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CITY OF GARDNER
MASSACHUSETTS 01440-2630

OFFICE OF THE
CITY COUNCIL



September 14, 2022

CITY COUNCIL INFORMAL MEETING

Date: Monday, October 3, 2022
Time: 6:45 P.M.
Location: City Council Chambers, Room 219, City Hall

AGENDA

10781 – An Act Relative to Establish a Special Act Charter Drafting Committee.
(*In the City Council and Referred to Committee of the Whole 9/7/2022*)

CITY COUNCIL OF GARDNER

Elizabeth J. Kazinskas

ELIZABETH J. KAZINSKAS

Council President

NOTICE: *Items listed on the Council Calendar are those reasonably anticipated by the Council President to 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.*



City of Gardner - Executive Department
Mayor Michael J. Nicholson

RECEIVED

2022 SEP -1 PM 2:15

CITY CLERK'S OFFICE
 GARDNER, MA

August 23, 2022

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

RE: An Act to Establish a Special Act Charter Drafting Committee

Dear Madam President and Councilors,

The current City Charter was originally drafted ninety-nine (99) years ago, and aside from a few small changes, has remained largely the same over the course of the last century.

In both a spirit of collaboration between the branches of the City's government and a spirit of looking forward, I am asking that the City Council vote to establish a Special Act Charter Drafting Committee to review our City Charter and submit proposed amendments in order to keep the business of the City's government up to date in modern times.

As we approach the document's 100th anniversary on January 1st of this year, I believe it would be prudent to update the Charter to ensure the operations of the City's government are meeting the needs of a modern municipality.

While I fully believe the structure of the City's Mayor-Council form of government works well and fits what this City needs, I do believe that some of the systems and operational aspects of the existing charter could be updated.

Over the past 100 years, our world as a whole has gone through a Great Depression, two World Wars, the Cold War, and a global pandemic. Since the current document was enacted, man has landed on the moon, the airplane was invented, the Berlin Wall was constructed and torn down, the Civil Rights Act was adopted, citizens between the ages of 18 and 21 were given the right to vote, and eighteen (18) individuals have held the office of President of the United States.

In all of the aforementioned events, the world changed and adapted to meet the times - as we as a City must also do. A lot has changed over the past century, and as we move forward to a stronger tomorrow, we must make sure this City has all of the tools and processes it needs to be successful in dealing with the obstacles, issues, and opportunities that were not yet even dreamt of when the current Charter was penned in 1921 and enacted in 1923.

Respectfully,

Michael J. Nicholson
 Mayor, City of Gardner

**AN ACT TO ESTABLISH A
SPECIAL ACT CHARTER DRAFTING COMMITTEE**

BE IT VOTED BY THE CITY COUNCIL AS FOLLOWS:

- Section 1: That there be established a Special Act Charter Drafting Committee consisting of three members to be appointed by the Mayor and confirmed by two-thirds vote of the City Council. Said Committee shall draft a Special Act Charter for the City for submission to the General Court and placement on the municipal general election ballot.
- Section 2: The Committee shall meet in open session, hold public hearings, and shall submit its draft Special Act to the City Council for its consideration.
- Section 3: Upon final action on the draft Special Act Charter by the City Council, the Special Act Charter Drafting Committee shall be dissolved.



City of Gardner – *Executive Department*

Mayor Michael J. Nicholson

September 27, 2022

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

RECEIVED
 2022 SEP 28 PM 2:07
 CITY OF GARDNER MA

RE: Follow Up Regarding *Item #19781: An Act Relative to Establishing a Special Act Charter Drafting Committee*

Dear Madam President and Councilors,

At the City Council Meeting of September 7, 2022, the question was raised as to what potential changes the Administration thought could be looked into and updated in the existing charter.

I believe, and what is outlined in the General Laws is that is the purview of the charter review committee themselves. However, I do respect the question concerning whether or not there is merit in creating a committee to review the Charter or not. With that said, I think to facilitate the practical considerations of this process, I should elucidate the Council with respect to the suggestions I intend to make in order for that question to be more thoroughly answered, at least concerning my intentions.

As such, I have outlined the issues and updates that I believe should be reviewed in the City Charter as it exists today.

However, I feel the need to reiterate that the question currently before the City Council is whether or not to create the committee to review the charter, and **NOT** on the items I have listed below. The committee, if created may, in the end, look at any, all, none, or other sections of the Charter in their process, and the items listed below are just the items I believe merit consideration.

Furthermore, the question was asked as to the number of members of the Committee. The initial proposal only had the minimum number required for a committee as a way to begin the conversation. I do believe that adding additional members appointed by the City Council or the Council President would allow for a more thorough, vetted, and collaborative process. However, I would caution that a committee too large in size may also hinder the work and quality of the final product. Furthermore, as you will see in your review of my suggestions, I have consolidated the work that was done years ago, by the review committee, the City Council, and the outside consultant to focus on what I believe were then areas of greatest and clearest consensus. Therefore I believe this can be a more concise and expedient process.

Respectfully Submitted,

Michael J. Nicholson
 Mayor, City of Gardner

PROPOSED AMENDMENTS FOR CONSIDERATION BY CHARTER REVIEW COMMITTEE

In the event that the Special Act Charter Drafting Committee is created by vote of the City Council, the Administration plans to submit the following suggestions to the Committee for their review.

Additions are coded in green

Deletions are coded in red in ~~strike print~~

Proposed Amendment 1:

Current Section:

SECTION 4. There shall be a mayor, elected by and from the qualified voters of the city, who shall be the chief executive officer of the city. He shall hold office for the term of two years from the first Monday in January following his election and until his successor is elected and qualified.

Proposed Amendment:

SECTION 4. There shall be a mayor, elected by and from the qualified voters of the city, who shall be the chief executive officer of the city. He shall hold office for the term of two years from the first Monday in January following his election and until his successor is elected and qualified. **In the event that first Monday falls on a legal holiday, the term shall begin on the following day, and shall continue until a successor has been qualified.**

Reasoning:

The current Charter requires that the current terms of office for all City elected officials begin on the first Monday in January regardless of whether the first Monday in January is New Years Day or not. This has lead to times where City Hall has had to been open on New Years Day so that the oath of office could be administered by the City Clerk, and leaves times when some elected officials have had to take their oaths of office at different times due to family commitments on the holiday.

This would fix that by moving the date to the day after the holiday, similar to other portions of the Charter, such as the schedule of meetings for the City Council.

This proposed change was originally included in the proposal submitted by the 2015 Charter Review Committee.

Proposed Amendment 2:

Current Section:

SECTION 5. The Legislative powers of the city shall be vested in a city council. The city council shall be composed of not less than eleven members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected at large by and from the qualified voters of the city. One of its members shall be elected annually by the council as its president. (At the first regular city election after acceptance of this act the councilors elected from each ward shall serve for one year and those elected at large for two years, from the first Monday in January following their election and until their successors are elected and qualified. (Deleted by Ch. 332 of the Acts of 1936). At each regular city election thereafter, their respective successors shall be elected to serve for two years. If the number of wards shall be increased, as provided in section two, the number of councilors shall also be increased, so that the number of councilors elected at large shall always exceed by one the number elected by wards.

Proposed Changes:

SECTION 5. **THE CITY COUNCIL**

- A) The Legislative powers of the city shall be vested in a city council.
- B) The city council shall be composed of not less than eleven members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected at large by and from the qualified voters of the city.
- C) One of its members shall be elected **annually** by the council as its president.
- ~~D) (At the first regular city election after acceptance of this act the councilors elected from each ward shall serve for one year and those elected at large for two years, from the first Monday in January following their election and until their successors are elected and qualified. (Deleted by Ch. 332 of the Acts of 1936).~~
- E) At each regular city election ~~thereafter, their respective successors~~ city councilors shall be elected to serve for two years. If the number of wards shall be increased, as provided in section two, the number of councilors shall also be increased, so that the number of councilors elected at large shall always exceed by one the number elected by wards.

Reasoning:

Formatting change for ease of access and understanding of information.

c) This change would remove the term of office for the Council President from the City Charter, but the Rules of the City Council would still apply to the President's election. Whereas the Charter is silent on electing a president after the year has started, in the event of a resignation as president or loss of confidence by the Council, but the Rules of the City Council due address those concerns, I believe the procedures for electing the president are more suited for the Rules of the Council rather than the Charter.

D and E) Subsection D applies to the 1925 City election and this section was deleted from the City Charter by Chapter 332 of the Acts of 1936 but never removed from the document. The Amendment to subsection E is made to coincide with the removal of subsection D.

PROPOSED AMENDMENT 3:

Current Section:

SECTION 6. All heads of departments and members of municipal boards, except the school committee, the city clerk, city treasurer, city auditor and city collector of taxes, officers whose election is provided for by this act and officials appointed by the governor, shall be appointed by the mayor, subject to confirmation by the city council; but the city solicitor shall be appointed by the mayor, without confirmation by the city council.

Proposed Amendment:

SECTION 6. **APPOINTMENTS**

- a) All heads of departments and members of municipal boards, except the school committee, the city clerk, city treasurer, city auditor and city collector of taxes, officers whose election is provided for by this act and officials appointed by the governor, shall be appointed by the mayor, subject to confirmation by the city council;
- b) ~~but the city solicitor~~ All members of the Law Department shall be appointed by the mayor, without confirmation by the city council.

Reasoning:

Formatting change for ease of access and understanding to information.

B) Places the Assistant City Solicitor position in the same appointment process as the City Solicitor, in keeping with the current spirit of the Charter of the Law Department reporting directly to the Mayor.

PROPOSED AMENDMENT 4:

Current Section:

SECTION 9. The city clerk, city treasurer, city auditor and city collector of taxes shall be elected by the city council for terms of three years and may be removed at any time by a two- thirds vote of the city council.

Proposed Amendment:

SECTION 9. The city clerk, city treasurer, city auditor and city collector of taxes shall be elected by the city council for terms of three years and may be removed at any time by a two- thirds vote of the city council. The person so removed shall 15 receive a copy of the reasons for removal and may, if desired, to contest the same before 16 the city council and may be represented by counsel at the hearing.

Reasoning:

This amendment was proposed in the amendment to the City Charter proposed by the City Council in 2016.

PROPOSED AMENDMENT 5:

Current Section:

SECTION 11. The mayor shall receive for this services such salary as the city council by ordinance shall determine and he shall receive no other compensation from the city. His salary shall not be increased or diminished during the term for which he is elected.

The council may, by a two thirds vote of all its members, taken by a call of the yeas and nays, establish a salary for its members. Such salary may be reduced but no increase therein shall be made to take effect during the year in which the increase is voted. (As amended by Chapter 184 of the Acts of 1939 and Compilation of City Ordinance No. 40.)

Proposed Amendment:

SECTION 11. The mayor shall receive for ~~this~~ ~~their~~ services such salary as the city council by ordinance ~~passed by majority vote~~ shall determine and he shall receive no other compensation from the city. His salary shall not be increased or diminished during the term for which he is elected.

The council may, by ~~majority~~ vote of all its members, taken by a call of the yeas and nays, establish a salary for its members. Such salary may be reduced but no increase therein shall be made to take effect during the year in which the increase is voted. ~~(As amended by Chapter 184 of the Acts of 1939 and Compilation of City Ordinance No. 40.)~~

Reasoning:

The first proposal – “this services” to “their services” – appears to have been a typographical error.

The vote threshold is a suggestion that follows what other cities have adopted.

Lastly, removing the statutory reference that was adopted in 1939

PROPOSED AMENDMENT 6:Current Section:

SECTION 12. On the fourth Tuesday preceding every regular and special city election at which any officer mentioned in this act is to be elected, there shall be held a preliminary election for the purpose of nominating candidates for such offices as, under the provisions of this act, are to be filled at such election. Voters qualified to vote at a regular city election shall be qualified to vote at a preliminary election. No special election for mayor or any officer shall be held after the expiration of forty days from the calling of the preliminary election. (See also G.L. Chap. 54 sec. 103A as amended).

Proposed Amendment:

SECTION 12. On the ~~fourth~~ ~~seventh~~ Tuesday preceding every regular and special city election at which any officer mentioned in this act is to be elected, there shall be held a preliminary election for the purpose of nominating candidates for such offices as, under the provisions of this act, are to be filled at such election. Voters qualified to vote at a regular city election shall be qualified to vote at a

preliminary election. No special election for mayor or any officer shall be held after the expiration of forty days from the calling of the preliminary election. (~~See also G.L. Chap. 54 sec. 103A as amended~~).

Reasoning:

This amendment was proposed in the amendment to the City Charter proposed by the City Council in 2016.

I would also agree with this due to all of the statutory changes regarding elections that have been adopted by the legislature in the last three years.

PROPOSED AMENDMENT 7:

Current Section:

SECTION 23. On the first Monday in January the mayor-elect and the councilors-elect shall meet and be sworn to the faithful discharge of their duties. The oath may be administered by the city clerk or by any justice of the peace, and a certificate that the oath has been taken shall be entered on the journal of the city council. At any meeting thereafter the oath may be administered, in the presence of the city council, to the mayor, or to any councilor absent from the meeting on the first Monday in January.

Proposed Amendment:

SECTION 23: On the first Monday in January or on the following day whenever said first Monday shall also be New Year's Day, the mayor-elect and the councilors-elect shall meet and be sworn to the faithful discharge of their duties. The oath may be administered by the city clerk or by any justice of the peace, and a certificate that the oath has been taken shall be entered on the journal of the city council. At any meeting no more than sixty (60) days thereafter the oath may be administered, in the presence of the city council, to any councilor absent from the meeting on the first Monday in January. The Council may, upon a two-thirds vote extend the period of time in which a councilor-elect has to take the oath of office up to ninety (90) additional days. If the mayor-elect fails to take the office as set forth herein, the office of Mayor shall be filled pursuant to Section 32. If the mayor-elect continues in his or her failure to take the oath of office for a period of six (6) months after the first Monday in January, the office shall be deemed vacant and thereafter filled in accordance with Section 32.

Reasoning:

This amendment was proposed in the amendment to the City Charter proposed by the City Council in 2016.

PROPOSED AMENDMENT 8:

Current Section:

SECTION 25. The city council may at any time request from the mayor specific information upon any municipal matter within its jurisdiction, and may request his presence to answer written questions relating thereto at a meeting to be held not earlier than one week after the date of the receipt by the mayor of said questions. The mayor shall personally, or through a head of a department or a member of a board, attend such meeting and publicly answer all such questions. The person so attending shall not be obliged to answer questions relating to any other matter. The mayor at any time may attend and address the city council in person, or through the head of a department or a member of a board, upon any subject. The council, or any committee thereof duly authorized by the council so to do, may investigate the financial transactions of any office or department of the city government, and the official acts and conduct of any official, and, by similar investigations, may secure information upon any matter.

Proposed Amendment:

SECTION 25. The city council may, **by majority vote**, at any time request from the mayor specific information upon any municipal matter within its jurisdiction, and may request his presence to answer written questions relating thereto at a meeting to be held not earlier than one week after the date of the receipt by the mayor of said questions. The mayor shall personally, or through a head of a department or a member of a board, attend such meeting and publicly answer all such questions. The person so attending shall not be obliged to answer questions relating to any other matter. The mayor at any time may attend and address the city council in person, or through the head of a department or a member of a board, upon any subject. The council, or any committee thereof duly authorized by the council so to do, may investigate the financial transactions of any office or department of the city government, and the official acts and conduct of any official, and, by similar investigations, may secure information upon any matter.

Reasoning:

The proposed amendment seeks to clarify the procedure listed in Section 25 for the City Council issuing a specific information request of the Executive.

PROPOSED AMENDMENT 9:

Current Section:

SECTION 26. No ordinance shall be passed finally on the date on which it is introduced, except in cases of special emergency involving the health or safety of the people or their property.

No ordinance shall be regarded as an emergency measure unless the emergency is defined and declared in a preamble thereto separately voted on and receiving the affirmative vote of two thirds of the members of the city council.

No ordinance making a grant, renewal or extension, whatever its kind or nature, of any franchise or special privilege shall be passed as an emergency measure, and except as provided in sections seventy and seventy-one of chapter one hundred and sixty-four of the General Laws and in chapter one hundred and sixty-six thereof, no such grant, renewal or extension shall be made otherwise than by ordinance.

Proposed Amendment:

SECTION 26. No ordinance shall be passed finally on the date on which it is introduced, except in cases of special emergency ~~involving the health or safety of the people or their property.~~

No ordinance shall be regarded as an emergency measure unless the emergency is defined and declared in a preamble thereto separately voted on and receiving the affirmative vote of two thirds of the members of the city council.

No ordinance making a grant, renewal or extension, whatever its kind or nature, of any franchise or special privilege shall be passed as an emergency measure, and except as provided in sections seventy and seventy-one of chapter one hundred and sixty-four of the General Laws and in chapter one hundred and sixty-six thereof, no such grant, renewal or extension shall be made otherwise than by ordinance.

Reasoning:

Allowing greater flexibility in what can be deemed an emergency, since the City Council must vote to approve emergency designation by two-thirds vote anyway.

PROPOSED AMENDMENT 10:Current Section:

SECTION 29. Every proposed ordinance, except emergency measures, as hereinbefore defined, shall at least ten days before its final passage, be published in full in at least one newspaper of the city, and in any additional manner that may be provided by ordinance.

After final passage, it shall, in the same manner as before, again be published once, as amended and completed, except in the case of an emergency ordinance which may be passed as hereinbefore provided and which shall take effect on its passage, and shall so be published at the earliest practicable moment. (Section 29 is given as amended by Chapter 65 of the Acts of 1935.)

Proposed Amendment:

SECTION 29. Every proposed ordinance, except emergency measures, as hereinbefore defined, shall at least ten days before its final passage, be published ~~in full~~ in summary in at least one newspaper of the city, and in any additional manner that may be provided by ordinance.

After final passage, it shall, in the same manner as before, again be published once, as amended and completed, in summary, except in the case of an emergency ordinance which may be passed as hereinbefore provided and which shall take effect on its passage, and shall so be published at the earliest practicable moment. ~~(Section 29 is given as amended by Chapter 65 of the Acts of 1935.)~~

Reasoning:

This amendment was originally suggested by the City Clerk's Office during the 2016 City Charter review as a means to save on publication costs for the publications of ordinances, particularly those of longer length- like the annual compensation schedule ordinance.

PROPOSED AMENDMENT 11:

Current Section:

SECTION 30. Every order, ordinance, resolution and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it he shall sign it; if he disapproves it he shall return it, with his objections in writing, to the city council, which shall enter his objections at large on its records, and again consider it. If the city council, notwithstanding such disapproval of the mayor, shall again pass such order, ordinance, resolution or vote by a two thirds vote of all the members of the city council, it shall then be in force, but such vote shall not be taken for seven days after its return to the city council. Every such order, ordinance, resolution or vote shall be in force if it is not returned by the mayor within ten days after it was presented to him. This section shall not apply to budgets submitted under section thirty-two of chapter forty-four of the General Laws or to appropriations by the city council under section thirty-three of said chapter.

Proposed Amendment:

SECTION 30. Every order, ordinance, resolution and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it he shall sign it; if he disapproves it he shall return it, with his objections in writing, to the city council, which shall enter his objections at large on its records, and again consider it. **The mayor may also submit proposed amendments and revisions to measures presented for signature by the City Council, which the City Council may consider to amend the measure and send it back to the Mayor for signature.** If the city council, notwithstanding such disapproval of the mayor, shall again pass such order, ordinance, resolution or vote **unamended as originally presented** by a two thirds vote of all the members of the city council, it shall then be in force, but such vote shall not be taken for seven days after its return to the city council. Every such order, ordinance, resolution or vote shall be in force if it is not returned by the mayor within ten days after it was presented to him. This section shall not apply to budgets submitted ~~under section thirty-two of chapter forty-four of the General Laws~~ or to appropriations by the city council ~~under section thirty-three of said chapter.~~ Pursuant to the provisions of the General Laws.

Reasoning:

This is a change that some communities in the Commonwealth have begun to adopt following the procedures of the Executive and Legislature at the Commonwealth level.

This gives all proposed measures that have been voted on by the City Council one final chance for consideration and collaboration between the branches of government for compromise rather than the current system of just adoption, "veto," or "veto overrides" (disapproval and vote over disapproval).

By doing so, it allows for greater deliberation in order to truly get the best final result for the City's residents.

The final amendment removes the references to specific sections of the General Laws of the Commonwealth, as those could change with any amendments adopted by the General Court.

PROPOSED AMENDMENT 12:

Current Section:

SECTION 31. The civil service laws shall not apply to the appointment of the mayor's secretaries nor of stenographers, clerks, telephone operators and messengers connected with his office, and the mayor may remove such appointees without a hearing and without making a statement of the cause for their removal.

Proposed Amendment:

SECTION 31. The civil service laws shall not apply to the appointment of any position within the mayor's office, and the mayor may remove such appointees without a hearing and without making a statement of the cause for their removal.

Reasoning:

This amendment was proposed in the amendment to the City Charter proposed by the City Council in 2016.

PROPOSED AMENDMENT 13:

Current Section:

SECTION 32. If a vacancy occurs in the office of mayor before the last six months of the term of office, the city council shall order an election to fill the same for the unexpired term; and if such vacancy occurs in the office of the mayor in the last six months of said term, the president of the city council shall succeed thereto for the unexpired term.

If a vacancy occurs in the position of councilor at large, the city council shall appoint the person who received the seventh highest vote total for the position of councilor at large during the most recent municipal election to fill the vacancy for the unexpired term, if the person is willing to serve, then to the eighth and so on until a person is appointed.

If a vacancy occurs in the position of ward councilor, the city council shall appoint the person from the same ward who received the next highest vote total in the most recent municipal election to fill the vacancy for the unexpired term, except that if there was not another candidate for the ward councilor position, then the city council, by a majority vote, may elect a resident of the same ward to fill the vacancy for the unexpired term.

If the Mayor is absent or unable from any cause temporarily to perform his duties, or if his office is vacant during the first eighteen months of his term, his duties shall be performed by the president of the city council. The person upon whom such duties shall devolve shall be called “acting mayor”, and he shall possess the powers of mayor only in matters not admitting of delay, but shall have no power to make permanent appointments.

Should an appointive officer of the city be temporarily unable for any cause to perform his duties, the mayor or the city council, whichever has the power of original appointment, may make a temporary appointment of some person to act until the official shall resume his duties. (Section 32 is given as amended by Chap.590 Acts of 1975.)

Proposed Amendment:

SECTION 32. If a vacancy occurs in the office of mayor before the last ~~six~~ twelve months of the term of office, the city council shall order an election to fill the same for the unexpired term; and if such vacancy occurs in the office of the mayor in the last ~~six~~ twelve months of said term, the president of the city council shall succeed thereto for the unexpired term.

If a vacancy occurs in the position of councilor at large, the city council by a majority vote, shall elect a resident of the City at large to fill the vacancy for the unexpired term. ~~appoint the person who received the seventh highest vote total for the position of councilor at large during the most recent municipal election to fill the vacancy for the unexpired term, if the person is willing to serve, then to the eighth and so on until a person is appointed.~~

If a vacancy occurs in the position of ward councilor, the city council ~~shall appoint the person from the same ward who received the next highest vote total in the most recent municipal election to fill the vacancy for the unexpired term, except that if there was not another candidate for the ward councilor position, then the city council,~~ by a majority vote, ~~may~~ shall elect a resident of the same ward to fill the vacancy for the unexpired term.

If the Mayor is absent or unable from any cause temporarily to perform his duties, or if his office is vacant during the first ~~eighteen~~ twelve months of his term, his duties shall be performed by the president of the city council. The person upon whom such duties shall devolve shall be called “acting mayor”, and he shall possess the powers of mayor ~~only in matters not admitting of delay~~, but shall have no power to make permanent appointments or removal from city service unless the disability or absence of the mayor shall extend beyond sixty (60) days nor shall an acting mayor approve or disapprove of any measure adopted by the city council unless the time within which the mayor must act would expire before the return of the mayor. In the event that the office of Mayor shall be vacated due to resignation or death prior to the end of the term, the acting mayor shall be entitled to the compensation as city council president in addition to ninety-percent (90%) the current rate of compensation of the mayor.

Should an appointive officer of the city be temporarily unable for any cause to perform his duties, the mayor or the city council, whichever has the power of original appointment, may make a temporary appointment of some person to act until the official shall resume his duties. ~~(Section 32 is given as amended by Chap.590 Acts of 1975.)~~

Reasoning:

Mayoral Special Election and Acting Mayor Timeline:

Elections are quite costly for the City and the requirements that have recently been put on elections by recent changes to the General Laws have only expanded the requirements for elections.

If someone holding the position of Mayor were to resign on January 1st in an odd numbered year, the earliest a preliminary election could be called would likely be in Mid-March, around the same time that nomination papers would be issued by the City Clerk's Office for the regular city election that same year- and that's with a January 1st resignation. The timeline only pushes closer as the year progresses.

Under the current system, between preliminary elections and final elections, there could be four (4) elections within the same calendar year for the same position, each with a cost of approximately \$15,000.

This proposed amendment allows the Acting Mayor to serve for the last year of the term to let the final decision be made by the voters during the regularly scheduled biennial City election. This would help keep elections consistent for the voters, as historical data in the City of Gardner shows that more voters turn out in regularly scheduled elections than in special elections, and help keep costs and excess procedures down for the City during these periods.

Powers of the Acting Mayor:

A lot has changed in how the City operates and functions since this section of the City Charter was drafted a century ago.

The phrase "in matters not admitting of delay," really constricts City operations that require mayoral consent and approval when there is a period with an Acting Mayor. Whether the current timeline changes or stays the same, only being able to conduct "matters not admitting of delay," can cause confusion as to what can and cannot be done and can hinder the City's progress.

The proposed amendment gives the Acting Mayor the powers of Mayor except in specific cases with procedures on how to proceed when those exceptions arise.

While most periods with an acting mayor are anomalies, the purpose of the City Charter is to protect the City when anomalies arise and to ensure that the City has the resources and tools necessary to care and serve the City's residents.

Compensation of the Acting Mayor:

This mirrors, in spirit, the legislation that the City proposed to the Legislature as a home rule petition when the City had an acting mayor in the spring of 2020.

Under the current system, the Council President is only entitled to the compensation they receive as Council President, even if they are serving in an Acting Mayor capacity. As such, it really limits whether someone is able to truly serve the City with the attention that the position of mayor deserves in providing executive functions and oversight, unless a person is either unemployed or retired.

Procedure for filling a vacancy in the City Council:

The current charter is silent on how to fill a vacancy in the position of City Councilor At-Large if there is no 7th candidate.

The proposed amendments unifies the methods of filling vacancies that exist in the City Council and School Committee.

Removal of Statutory Reference

Removing statutory reference and amendment note

PROPOSED AMENDMENT 14:

Current Section:

SECTION 33. It shall be unlawful for the mayor or for a member of the city council or school committee or for any officer or employee of the city, directly or indirectly, to make a contract with the city, or to receive any commission, discount, bonus, gift, contribution, or reward from or any share in the profits of any person or corporation, making or performing such a contract, unless the mayor, such member, officer or employee, immediately upon learning of the existence of such contract, or that such a contract is proposed, shall notify in writing the mayor, city council or school committee of the nature of his interest in such contract, and shall abstain from doing any official act on behalf of the city in reference thereto. In case of such interest on the part of an officer whose duty it is to sign the contract on behalf of the city, the contract may be signed by any other officer of the city duly authorized thereto by the mayor, or if the mayor has such interest, by the city clerk, provided,

however, that when a contractor with the city is a corporation or a voluntary stock association, the ownership of less than five per cent of the stock or shares actually issued shall not be considered, as involving an interest in the contract within the meaning of this section, and such ownership shall not affect the validity of the contract unless the owner of such stock or shares is also an officer or agent of the corporation or association, or solicits or takes part in the making of the contract.

A violation of this section shall render the contract in respect to which such violation occurs voidable at the option of the city. Any person violating the provisions of this section shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Proposed Amendment:

Deletion of Section in its entirety

Reasoning:

This amendment was proposed in the amendment to the City Charter proposed by the City Council in 2016.

This section currently conflicts with the General Laws procurement requirements.

PROPOSED AMENDMENT 15:

Current Section:

SECTION 34. No contract for construction work or for the purchase of apparatus, supplies or material, whether the same shall be for repairs or original construction, the estimated cost of which amounts to or exceeds four thousand dollars (see compilation of ordinances no. 52, see also G.L. Chap. 40, sec. 4G as amended), except in cases of special emergency involving the health or safety of the people or their property, shall be awarded unless proposals for the same shall have been invited by advertisements in at least one newspaper published in the city once a week for at least two consecutive weeks, the last publication to be at least one week before the time specified for the opening of said proposals. Such advertisements shall state the time and place where plans and specifications of the proposed work or supplies may be had and the time and place for opening the proposals in answer to said advertisements, and shall reserve to the city the right to reject any or all of such proposals. All such proposals shall be opened in public. No bill or contract shall be split or divided for the purpose of evading any provision of this act. (Section 34 is given as amended by Chapter 16 of the Acts of 1934), and again amended by Chapter 191 of the Acts of 1960, sec.1).

Proposed Amendment:

Deletion of Section in its entirety

Reasoning:

This amendment was proposed in the amendment to the City Charter proposed by the City Council in 2016.

This section currently conflicts with the General Laws procurement requirements.

PROPOSED AMENDMENT 16:

Current Section:

SECTION 35. All contracts made by any department, board or commission in which the amount involved is one thousand dollars or more shall be in writing, and no such contract shall be deemed to have been made or executed until the approval of the mayor and of the department or board making the contract is affixed thereto. Any contract made as aforesaid may be required to be accompanied by a bond with sureties satisfactory to the board of officials having the matter in

charge, or by a deposit of money, certified check or other security conditioned on the faithful performance thereof, and such bonds or other securities shall be deposited with the city treasurer until the contract has in all respects been carried out; and no such contract shall be altered except by a written agreement of the contractor, the sureties on his bond, and the officer, department or board making the contract, with the approval of the mayor affixed thereto. (Section 35 is given as amended by Chapter 191 of the Acts of 1960, section 2.)

Proposed Amendment:

Deletion of Section in its entirety

Reasoning:

This section currently conflicts with the General Laws procurement requirements.

It also severely complicates procedures for City Departments as it requires a written contract signed by the Mayor and a vendor for all contracts for an amount exceeding \$1,000.

By means of example, under the current system, if the School Department wants to purchase pencils for every student currently enrolled in our schools from WB Mason, and the bill comes to \$1,284 (based on current pricing on WB Mason's website). A written contract would need to be executed between WB Mason and the Mayor.

\$1,000 was a lot different in 1923 in terms of purchasing power than it is today. When adjusted for inflation, \$1,000 in 1923 was worth the equivalent of \$17,319.94 in today's purchasing power.

Chapter 30B of the General Laws currently governs all aspects covered by this section of the City Charter and requires mayoral signature on a contact for all purchases over \$10,000.

PROPOSED AMENDMENT 17:

Current Section:

SECTION 37. The school committee shall consist of the mayor, who shall be chairman, and six persons who shall be elected at large from the registered voters of the city. At the biennial municipal election to be held in the year nineteen hundred and ninety-one there shall be elected three persons to serve for two years and three persons to serve for four years. At each biennial election thereafter there shall be elected three persons to serve for the term of four years. (*Section 37 is given as amended by Chapter 290 of the Acts of 1989, section 1*). NOTE: For provisions with respect to election of members to and powers and duties of the Montachusett Regional Vocational Technical School District Committee, see Chapter 560 of the Acts of 1964 and Chapter 543 of the Acts of 1965).

Proposed Amendment:

SECTION 37. The school committee shall consist of the mayor, or their designee, who shall be chairman, and six persons who shall be elected at large from the registered voters of the city. ~~At the biennial municipal election to be held in the year nineteen hundred and ninety one there shall be elected three persons to serve for two years and three persons to serve for four years.~~ At each biennial election ~~thereafter~~ there shall be elected three persons to serve for the term of four years. ~~(Section 37 is given as amended by Chapter 290 of the Acts of 1989, section 1).~~ NOTE: For provisions with respect to election of members to and powers and duties of the Montachusett Regional Vocational Technical School District Committee, see Chapter 560 of the Acts of 1964 and Chapter 543 of the Acts of 1965).

Reasoning:

This allows and gives the Mayor the option to designate someone to serve as the Chair of the School Committee.

Furthermore it removes all references to an election that has already passed and statutory references which could change overtime by vote of the General Court.

PROPSOED AMENDMENT 18:

Current Section:

SECTION 42. All meetings of the school committee shall be open to the public, except that when requested by not less than four members of the committee, any particular meeting shall be private. The vote on any particular measure shall be by the call of yeas and nays, when it is so requested by not less than two members of the committee.

Proposed Amendment:

Deletion of Section in its entirety.

Reasoning:

This section blatantly conflicts the Commonwealth's open meeting law.

PROPOSED AMENDMENT 19:

Current Section:

SECTION 43. If a vacancy occurs in the school committee by failure to elect, or otherwise, the city council and the remaining members of the school committee shall meet in joint convention and elect a suitable person to fill the vacancy until the next regular city election. The mayor, if present, shall preside at the convention.

Proposed amendment:

SECTION 43: On the first Monday in January the school committee members -elect shall appear before the city council and be sworn to the faithful discharge of their duties. The oath may be

administered by the city clerk or by any justice of the peace. At any meeting no more than sixty (60) days thereafter the oath may be administered in the presence of the school committee, to any school committee member-elect absent from the meeting on the first Monday in January. The school committee may, upon a two thirds vote extend the period of time in which a school committee member-elect has to take the oath of office up to ninety (90) additional days. If a vacancy occurs in the school committee by failure to elect, or otherwise, the city council and the remaining members of the school committee shall meet in joint convention and elect a suitable person to fill the vacancy until the next regular city election. The mayor, if present, shall preside at the convention.

Reasoning:

This amendment was proposed in the amendment to the City Charter proposed by the City Council in 2016.

PROPOSED AMENDMENT 20:

Current Section:

SECTION 51. The ballots used in voting upon such proposed measure shall state the nature of the measure in terms sufficient to show the substance thereof. No measure shall go into effect unless it receives the affirmative votes of at least a third of the whole number of registered voters.

Proposed Amendment:

Deletion of section in its entirety

Reasoning:

This amendment was proposed in the amendment to the City Charter proposed by the City Council in 2016.

This section is currently in conflict with the General Laws of the Commonwealth.

SUGGESTED AREAS OF FURTHER REVIEW

I believe the following sections should be reviewed to see whether they should remain in the Charter, be deleted, or amended to meet current operations, though their current placement in the charter does not provide any substantial detriment to current operations even if the language is outdated.

SUGGESTED AREA OF REVIEW 1:

Sections 1 through three of the City Charter deal with how the Selectmen of the Town of Gardner in 2022 shall call for elections and oversee the transition from a Town form of government to a City form.

SUGGESTED AREA OF REVIEW 2:

Section 7 of the City Charter gives the specific language that must be used by the Mayor when making appointments of individuals to City offices. While the language certainly works, I believe that defining specific language that must be used on appointment certificates can somewhat restrict the Office of Mayor in some cases or cause the mayor to appoint someone who may not truly fit the required wording based on how you interpret the language.

I can firmly stand behind every appointment I have made during my tenures as Mayor in Gardner for the past two years, and believe each one of them to have been the best for the jobs that they were appointed to. However, the Charter should look to the position, not the person, and the “what ifs” that may arise in the operations of the City’s government in order to ensure that the City’s governing document can insulate the City from any issues that may arise when anomalies occur.

SUGGESTED AREA OF REVIEW 3:

Section 13 of the City Charter gives an example of what a nomination form should look like “in substantial form.” I personally believe that examples such as this do not belong in a document like a Charter, since they one provide date references to the nineteen hundreds and as the language of the charter states, could differ in some ways from what is printed.

The same can be said with the language provided by the City Charter regarding the “PETITION ACCOMPANYING STATEMENT OF CANDIDATE”- which title in and of itself can be thought to be grammatically incorrect as currently printed in the Charter.

SUGGESTED AREA OF REVIEW 4:

Section 14 of the City Charter provides language for the official primary ballot, which for the same reasons listed in Suggested Area of Review 3, I believe should be discussed as to whether or not that should remain in the charter. These types of documents are largely governed by regulations issued by the Secretary of the Commonwealth’s office and would be covered without Charterial reference.

SUGGESTED AREA OF REVIEW 5:

Section 22 of the City Charter relates to the municipal election of 1937 and states that all elections after that under the current system, except for the current way school committee members are elected.

I believe this should be looked at to clean up the language and provide for the current system by which the school committee is elected.

This section is also in conflict with Chapter 290 of the Acts of 1989 which staggered the terms of those on the School Committee.

SUGGESTED AREA OF REVIEW 6:

Section 24 of the City Charter can be interpreted, in some ways, to be in conflict with the Conflict of Interest and Ethics laws of the Commonwealth.

Furthermore, it states that all “motions, resolutions, and ordinances,” need a majority vote of all members of the City Council. I believe it may be worth discussing whether the majority vote should be considered of all members of the City Council versus those present and voting, as is allowed under certain circumstances of the General Laws.

SUGGESTED AREA OF REVIEW 7:

In the event the Committee issues formal recommendations for amending the City Charter, Section 53 would have to be amended to provide for new language for the citizens on the ballot for when the proposed amendments are voted on.

SUGGESTED AREA OF REVIEW 8:

As stated in some of the previous items, I believe that any statutory references should be removed from the document as those references could change at any time by vote of the General Court and thus could cause confusing or conflicting language in the current charter.

SUGGESTED AREA OF REVIEW 9:

All references to personnel in the charter are male, as was the way with legislative drafting in 1923, only 4 years after women received the right to vote through the 19th Amendment.

I would suggest that the Committee review changing these references throughout the document to make the document more inclusive as several women have held elective and appointed office in the City’s history since the Charter was first adopted.

SUGGESTED AREA OF REVIEW 10:

The following Session Laws were originally proposed by the 2015 Charter Review Committee to be included in new Charter legislation to be repealed in order to bring the Charter and its amendments in line with current practice and current state law.

- Chapter 16 of the Acts of 1934
 - o Required that all City Contracts valued over \$500 be advertised in a newspaper of general circulation in the City
 - This is now in conflict and covered by MGL c.30B
- Chapter 65 of the Acts of 1935
 - o Required that all ordinances be advertised in a newspaper of general circulation in the City
 - Currently governed by the General Laws following the Municipal Modernization Act of 2016

- Also stated that ballot initiatives be placed on the ballot if twelve percent (12%) of the voters in an election.
 - This is governed by State Law and is in conflict with the language in the Charter itself which requires 8% for a general election or 20% for a special election. I believe the committee should determine how this adopted statute relates to the language and how to proceed with that matter.
- Chapter 111 of the Acts of 1947
 - This set the Mayor's salary at \$4,000 per year and the City Council Salary at \$500
 - While this is no longer in practice, it was never repealed.
- Chapter 184 of the Acts of 1939
 - This set the Mayor's salary at \$2,500 per year and the City Council Salary at \$300
 - While this is no longer in practice, it was never repealed.
- Chapter 191 of the Acts of 1960
 - Confirmed that all purchases over \$1,000 must be made through a contract in writing
 - Currently covered by MGL c.30B
- Chapter 34 of the Acts of 1975
 - Set the School Committee temporarily to 2 year terms and required that the membership of the school committee be one representative from each ward of the City.
 - Not current practice but never repealed
 - In conflict with Chapter 290 of the Acts of 1989 which set the term for school committee members to 4 year terms and all members as at large candidates.
- Chapter 206 of the Acts of 1975 and Chapter 590 of the Acts of 1975
 - Set the procedures to fill vacancies in elected office
 - Later adopted as regular language into the City Charter but never repealed
- Chapter 150 of the Acts of 2011
 - A ward councilor who no longer resides in their respective ward following constitutionally required redistricting after the federal census is allowed to finish their term representing their former ward until the winners of the next election take office.
 - I believe the committee should review adding this language into the Charter itself rather than just through a session law that the General Court adopted.