law would require every covered facility to post within each unit, patient room, and waiting area a notice explaining the patient limits and how to report violations. Each day of a facility's non-compliance with the posting requirement would be punishable by a civil penalty between \$250 and \$2,500.

The proposed law's requirements would be suspended during a state or nationally declared public health emergency.

The proposed law states that, if any of its parts were declared invalid, the other parts would stay in effect. The proposed law would take effect on January 1, 2019.

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A **YES VOTE** would limit the number of patients that could be assigned to one registered nurse in hospitals and certain other health care facilities.

A **NO VOTE** would make no change in current laws relative to patient-to-nurse limits.

QUESTION 2: LAW PROPOSED BY INITIATIVE PETITION

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives on or before May 2, 2018?

SUMMARY

This proposed law would create a citizens commission to consider and recommend potential amendments to the United States Constitution to establish that corporations do not have the same Constitutional rights as human beings and that campaign contributions and expenditures may be regulated.

Any resident of Massachusetts who is a United States citizen would be able to apply for appointment to the 15-member commission, and members would serve without compensation. The Governor, the Secretary of the Commonwealth, the state Attorney General, the Speaker of the state House of Representatives, and the President of the state Senate would each appoint three members of the commission and, in making these appointments, would seek to ensure that the commission reflects a range of geographic, political, and demographic backgrounds.

The commission would be required to research and take testimony, and then issue a report regarding (1) the impact of political spending in Massachusetts; (2) any limitations on the state's ability to regulate corporations and other entities in light of Supreme Court decisions that allow corporations to assert certain constitutional rights; (3) recommendations for constitutional amendments; (4) an analysis of constitutional amendments introduced to Congress; and (5) recommendations for advancing proposed amendments to the United States Constitution.

The commission would be subject to the state Open Meeting Law and Public Records Law. The commission's first report would be due December 31, 2019, and the Secretary of the Commonwealth would be required to deliver the commission's report to the state Legislature, the United States Congress, and the President of the United States.

The proposed law states that, if any of its parts were declared invalid, the other parts would stay in effect. The proposed law would take effect on January 1, 2019.

A **YES VOTE** would create a citizens commission to advance an amendment to the United States Constitution to limit the influence of money in elections and establish that corporations do not have the same rights as human beings.

A **NO VOTE** would not create this commission.

QUESTION 3: REFERENDUM ON AN EXISTING LAW

Do you approve of a law summarized below, which was approved by the House of Representatives and the Senate on July 7, 2016?

SUMMARY

This law adds gender identity to the list of prohibited grounds for discrimination in places of public accommodation, resort, or amusement. Such grounds also include race, color, religious creed, national origin, sex, disability, and ancestry. A “place of public accommodation, resort or amusement” is defined in existing law as any place that is open to and accepts or solicits the patronage of the general public, such as hotels, stores, restaurants, theaters, sports facilities, and hospitals. “Gender identity” is defined as a person’s sincerely held gender-related identity, appearance, or behavior, whether or not it is different from that traditionally associated with the person’s physiology or assigned sex at birth.

This law prohibits discrimination based on gender identity in a person’s admission to or treatment in any place of public accommodation. The law requires any such place that has separate areas for males and females (such as restrooms) to allow access to and full use of those areas consistent with a person’s gender identity. The law also prohibits the owner or manager of a place of public accommodation from using advertising or signage that discriminates on the basis of gender identity.

This law directs the state Commission Against Discrimination to adopt rules or policies and make recommendations to carry out this law. The law also directs the state Attorney General to issue regulations or guidance on referring for legal action any person who asserts gender identity for an improper purpose.

The provisions of this law governing access to places of public accommodation are effective as of October 1, 2016. The remaining provisions are effective as of July 8, 2016.

A YES VOTE would keep in place the current law, which prohibits discrimination on the basis of gender identity in places of public accommodation.

A NO VOTE would repeal this provision of the public accommodation law.

QUESTION 4

Shall the City of Gardner be allowed to assess an additional \$601,947.00 in real estate and personal property taxes for the purposes of funding the School Department for the fiscal year beginning July 1, 2019?

It is further ordered that the following polling places are designated by this Council:

WARD 1, PRECINCT A – Elk’s Home, 31 Park Street

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WARD 1, PRECINCT B – Elk’s Home, 31 Park Street
WARD 2, PRECINCT A – Levi Heywood Memorial Library, 55 West Lynde Street
WARD 2, PRECINCT B – Levi Heywood Memorial Library, 55 West Lynde Street
WARD 3, PRECINCT A – Acadien Social Club, 193 Parker Street
WARD 3, PRECINCT B – High Rise Community Room, 104 Church Street
WARD 4, PRECINCT A – Police Headquarters, 200 Main Street
WARD 4, PRECINCT B – Police Headquarters, 200 Main Street
WARD 5, PRECINCT A – Knights of Columbus, 110 South Main Street
WARD 5, PRECINCT B – Knights of Columbus, 110 South Main Street

It is further ordered that the polls shall open at 7:00 o'clock in the morning and close at 8:00 o'clock in the evening.

It is further directed that this Order be posted in accordance with the provisions of Section 63 of Chapter 54 of the General Laws.

5-5 A Measure Authorizing Participation in the Massachusetts Commercial Property Assessed Clean Energy Program (“PACE Massachusetts”).

Economic Development Coordinator Maribel Cruz and Wendy Lee O’Malley, Vice President, PACE Program Manager, MassDevelopment, appeared before the Committee to outline the PACE Program.

Wendy O’Malley presented the following aspects of the Program:

- An energy improvement tax-based financing mechanism for commercial and industrial properties, multi-family housing units, and for non-profit organizations.
- Solar energy projects, boiler replacements, etc.
- Intended for existing buildings with cost range from \$250,000 to \$2.5M (includes support structures).
- Assists local businesses by freeing funds in order to “grow their businesses.”
- Private property owners select their lenders and contractors/developers.
- Repayment through a betterment assessment through the City.
- PACE assigns a lien on the property. The City is the first lienholder.

Councillor Cormier noted that the City has no fiscal responsibility, but serves only as a conduit to MassDevelopment. MassDevelopment approves the projects with EOER approval.

Ms. O’Malley noted that a Third Party lender would have to take action to enforce the lien.

President Graves questioned the reference to an Agreement under subsection ii of the enabling vote.

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Ms. O'Malley stated that the reference is to draft guidelines prepared in 2017 which lays out the City's responsibility, MassDevelopment's, and others

Councillor Walsh questioned whether the Agency has a pro forma.

Ms. O'Malley said that a template is available in draft form, but that it cannot be released until it is in Final Form. She noted that the Agreement, which is a contract with MassDevelopment, references how the law applies, such as lien enforcement.

Councillor Walsh said that he shares the concerns of President Graves about the Agreement that the Committee does not have; however, overall, the benefits of the program and the structure are in the Resolution.

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:

AUTHORIZING THE CITY OF GARDNER TO PARTICIPATE
IN THE MASSACHUSETTS COMMERCIAL PROPERTY ASSESSED
CLEAN ENERGY PROGRAM
(PACE MASSACHUSETTS)

VOTE: WHEREAS, pursuant to M.G.L. c. 23M (the "PACE Act"), the Commonwealth has established a commercial sustainable energy program known as the Massachusetts Property Assessed Clean Energy Program ("PACE Massachusetts") to provide a financing mechanism ("PACE financing") to private owners of commercial and industrial properties for certain qualifying commercial energy improvements and

WHEREAS, pursuant to the PACE Act, PACE Massachusetts is administered by the Massachusetts Development Finance Agency ("MassDevelopment"), in consultation with the Massachusetts Department of Energy Resources; and

WHEREAS, under PACE Massachusetts, the owner of the commercial or industrial property benefitting from the improvements (the "benefitted property") is required to repay the PACE financing through the payment of a betterment assessment (a "PACE betterment assessment") placed on such benefitted property by the municipality in which the benefitted property is located; and

WHEREAS, in order for an owner of commercial or industrial property to participate in PACE Massachusetts, Section 2 of the PACE Act requires that the municipality in which such property is located must elect to participate in PACE Massachusetts; and

WHEREAS, the City of Gardner has determined that it is in the best interest of the Municipality to participate in PACE Massachusetts as a "participating municipality," as provided in the PACE Act, to permit the owners of commercial and industrial

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properties located in the Municipality to access PACE financing for qualifying commercial energy improvements through PACE Massachusetts;

WHEREAS, NOW THEREFORE, BE IT ORDERED, as follows:

The City Council of the City of Gardner, hereby approves the City of Gardner's participation in PACE Massachusetts pursuant to the PACE Act, and authorizes the Mayor to enter into a PACE Massachusetts Municipal Assessment and Assignment Agreement (the "Agreement") with MassDevelopment, pursuant to which the Municipality will agree to (i) levy PACE betterment assessments and impose PACE betterment assessment liens on benefitted properties located in the Municipality, in the amounts determined by MassDevelopment to be sufficient to repay the PACE financing, (ii) assign the PACE betterment assessment liens to MassDevelopment, which MassDevelopment may in turn assign to the providers of the PACE financing (each a "capital provider"), as collateral for such PACE financing, (iii) include on the property tax bills for the benefitted properties the installment payments necessary to repay the PACE betterment assessments, in the amounts and at the times as determined by MassDevelopment, (iv) collect and pay over to MassDevelopment or its designee, the PACE betterment assessment installment payments, as and when collected, and (v) enforce, to the extent required by the Agreement, the PACE betterment assessments and liens; the Agreement to be substantially in the form presented to this meeting, with such changes, modifications and insertions as the Mayor may approve as being in the best interest of the Municipality. The Collector/Treasurer of the City as may be designated in the Agreement is authorized to levy such PACE betterment assessments and impose the PACE betterment assessment liens on behalf of the City without further authorization by this legislative body.

Notwithstanding any other provision of law to the contrary, officers and officials of the Municipality, including, without limitation, municipal tax assessors and tax collectors, are not personally liable to MassDevelopment or to any other person for claims, of whatever kind or nature, under or related to PACE Massachusetts, including, without limitation, claims for or related to uncollected PACE betterment assessments. Other than fulfillment of the obligations specified in the Agreement, the Municipality has no liability to the owner of the benefitted property or to any capital provider related to the Municipality's participation in PACE Massachusetts.

ADJOURNMENT

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, it was voted to adjourn at 12:40 p.m.