

**City of Gardner, Massachusetts  
Charter Committee**

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**CALENDAR FOR THE MEETING  
of  
THURSDAY, FEBRUARY 16, 2023  
CITY COUNCIL CHAMBER  
3:00 P.M.**

**ORDER OF BUSINESS**

- I. CALL TO ORDER**
- II. CALL OF THE ROLL**
- III. REVIEW AND DISCUSSION OF CITY CHARTER AND PROPOSED AMENDMENTS**
- IV. SCHEDULING OF PUBLIC HEARING**
- V. ADJOURNMENT**

**ENCLOSURES:**

- Current City Charter
- 2022 Mayor Suggestions
- 2015 City Council Proposed Amendments
- 2015 Charter Committee Proposed Amendments
- 2015 Law Department Review of Current City Charter

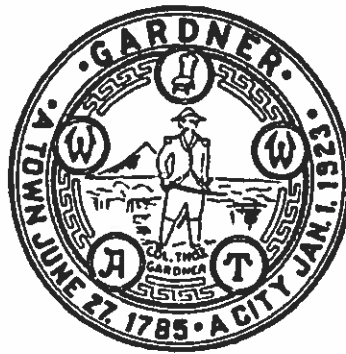
# Current City Charter

**CHARTER**

**FOR THE**

**CITY OF GARDNER**

**MASSACHUSETTS**



**As Amended to November 8, 1989**

**CHARTER**  
FOR THE  
**CITY OF GARDNER**  
MASSACHUSETTS  
As Amended to November 8, 1989

(Acts 1921, Chap. 119, with Amendments thereto)

AN ACT TO INCORPORATE THE CITY OF GARDNER

*Be it enacted, etc., as follows:*

SECTION 1. The inhabitants of the town of Gardner shall continue to be a body corporate and politic under the name of the City of Gardner, and as such shall have, exercise and enjoy all the rights, immunities, powers and privileges and shall be subject to all the duties, liabilities and obligations provided herein or by statute, or otherwise pertaining to cities as municipal corporations.

SECTION 2. Upon the acceptance of this act, the selectmen of the town then in office shall forthwith divide the territory of the town into five wards, so that the wards will contain, as nearly as may be consistent with well defined limits, an equal number of voters, and they shall designate the wards by numbers. The number of wards may, in any year fixed by law for a new division of wards in cities, be changed by vote of the city council, with the division of wards in cities, be changed by vote of the city council, with the assent of the mayor; but the number of wards shall not be less than five.

The selectmen, for the purpose of the first preliminary election and the first regular city election, after the acceptance of this act, shall provide suitable polling places and give notice thereof, and shall at least ten days before said preliminary election appoint all proper election officers therefore and for said regular city election; and they shall in general have the powers and perform the duties of the board of aldermen in cities under the General Laws, the provisions of which, so far as may be applicable, shall apply to said elections; and the town clerk shall perform the duties therein assigned to city clerks. The registrars shall cause to be prepared and published, according to law, lists of qualified voters in each of the wards established by selectmen.

SECTION 3. The selectmen shall notify the persons elected at the said first regular city election and shall provide and appoint a place for the first meeting of the mayor and council on the first Monday in January, next ensuing; and shall, by written notice, left at their respective places of residence at least twenty-four hours prior to such meeting, notify the mayor elect and the councilmen elect, who shall immediately proceed to organize and carry into effect the provisions of this act, which shall thereupon have full force and effect. The selectmen shall, in like manner, appoint a place and time for the first meeting of the school committee, and shall notify the members thereof.

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.

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.

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.

SECTION 7. In making his appointments the mayor shall sign and file with the city clerk a certificate in the following form:

#### CERTIFICATE OF APPOINTMENT

I appoint (name of appointee) to the position of (name of office), and I certify that in my opinion he is a recognized expert in the work which will devolve upon him, and that I make the appointment solely in the interest of the city.

Mayor.

Or the following form, as the case may be:

I appoint (name of appointee) to the position of (name of office), and I certify that in my opinion he is a person specially fitted by education, training or experience to perform the duties of said office, and that I make the appointment solely in the interest of the city.

Mayor.

SECTION 8. The mayor may, with the approval of a majority of the members of the city council, remove any head of a department or member of a board before the expiration of his term of office, except members of the school committee, officers elected by the city council, officers whose election is provided for by this act, and official appointed by the governor.

The person removed shall receive a copy of the reasons for his removal in writing; and he may contest the same at a hearing to be given by the city council, at which he shall have the right to be represented by counsel.

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.

SECTION 10. Until superseded under the provisions of this act or by action of the city council, the organization of the executive and administrative departments, and the powers and duties of the officers and employees of said town, shall remain as constituted at the time when this act takes full effect as provided in section three, but the city council may from time to time by ordinance, subject to the provisions of this act and in accordance with general laws, reorganize, consolidate or abolish departments, in whole or in part; may transfer the duties, powers and appropriations of one department to another, in whole or in part; may establish new departments; and may increase, reduce, establish or abolish salaries of heads of departments or members of boards. Nothing in this section shall authorize any action in conflict with the civil service laws and the rules and regulations made there under.

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.)

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).

SECTION 13. Any person who is qualified to vote for a candidate for any office mentioned in this act, and who is a candidate for nomination for that office, may have his name as such candidate printed on the official ballot to be used at a preliminary election; provided that, at least twenty-eight (G.L. Chap. 53 sec. 10 as amended) days prior to the preliminary election, he shall file with the city clerk a statement in writing of his candidacy, and with it the petition of at least fifty voters of the city, qualified to vote for a candidate for the said office. Said statement and petition shall be in substantially the following form:

#### STATEMENT OF CANDIDATE

I (.....), on oath declare that I reside at (number if any) on (name of street) in the city of Gardner; that I am a voter therein, qualified to vote for a candidate for the hereinafter

mentioned office; that I am a candidate for nomination for the office of (state the office) for (state the term) to be voted for at the preliminary election for nominations to be held on Tuesday, the ..... day of ..... Nineteen hundred and ..... and I request that my name be printed as such candidate on the official ballots to be used at said preliminary election.

(Signed)

Commonwealth of Massachusetts

Worcester, SS

Subscribed and sworn to this day of , nineteen hundred and , before me,

(Signed)

Justice of the Peace or (Notary Public)

My Commission Expires

### PETITION ACCOMPANYING STATEMENT OF CANDIDATE

Whereas (name of candidate) is a candidate for nomination for the office of (state the office) for (state the term), we the undersigned, voters of the city of Gardner, duly qualified to vote for a candidate for said office, do hereby request that the name of said (name of candidate) as a candidate for nomination for said office be printed on the official ballots to be used at the preliminary election to be held on the Tuesday of , nineteen hundred and . We further state that we believe him to be of good moral character and qualified to perform the duties of the office.

No acceptance by a candidate for nomination named in the said petition shall be necessary for its validity or for its filing, and the petition need not be sworn to. The petition may be on one or more papers.

SECTION 14. On the first day, not being Sunday or a legal holiday following the expiration of time for filing above-described statements and petitions, the city clerk shall post in a conspicuous place in the city hall the names and residences of the candidates for nomination who have duly filed the above-mentioned statements and petitions, as they are to appear on the official ballots to be used at the preliminary election, except as to the order of the names, and shall cause the ballots to be printed, and the ballots so prepared shall be the official ballots and the only ballots used at the preliminary election. They shall be headed as follows:

### OFFICIAL PRELIMINARY BALLOT

Candidates for nomination for the offices of ( ) in the City of Gardner. At a preliminary election to be held on the day of in the year nineteen hundred and . (The heading shall be varied in accordance with the office for which nominations are to be made).

SECTION 15. The name of each persons, and of none other, who has filed a statement and accompanying petition as aforesaid with his residence and the title and term of the office for which he is a candidate for nomination, shall be printed on said ballots under the designation of office in the order in which they may be drawn by the city clerk, whose duty it shall be to make such drawing and to give each candidate an opportunity to be present in person or by one representative. Blank space shall be left at the end of each list of candidates for nomination for the different offices equal to the number to be nominated therefore, in which the voter may insert the name of any person not printed on the ballot for whom he desires to

vote for nomination for such office. There shall be printed on said ballots such directions as will aid the voter, as to wit: "vote for one", "vote for not more than two", and the like. (G.L. Chap 54, sec. 42 as amended).

To the name of a candidate for a city office who is an elected incumbent thereof there shall be added in the same space the words "candidate for re-election" (see G.L. Chap 54, sec. 41 as amended).

SECTION 16. No ballot used at any preliminary, special or regular city election shall have printed thereon any party or other political designation or mark, and there shall not be appended to the name of any candidate any such party or other political designation or mark, or anything showing how he was nominated, or indicating his views or opinions. (See also G.L. Chap. 53, sec. 34 as amended).

SECTION 17. The election officers shall, immediately upon the closing of the polls at the preliminary elections, count the ballots and ascertain the number of votes cast in the voting places where they officiate for each person for nomination for each office, and shall forthwith make return thereof to the city clerk upon blanks to be furnished as in regular city elections.

SECTION 18. On the first day, not being Sunday or a legal holiday, following the preliminary election, the city clerk shall canvass the returns received from the election officers, and shall forthwith determine the result of the canvass and publish the same in one or more newspapers published in the city, and shall post the same in a conspicuous place in city hall.

SECTION 19. The two person receiving at a preliminary election the highest and second highest number of votes respectively, for any office , shall be the candidates and the only candidates for that office whose names shall be printed on the official ballots to be used at the succeeding regular or special city election. If two or more persons are to be elected to the same office at such regular or special city election, the several persons, to a number equal to twice the number so to be elected to such office, receiving the highest number of votes for nomination for that office, or all such persons if less than twice the number of those so to be elected, shall be candidates, and except as otherwise provided herein the only candidates, for that office whose names shall be printed on the official ballots to be used at such regular or special city election.

The names shall be printed on the ballots under the designation of the respective offices for which they are candidates in the order in which they may be drawn by the city clerk, as provided in section fifteen. In case two or more persons should receive an equal number of votes for the same office at any preliminary election held under this act and one of such persons would otherwise be entitled to have his name upon the official ballot then the names of all such persons shall be placed on the ballot.

SECTION 20. If at the expiration of the time for filing statements of candidates to be voted for at any preliminary election not more than twice as many such statements have been filed with the city clerk for the office of mayor, councilor at large, or school committee as there are candidates to be elected to said offices respectively, the candidates whose statements have thus been filed shall be deemed to have been nominated to said offices respectively, and their names shall be used as such regular or special city election, and the city clerk shall not print



said names upon the ballot to be used at said primary election, and no other nomination to said offices shall be made. And if in any ward, at the expiration of the time for filing statements of candidates to be voted for at any preliminary election, not more than twice as many such statements have been filed with the city clerk for the office of councilor from such ward as are to be elected, the candidates whose statements have thus been filed shall be deemed to have been nominated, and their names shall be printed on the official ballot to be used at such regular or special city election, and the city clerk shall not print said names upon the ballot to be used at said preliminary election, and no other nominations to said offices shall be made. And if it shall appear that no names are to be printed upon the official ballot to be used at any preliminary election, in any ward or wards of the city, no preliminary election shall be held in such ward or wards.

SECTION 21. No acceptance of nomination made at a preliminary election shall be necessary for its validity.

SECTION 22. Beginning with the year nineteen hundred and thirty-seven, municipal elections in the city of Gardner for the choice of mayor, councilors and members of the school committee shall be held biennially on the Tuesday next following the first Monday in November in each odd numbered year. (Section 22 is given as amended by Chapter 332 Acts of 1936 Section 1).

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.

SECTION 24. Except as provided in this section, the legislative powers of the city council may be exercised as provided by ordinance or rule adopted by it.

1. Except as otherwise provided in this act, every member of the council shall have the right to vote on any question coming before it. A majority of the council shall constitute a quorum, and the affirmative vote of a majority of all the members of the council shall be necessary to adopt any motion, resolution or ordinance.

2. The city council shall, from time to time, establish rules for its proceedings. Regular and special meetings of the council shall be held at a time and place fixed by ordinance. All legislative sessions shall be open to the public, and every matter coming before the council for action shall be put to vote, the result of which shall be duly recorded. A full and accurate journal of the proceedings of the council shall be kept, and shall be open to the inspection of any registered voter of the city.

3. The city clerk shall have such powers and perform such duties as the council may from time to time prescribe, in addition to such duties as may be prescribed by law. He shall keep the records of the meetings of the council.

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.

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.

SECTION 27. No ordinance, or part thereof, shall be amended or annulled except by an ordinance adopted in accordance with the provisions of this act.

SECTION 28. Any ordinance, order or resolution may be passed through all its stages of legislation at one session, provided that no member of the council objects thereto; but if any member of the council objects, further action on the measure shall, unless it is an emergency measure as defined in section twenty-six, be postponed for that meeting.

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.)

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.

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.

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.)

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.

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).

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.)

SECTION 36. At the request of any department, the city council may, with the approval of the mayor, acquire by purchase, or take by eminent domain under chapter seventy-nine of the General Laws in the name of the city, for any municipal purpose, any land or interest therein within the limits of the city not already appropriated to public use. Whenever the price proposed to be paid for land for any municipal purpose is more than twenty-five per cent higher than its average assessed valuation during the previous three years, said land shall not be purchase, but shall be taken by eminent domain and paid for in the manner provided for the payment of damages for land taken under said chapter seventy-nine. The city council shall estimate the damages, if any, sustained by persons in their property by such taking, and

shall state the share of each separately. No land shall be taken until an appropriation by loan or otherwise for the general purposes, for which land is needed shall have been made by the city council by a two thirds vote of all its members and approved by the mayor; nor shall a price be paid in excess of said estimated damages unless a larger sum is awarded by a court of competent jurisdiction.

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).

SECTION 38. The school committee shall elect annually a superintendent of schools except as provided in section forty-one of chapter seventy-one of the General Laws, and may, under the laws regulating the civil service, appoint, suspend or remove such subordinate officers or assistants, including janitors of school buildings as it may deem necessary for the proper discharge of its duties and the conduct of its business; it shall define their terms of service and their duties, and shall fix their compensation. No member of the school committee, except the mayor, shall during the term for which he is elected, hold any other office or position the salary or compensation for which is payable out of the city treasury. The committee shall organize annually on Tuesday following the first Monday in January, and shall elect one of its members as vice-chairman, whose duty it shall be to preside at all meetings of the committee at which the mayor is not present.

SECTION 39. The school committee, in addition to the powers and duties pertaining by law to school committees, shall have power to provide, when they are necessary, temporary accommodations for school purposes, and shall have the control of all school buildings and of the grounds connected therewith, and the power to make all repairs, the expenditures for which are made from the regular appropriation for the school department, except as is otherwise provided herein.

SECTION 40. No site for a school building shall be acquired by the city unless approval of the site by the school committee is first obtained. No plans for the construction or alteration of a school building shall be accepted and no work shall be begun on the construction or alteration of a school building, unless the approval of the school committee and the mayor therefore is first obtained; but such approval shall not be required for the making of ordinary repairs.

SECTION 41. The school committee shall make all reasonable rules and regulations for the management of the public schools of the city and for conducting the business of the committee, provided that such rules are not inconsistent with any laws of the commonwealth.

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.

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.

SECTION 44. A petition meeting the requirements hereinafter specified and requesting the city council to pass an ordinance, resolution, order or vote, except an order granted under the provisions of chapter on hundred and sixty-four and one hundred and sixty-six of the General Laws or requesting the school committee to pass a resolution, order or vote, all of these four terms being hereinafter included in the term "measure", therein set forth or designated, shall be termed an initiative petition, and shall be acted upon as hereinafter provided.

SECTION 45. Signatures to initiative petitions need not be on all one paper. All such papers pertaining to any one measure shall be fastened together, and shall be filed in the office of the city clerk as one instrument, with the endorsement thereon of the names and addresses of three persons designated as filing the same. With each signature to said petition shall be stated the place of residence of the signer, giving the street and number, if any.

Within five days after the filing of said petition the registrars of voters shall ascertain by what number of registered voters the petition is signed, and what percentage that number is of the total number of registered voters, and shall attach thereto their certificate showing the result of such examination.

The city clerk shall forthwith transmit the said certificate with the said petition to the city council or to the school committee, accordingly as the petition is addressed, and at the same time shall send a copy of said certificate to one or more of the persons designated on the petition as filing the same.

SECTION 46. If an initiative petition be signed by registered voters equal in number, except as otherwise provided in this act, to at least twenty per cent of the whole number of registered voters, the city council or the school committee shall, within twenty days after the date of the certificate of the registrars of voters that the petition has been signed by the required percentage of registered voters, either –

1. Pass said measure without alteration, subject to the referendum vote provided by this act.  
or
2. The city council shall call a special election to be held on a Tuesday fixed by it not less than thirty nor more than forty-five days after the date of the certificate hereinbefore mentioned, and shall submit the proposed measure without alteration to a vote of the registered voters of the city at that election, provided, however that if any regular city election is otherwise to occur within ninety days after the date of said certificate, the city council may, at its discretion, omit calling the special election and submit the proposed measure to the voters at such other election.

SECTION 47. If an initiative petition be signed by registered voters equal in number to at least eight per cent but less than twenty per cent of the total number of registered voters, and said measure be not passed without alteration within twenty days by the city council or the school committee, as provided in the preceding section, then such proposed measure, without alteration, shall be submitted by the city council to a vote of the registered voters of the city at the next regular city election.

SECTION 48. If within twenty days after the final passage of any measure, other than a loan order (however, see Chapter 202 of the Acts of 1941 and G.L. Chapter 44, section 8A with respect to orders authorizing the issue of bonds, notes or certificates of indebtedness withholding effectiveness for a period of twenty days from day of order and allowing opportunity for initiative petition signed by a minimum of twelve per cent of the registered voters of the City of Gardner), by the city council or by the school committee, a petition signed by registered voters of the city, equal in number to at least twelve per cent of the total number of registered voters, be presented to the city council or to the school committee, as the case may be, protesting against such measure or any part thereof taking effect, the same shall thereupon and thereby be suspended from taking effect; and the city council or the school committee, as the case may be, shall immediately reconsider such measure or part thereof; and if such measure or part thereof be not entirely annulled, repealed or rescinded, the city council shall submit the same, by the method herein provided, to a vote of the qualified voters of the city, either at the next regular city election, or at a special election which may, in its discretion, be called for the purpose, and such measure or part thereof shall forthwith become null and void unless a majority of the qualified voters voting on the same at such election shall vote in favor thereof. The petition provided for by this section shall be termed a referendum petition.

The procedure in respect to the referendum petition shall be the same as that provided by section forty-five of this act, except that the words "measure or part thereof protested against" shall for this purpose be understood to replace the word "measure" in that section wherever it may occur, and that the word "referendum" shall be understood to replace the word "initiative" in that section. (Section 48 is given as amended by Chapter 65 of the Acts of 1935).

SECTION 49. The city council may of its own motion, and shall upon request of the school committee in case of a measure originating with that committee and pertaining to the affairs under its administration, submit to a vote of the registered voters of the city for adoption or rejection at a regular or special city election any proposed measure, or a proposition for the annulment, repeal or amendment of any measure, in the same manner and with the same force and effect as are hereby provided for submission on petition.

SECTION 50. If two or more proposed measures passed at the same election contain conflicting provisions, that one of said measures which received the largest number of affirmative votes shall take effect and the other shall be void.

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.

SECTION 52. All official bonds, recognizances, obligations, contracts and all other instruments entered into or executed by or to the town of Gardner before the organization of the city government under this act and all taxes, special assessments; fines, penalties, forfeitures incurred or imposed, due or owing to the town, shall be enforced and collected, and all writs, prosecutions, actions and causes of action, except as herein otherwise provided, shall continue without abatement and remain unaffected by this act; and no legal act done by or in favor of the town shall be rendered invalid by the acceptance of this act.

All laws, by-laws, rules and regulations, general or special relating to the town of Gardner, in force at the time when this act takes full effect, shall until altered, amended or repealed, continue in force in the city of Gardner, so far as the same are not inconsistent herewith.

SECTION 53. This act shall be submitted to the voters of the town of Gardner at the annual town election in March in the year nineteen hundred and twenty-two for their acceptance. At such election the polls shall be open not less than eight hours; and the vote shall be taken by ballot, in accordance with the provisions of the General Laws so far as the same shall be applicable, and not inconsistent herewith, in answer to the following question which shall be placed upon the official ballot used for the election of town officers: "Shall an act passed by the general court in the year nineteen hundred and twenty-one, entitled 'An Act to incorporate the City of Gardner', be accepted?" If a majority of the voters present and voting thereon vote to accept this act then the same shall take effect; but not otherwise. (Approved March 15, 1921).

Chapter 119 of the Acts of 1921 accepted by the voters of Gardner March 6, 1922.



# 2022 Mayor Suggestions



City of Gardner – *Executive Department*

Mayor Michael J. Nicholson

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September 27, 2022

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

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 though could be looked into and updated in the existing charter.

I will admit, I had avoided submitting my proposed thoughts on the matter, as I believe that to be the responsibility of the charter review committee themselves, and I did not want to disrespect or disregard the process that is statutorily outlined in the General Laws for this process.

With that said, I do respect the opinion that the question should be whether there is merit in creating a committee to review the Charter or not.

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.

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 receive a copy of the reasons for removal and may, if desired, to contest the same before 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.

City Charter Review Proposals by Administration, 9/27/2022

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 1<sup>st</sup> 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 1<sup>st</sup> 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 7<sup>th</sup> 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 contract 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 though 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 19<sup>th</sup> 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.

# 2015 City Council Proposal

**VOTED:** To petition the General Court that legislation be adopted precisely as follows. The General Court may make clerical or editorial changes of form only to the bill, unless the Mayor and City Council approve amendments to the bill before enactment by the General Court. The Mayor and City Council are hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition.

**AN ACT RELATIVE TO THE CHARTER OF THE CITY OF GARDNER.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

**SECTION 1.** Section 9 of the charter of the city of Gardner, which is on file in the office of the archivist of the commonwealth, as provided in section 12 of chapter 43B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the first sentence the following words:- The person so removed shall receive a copy of the reasons for removal and may, if desired, to contest the same before the city council and may be represented by counsel at the hearing.

**SECTION 2.** Said Charter is hereby further amended by striking from Section 12 the words "fourth Tuesday" and inserting in place thereof the following words:- seventh Tuesday.

**SECTION 3.** Said charter is hereby further amended by striking out section 23 and inserting in place thereof the following section:- 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

# PETITION

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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.

SECTION 4. Said charter is hereby further amended by striking out section 31 and inserting in place thereof the following section:- 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.

SECTION 5. Said charter is hereby further amended by striking out section 32 and inserting in place thereof the following section:- If a vacancy occurs in the office of mayor by death or resignation, 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 by death or resignation, 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 by death or resignation, 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.



# PETITION

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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 by death or resignation, 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.)

SECTION 6. Said charter is hereby further amended by striking out section 33 in its entirety.

SECTION 7. Said charter is hereby further amended by striking out section 34 in its entirety.

SECTION 8. Said charter is hereby further amended by striking out section 42 and inserting in place thereof the following section:- The vote on any particular measure before the school committee shall be by the call of yeas and nays, when it is so requested by not less than two members of the committee.

SECTION 9. Said charter is hereby further amended by striking out section 43 and inserting in place thereof the following section:- On the first Monday in January or on the following day whenever said first Monday shall also be New Year's Day, the school committee members-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. At any meeting no more than sixty (60) days thereafter the oath may be administered, in the presence of the city council and the school committee, to any school committee member-

## **PETITION**

---

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 death, resignation, or by failure to elect, the city council shall appoint the person 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 school committee, then 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 for the unexpired term. The mayor, if present, shall preside at the convention.

SECTION 10. Said charter is hereby further amended by striking out section 46 and inserting in place thereof the following section:- If an initiative petition be signed by registered voters equal in number, except as otherwise provided in this act, to at least fifteen per cent of the whole number of registered voters, the city council or the school committee shall, within twenty days after the date of the certificate of the registrars of voters that the petition has been signed by the required percentage of registered voters, either -

1. Pass said measure without alteration, subject to the referendum vote provided by this act or
  
2. The city clerk shall call a special election to be held on a Tuesday fixed by said clerk not less than thirty nor more than forty-five days after the date of qualification, and shall submit the proposed measure without alteration to a vote of the registered voters of the city at that election; provided, however, that if any city election is otherwise to occur within ninety days after the date of qualification, the city clerk may, at his discretion, omit calling the special election and submit the proposed measure to the voters at such approaching election.

SECTION 11. Said charter is hereby further amended by striking out section 47 and inserting in place thereof the following section:- If an initiative petition be signed by

## **PETITION**

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registered voters equal in number to at least eight per cent but less than fifteen per cent of the total number of registered voters, and said measure be not passed without alteration within twenty days by the city council or the school committee, as provided in the preceding section, then such proposed measure, without alteration, shall be submitted by the city clerk to a vote of the registered voters of the city at the next regular city election.

SECTION 12. Said charter is hereby further amended by striking out section 51 in its entirety.

SECTION 13. The following question shall be placed on the ballot to be used at the next regular city election to be held in the city of Gardner: Shall an act entitled "An Act Relative to the Charter of the City of Gardner" be accepted?

The city solicitor shall prepare the summary of the proposed charter amendments which shall appear on the ballot along with the question provided in this section.

If a majority of votes cast in answer to the question is in the affirmative, the city shall be taken to have accepted the charter of the city of Gardner, but not otherwise.

SECTION 14. This act shall take effect upon its passage.

**2015 Charter  
Committee  
Recommendations**

# Gardner Charter Review Committee Final Recommendation Summary

March 2014

## **The Gardner Charter Review**

***Committee's mission is to recommend a charter for the City that provides a local government that is transparent, effective, efficient, and responsive, both for the present day and for future generations.***

## **City Council**

The current 11 member city councils; 6 elected at-large and 5 elected by ward would not change. The council would continue to appoint a city clerk but would no longer appoint the auditor or the treasure/collector; those positions would be appointed by the mayor. All department heads appointed by the mayor would be subject to confirmation by the city council. The city council would retain the powers of municipal legislative bodies in Massachusetts.

## **Mayor**

The mayor would continue to be the chief executive officer of the city, responsible for its day-to-day operations. The mayor would appoint department heads and members of boards and commissions, subject to city council confirmation. The mayor would serve a 4-year term, rather than the current 2-year term.

## **School Committee**

The school committee would become a 7-member body elected at-large; the mayor would continue to serve as the 7<sup>th</sup> member and would continue to be the chair.

## **Organization of City Operations**

The mayor would be authorized to submit reorganization plans of city departments and boards and commissions to the city council. The city council could approve or reject the mayor's proposals but would not have the authority to amend them.

## **Finances**

The mayor would be required to call a joint meeting of the city council and the school committee to review the fiscal condition of the city before the start of each year's budget process. The budget process would become more open and transparent, and would require a public hearing. The mayor would be required to prepare five-year financial projections and capital improvement programs. An annual audit would be conducted by an independent public accountant selected and overseen by the city council.

## **Prohibitions**

Members of the city council or school committee would not be allowed to hold any other compensated municipal position. No former member of the city council or school committee can hold any compensated appointed municipal position until 1 year after their service ends. Any elected official finally convicted of a felony would immediately be removed from office.

## **Elections**

Elections would take place in September and November in each odd-numbered year as they are now.

## **Voter Participation Provisions**

There would be provisions for voters to directly participate in the decisions of city government. There would be a provision to allow voters; to initiate a referendum to allow voters to reverse measures adopted by the city council or school committee; and to initiate petitions to compel the city council or school committee to adopt measures. There would be a recall procedure for all elected officials. There would be safeguards against frivolous petitions.

## **Charter and Ordinance Review**

The City would be required to review its charter every ten years and codify its ordinances every five years.

## **Timeline**

The recommendations will be filed with the city council and the mayor in March. The city council will deliberate and submit a home rule petition to the mayor for approval. The state legislature will then take action on the petition. If the petition is approved, it will appear on the ballot at the state election in November 2014.





**CITY OF GARDNER, MASSACHUSETTS**

**CHARTER REVIEW COMMITTEE**

FINAL RECOMMENDATIONS FOR

A SPECIAL ACT CHARTER

March 2014

Andrew Boucher, Chair  
Leonette Roy, Vice-Chair  
David Curran  
Patricia Jandris  
Albert LaFreniere  
Charles Leblanc  
Cleo Monette  
Edward Yablonski  
Arthur Young

1 AN ACT REVISING THE CHARTER FOR THE CITY OF GARDNER.

2

3 Be it enacted by the Senate and House of Representatives in General Court  
4 assembled, and by the authority of the same as follows:

5

6 SECTION 1. The following shall be the charter for the city of Gardner.

7

8 ARTICLE 1

9 INCORPORATION; SHORT TITLE; DEFINITIONS

10

11 SECTION 1-1: INCORPORATION

12 The inhabitants of the city of Gardner, within the territorial limits established  
13 by law, shall continue to be a municipal corporation, a body corporate and  
14 politic, under the name "City of Gardner".

15

16 SECTION 1-2: SHORT TITLE

17 This instrument shall be known and may be cited as the city of Gardner  
18 charter.

19

20 SECTION 1-3: DIVISION OF POWERS

21 The administration of the fiscal, prudential and municipal affairs of the city of  
22 Gardner shall be vested in an executive branch headed by a mayor and a  
23 legislative branch consisting of a city council. The legislative branch shall  
24 never exercise any executive power and the executive branch shall never  
25 exercise any legislative power.

26

27 SECTION 1-4: POWERS OF THE CITY

28 Subject only to express limitations on the exercise of any power or function  
29 by a municipal government in the constitution or General Laws, it is the

1 intention and the purpose of the voters of Gardner, through the adoption of  
2 this charter, to secure for themselves and their government all of the powers  
3 it is possible to secure as fully and as completely as though each power were  
4 specifically and individually enumerated in this charter.

5  
6 **SECTION 1-5: CONSTRUCTION**

7 The powers of the city of Gardner under this charter are to be construed  
8 liberally in favor of the city, and the specific mention of any particular power  
9 is not intended to limit the general powers of the city as stated in section 1-  
10 4.

11  
12 **SECTION 1-6: INTERGOVERNMENTAL RELATIONS**

13 Subject only to express limitations in the constitution or General Laws, the  
14 city of Gardner may exercise any of its powers or perform any of its  
15 functions and may participate in the financing thereof, jointly or in  
16 cooperation, by contract or otherwise, with the commonwealth or any of its  
17 agencies or political subdivisions, or with the United States government or  
18 any of its agencies.

19  
20 **SECTION 1-7: DEFINITIONS**

21 As used in this charter, the following words shall, unless the context clearly  
22 requires otherwise, have the following meanings:

23 (1) "Charter", this charter and any adopted amendments to it.

24 (2) "City", the city of Gardner.

25 (3) "City agency", any multiple member body, any department, division, or  
26 office of the city of Gardner.

27 (4) "City office or department head", a person having charge of a city office  
28 or department.



- 1 (5) "City website", a site established and maintained by the city as its online  
2 repository of municipal information, whether on the Internet or accessed  
3 through another comparable technology.
- 4 (6) "Emergency", a sudden, generally unexpected occurrence or set of  
5 circumstances demanding immediate action.
- 6 (7) "Full city council", the entire authorized membership of the city council,  
7 notwithstanding any vacancy which might exist.
- 8 (8) "Full multiple member body", the entire authorized membership of a  
9 multiple member body, notwithstanding any vacancy that exists.
- 10 (9) "Full school committee", the entire authorized membership of the school  
11 committee, notwithstanding any vacancy that exists.
- 12 (10) "Initiative measure", a measure proposed by the voters through the  
13 initiative process provided under this charter.
- 14 (11) "Local newspaper", a newspaper of general circulation within Gardner,  
15 with either a weekly or daily circulation.
- 16 (12) "Majority vote", when used in connection with a meeting of a multiple  
17 member body, shall mean a majority of those present and voting, unless  
18 another provision is made by ordinance or by such body's own rules;  
19 provided, however, that General Laws related to any vote to meet in  
20 executive session shall always require a majority of the full multiple member  
21 body.
- 22 (13) "Measure", any ordinance, order or other vote or proceeding adopted,  
23 or which might be adopted, by the city council or the school committee.
- 24 (14) "Multiple member body", any council, commission, committee,  
25 subcommittee or other body consisting of 2 or more persons whether  
26 elected, appointed or otherwise constituted, but not including the city  
27 council, the school committee or an advisory committee appointed by the  
28 mayor.

1 (15) "Organization or reorganization plan", a plan submitted by the mayor to  
2 the city council which proposes a change in the organization or the  
3 administrative structure of the city organization or a change in the way in  
4 which any municipal service is delivered.

5 (16) "Quorum", a majority of all voting members of a multiple member body  
6 unless some other number is required by law or by ordinance.

7 (17) "Recall", an election to remove an elected official from office before the  
8 expiration of the term for which elected.

9 (18) "Referendum measure", a measure adopted by the city council or the  
10 school committee that is protested under the referendum procedures of this  
11 charter.

12 (19) "Remove from the city" or "remove from a ward", when a person  
13 ceases to be domiciled within the territorial limits of the city or a ward.

14 (20) "Voters", registered voters of the city of Gardner.

15 (21) "Year", a calendar year, unless otherwise specified.

16  
17 ARTICLE 2

18 LEGISLATIVE BRANCH

19  
20 SECTION 2-1: COMPOSITION; TERM OF OFFICE; ELIGIBILITY

21 (a) Composition - There shall be a city council consisting of 11 members  
22 which shall exercise the legislative powers of the city. Six of these members,  
23 to be known as councilors-at-large, shall be nominated and elected by and  
24 from the voters at large. Five of these members, to be known as ward  
25 councilors, shall be nominated from and elected by the voters in each ward;  
26 1 such ward councilor to be elected from each of the 5 wards into which the  
27 city is divided under section 8-6.

28 (b) Term of Office - The term of office for councilors shall be 2 years each,  
29 beginning on the first Monday in the January succeeding the councilor's

1 election, except when that first Monday falls on a legal holiday, in which  
2 event the term shall begin on the following day, and until successors have  
3 been qualified.

4 (c) Eligibility - Any voter shall be eligible to hold the office of councilor-at-  
5 large. A ward councilor shall be a voter in the ward from which election is  
6 sought. If a ward councilor or a councilor-at-large removes from the city  
7 during the councilor's term, that office shall immediately be deemed vacant  
8 and filled in the manner provided in section 2-11. A ward councilor who  
9 removes from the ward in which the councilor was elected and who remains  
10 a resident of the city may continue to serve during the term for which the  
11 councilor was elected. The city council shall determine whether a city  
12 councilor has removed from the city.

13  
14 SECTION 2-2: PRESIDENT AND VICE-PRESIDENT, ELECTION; TERM;  
15 POWERS

16 (a) Election and Term - As soon as practicable after the councilors-elect have  
17 been qualified following each regular city election, as provided in section 9-  
18 9, the members of the city council shall elect from among its members a  
19 president and vice-president who shall serve for 2 year terms. The method  
20 of election of the president and vice-president shall be prescribed within the  
21 rules of the city council. The rules of the city council in effect at the time of  
22 the regular municipal election shall govern the election of the president and  
23 vice-president.

24 (b) Powers and Duties - The president shall prepare the agenda for city  
25 council meetings. The president shall preside at all meetings of the city  
26 council, regulate its proceedings and decide all questions of order. The  
27 president shall appoint all members of committees of the city council,  
28 whether special or standing. The president shall have the same powers to  
29 vote upon measures coming before the city council as any other member of

1 the city council. The president shall perform any other duties consistent with  
2 the office that are established by charter, ordinance or other vote of the city  
3 council. The vice-president shall preside in the absence of the president.  
4

#### 5 SECTION 2-3: PROHIBITIONS

6 (a) Holding Other City Position – Except as otherwise provide by the charter,  
7 no member of the city council shall hold any other compensated city office or  
8 position, whether elected or appointed. No former member of the city council  
9 shall hold any compensated appointed city position until 1 year following the  
10 date on which the former member's service on the city council has  
11 terminated. This section shall not prevent a city employee who vacated a  
12 position in order to serve as a member of the city council from returning to  
13 the same position upon the expiration of the term for which that person was  
14 elected.

15 (b) Interference with Administration - No city council or any member of the  
16 city council shall give orders or directions to any employee of the city who is  
17 not appointed by the city council, either publicly or privately.  
18

#### 19 SECTION 2-4: COMPENSATION

20 The members of the city council shall receive compensation for their services  
21 as set by ordinance. No ordinance increasing or reducing the compensation  
22 of the members of the city council shall be effective unless it is adopted by a  
23 2/3 vote of the full city council. No ordinance increasing or reducing the  
24 compensation of the members of the city council shall be effective unless it  
25 is adopted during the first 18 months of the term for which the city council is  
26 elected and it provides that the compensation increase or reduction is to  
27 take effect upon the organization of the city government following the next  
28 regular city election.  
29

1 SECTION 2-5: GENERAL POWERS

2 Except as otherwise provided by the General Laws or by this charter, all  
3 powers of the city shall be vested in the city council which shall provide for  
4 the performance of all duties and obligations imposed upon the city by law.  
5

6 SECTION 2-6: EXERCISE OF POWERS; QUORUM; RULES

7 (a) Exercise of Powers - Except as otherwise provided by General Laws or by  
8 this charter, the legislative powers of the city council may be exercised in a  
9 manner determined by the city council.

10 (b) Quorum - The presence of 6 members shall constitute a quorum for the  
11 transaction of business.

12 (c) Rules of Procedure - The city council shall adopt rules regulating the  
13 procedures of the city council, which shall include, but not be limited to, the  
14 following rules:

15 (i) regular meetings of the city council shall be held at a time and place fixed  
16 by ordinance;

17 (ii) special meetings of the city council shall be held at the call of the  
18 president or at the call of any 3 or more members, for any purpose;  
19 provided, however, that notice of the meeting shall, except in an emergency,  
20 which shall be designated by the president, be delivered to each member at  
21 least 48 weekday hours in advance of the time set and shall specify the  
22 date, time and location of the meeting and the purposes for which the  
23 meeting is to be held; provided further, that a copy of each notice shall  
24 immediately be posted as the General Laws relative to such postings  
25 require;

26 (iii) all sessions of the city council and of every committee or subcommittee  
27 of the council shall, at all times, be open to the public, unless otherwise  
28 specified by law; and

1 (iv) a full, accurate, up-to-date account of the proceedings of the city council  
2 shall be maintained by the city clerk, which shall include a record of each  
3 vote taken and which shall be made available with reasonable promptness  
4 following each meeting, but not later than the next regularly scheduled  
5 meeting; provided, however, that unless otherwise provided by law, the  
6 minutes of an executive session shall be made available as soon as  
7 publication of the minutes would not defeat the purpose of the executive  
8 session.

9

10 SECTION 2-7: ACCESS TO INFORMATION

11 (a) In General - The city council may make investigations into the affairs of  
12 the city and into the conduct and performance of any city agency.

13 (b) Information Requests - The city council may require one or more  
14 members of a multiple-member body or city employee(s) to appear before  
15 the city council to give any information that the city council may require in  
16 relation to the municipal services, functions and powers or duties which are  
17 within the scope of responsibility of that person(s) and not within the  
18 jurisdiction of the school committee. The city council shall give a minimum  
19 of 7 days notice to any such persons it may require to appear before it under  
20 this section. The notice shall include specific questions on which the city  
21 council seeks information and no person called to appear before the city  
22 council under this section shall be required to respond to any question not  
23 relevant or related to those questions presented in advance and in writing.

24 (c) Mayor - The city council may request specific information from the mayor  
25 on any municipal matter and may request that the mayor be present to  
26 answer written questions relating to that information at a meeting to be held  
27 not earlier than 7 days from the date the mayor receives the questions. The  
28 mayor shall personally, or through a designee, attend such meeting and

1 respond to the questions. The mayor, or the person designated to attend,  
2 shall not be required to answer questions relating to any other matter.

3  
4 SECTION 2-8: APPOINTMENTS OF THE CITY COUNCIL

5 The council shall, by a majority vote, elect a city clerk to hold office for 3  
6 years and until said city clerk's successor is qualified. The city clerk shall  
7 have such powers and perform such duties as the council may prescribe, in  
8 addition to such duties as may be prescribed by law. Subject to  
9 appropriation, the city council may employ staff as it deems necessary.

10  
11 SECTION 2-9: ORDINANCES AND OTHER MEASURES

12 (a) Measures- Except as otherwise provided by the charter, every adopted  
13 measure shall become effective at the expiration of 10 days after adoption  
14 or upon the signature of the mayor, whichever occurs first. No ordinance  
15 shall be amended or repealed except by another ordinance adopted in  
16 accordance with the charter, or as provided in the initiative and referendum  
17 procedures under article 8 of this charter.

18 (b) Emergency Measures- An emergency measure shall be introduced in the  
19 form and manner prescribed for measures generally, except that it shall be  
20 plainly designated as an emergency measure and shall contain statements  
21 after the enacting clause declaring that an emergency exists and describing  
22 the scope and nature of the emergency in clear and specific terms. A  
23 preamble which declares and defines the emergency shall be separately  
24 voted on and shall require the affirmative vote of 2/3 of the full city council.  
25 An emergency measure may be passed with an amendment or rejected at  
26 the meeting at which it is introduced. No measure making a grant, renewal  
27 or extension, whatever its kind or nature, or a franchise or special privilege  
28 shall be passed as an emergency measure. Except as provided by the  
29 General Laws, such grant, renewal or extension shall be made by ordinance.

1 An emergency measure shall become effective upon adoption or at such  
2 later time as it may specify.

3 (c) Charter Objection- On the first occasion that the question on adoption of  
4 a measure is put to the city council, if a single member present objects to  
5 the taking of the vote, the vote shall be postponed until the next meeting of  
6 the city council, whether regular or special. If 3 members present object,  
7 such postponement shall be until the next regular meeting. If it is an  
8 emergency measure at least 5 members must object. This procedure shall  
9 not be used more than once for any specific matter notwithstanding an  
10 amendment to the original matter. A charter objection shall have privilege  
11 over all motions but must be raised prior to or at the call for a vote by the  
12 presiding officer and all debate shall cease.

13

#### 14 SECTION 2-10: CITY COUNCIL CONFIRMATION OF CERTAIN APPOINTMENTS

15 The mayor shall refer to the city council and simultaneously file with the city  
16 clerk, the name of each person the mayor desires to appoint as a  
17 department head or as a member of a multiple-member body. Appointments  
18 made by the mayor shall become effective on the forty-fifth day after the  
19 date on which notice of the proposed appointment was filed with the city  
20 clerk unless approved or rejected by the city council within the 45 days.

21

#### 22 SECTION 2-11: FILLING OF VACANCIES

23 Whenever a vacancy occurs on the city council, the president of the city  
24 council shall, within 30 days following the date of the vacancy, call a special  
25 meeting of the city council to fill the vacancy. The city council shall choose a  
26 person to fill the vacancy from among the voters entitled to vote for the  
27 office. Persons elected to fill a vacancy by the city council shall serve only  
28 until the next regular city election, when the office shall be filled by the  
29 voters. The candidate elected to an office filled by appointment prior to the



1 election shall be sworn to the office immediately to complete the then  
2 unexpired term in addition to the term for which elected. No vacancy shall  
3 be filled under this section if a regular city election is to be held within 120  
4 days following the date the vacancy is declared to exist. Persons serving as  
5 city councilors under this section shall not be entitled to have the words  
6 "candidate for reelection" printed with that person's name on the election  
7 ballot.

8

### 9 ARTICLE 3

#### 10 EXECUTIVE BRANCH

11

#### 12 SECTION 3-1: MAYOR: QUALIFICATIONS; TERM OF OFFICE; 13 COMPENSATION; PROHIBITIONS

- 14 (a) Mayor Qualifications – The chief executive officer of the city shall be a  
15 mayor, elected by the voters of the city at large. Any voter shall be eligible  
16 to hold the office of mayor. The mayor shall devote full-time to the office  
17 and shall not hold any other public office.
- 18 (b) Term of Office – The term of office of the mayor shall be 4 years,  
19 beginning on the first Monday in the January succeeding the mayor's  
20 election, except when that first Monday falls on a legal holiday, in which  
21 event the term shall begin on the following day, and shall continue until a  
22 successor has been qualified.
- 23 (c) Compensation – The city council shall, by ordinance, establish the  
24 compensation for the mayor. No ordinance increasing or reducing the  
25 compensation of the mayor shall be effective unless it has been adopted by  
26 a 2/3 vote of the full city council. No ordinance increasing or reducing the  
27 compensation of the mayor shall be effective unless it has been adopted  
28 during the first 18 months of the term for which the mayor is elected and  
29 unless it provides that the compensation increase or reduction is to take

1 effect upon the organization of the city government following the next  
2 regular city election.

3 (d) Prohibitions – The mayor shall hold no other city position. No former  
4 mayor shall hold a compensated appointed city office or city employment  
5 until 1 year following the date on which the former mayor’s city service has  
6 terminated. This subsection shall not prevent a city officer or other city  
7 employee who has vacated a position in order to serve as mayor from  
8 returning to the same office or other position of city employment held at the  
9 time such position was vacated; provided, however, that no such person  
10 shall be eligible for any other municipal position until at least 1 year  
11 following the termination of service as mayor. This prohibition shall not apply  
12 to persons covered by a leave of absence under section 37 of chapter 31 of  
13 the General Laws.

14

15 **SECTION 3-2: EXECUTIVE POWERS; ENFORCEMENT OF ORDINANCES**

16 The executive powers of the city shall be vested solely in the mayor and may  
17 be exercised by the mayor either personally or through the several city  
18 agencies under the general supervision and control of the office of the  
19 mayor. The mayor shall cause the charter, laws, ordinances and other orders  
20 of the city government to be enforced and shall cause a record of all official  
21 acts of the executive branch of the city government to be kept. The mayor  
22 shall exercise general supervision and direction over all city agencies, unless  
23 otherwise provided by law or by this charter. Each city agency shall furnish  
24 to the mayor, upon request, any information or materials the mayor may  
25 request and as the needs of the office of mayor and the interest of the city  
26 may require. The mayor shall supervise, direct and be responsible for the  
27 efficient administration of all city activities and functions placed under the  
28 control of the mayor by law or by this charter. The mayor shall be  
29 responsible for the efficient and effective coordination of the activities of all

1 agencies of the city and may call together for consultation, conference and  
2 discussion, at reasonable times, all persons serving the city, whether elected  
3 directly by the voters, chosen by persons elected directly by the voters or  
4 otherwise. The mayor shall be, by virtue of the office, a member of every  
5 appointed multiple-member body of the city. The mayor may, as such ex  
6 officio member, attend a meeting of an appointed multiple-member body of  
7 the city, at any time, including, so called executive sessions, to participate in  
8 the discussions of that body, but shall not have the right to vote.  
9

#### 10 SECTION 3-3: APPOINTMENTS BY THE MAYOR

11 The mayor shall appoint, subject to confirmation by the city council under  
12 section 2-10, all department heads and the members of multiple-member  
13 bodies for whom no other method of appointment or selection is provided by  
14 the charter; provided, however, that this shall not include persons serving  
15 under the school committee and persons serving under the city council. All  
16 appointments to multiple-member bodies shall be for terms established  
17 under article 5. Upon the expiration of the term of any member of a  
18 multiple-member body, a successor shall be appointed under article 5. The  
19 mayor shall fill a vacancy for the remainder of the unexpired term of any  
20 member of a multiple-member body. The method of appointment for all  
21 other city employees shall be prescribed by administrative order under  
22 article 5.  
23

#### 24 SECTION 3-4: TEMPORARY APPOINTMENTS TO CITY OFFICES

25 Whenever a vacancy, either temporary or permanent, occurs in a city office  
26 and the needs of the city require that such office be filled, the mayor may  
27 designate a person to perform the duties of the office on a temporary basis  
28 until the position can be filled as provided by law or by this charter. When

1 the mayor designates a person under this section, the mayor shall file a  
2 certificate with the city clerk in substantially the following form:  
3 I designate (name of person) to perform the duties of the office of  
4 (designate office in which vacancy exists) on a temporary basis until the  
5 office can be filled by (here set out the regular procedure for filling the  
6 vacancy, or when the regular officer shall return). I certify that this person is  
7 qualified to perform the duties which will be required and that I make this  
8 designation solely in the interests of the city of Gardner.

9 Persons serving as temporary officers under this section shall have only  
10 those powers of the office indispensable and essential to the performance of  
11 the duties of the office during the period of temporary appointment and no  
12 others. Notwithstanding any general or special law to the contrary, no  
13 temporary appointment shall be for more than 90 days; provided, however,  
14 that not more than 2 extensions of a temporary appointment, which shall  
15 not exceed a total of 60 days, may be made when a permanent vacancy  
16 exists in the office.

17

18 **SECTION 3-5: COMMUNICATIONS; SPECIAL MEETINGS**

19 (a) Communications to the City Council - The mayor shall, by written  
20 communications, recommend to the city council for its consideration  
21 measures as, in the judgment of the mayor, the needs of the city require.  
22 The mayor shall, by written communication, keep the city council fully  
23 informed of the financial and administrative condition of the city and shall  
24 specifically indicate in any such reports any fiscal, financial or administrative  
25 issues facing the city.

26 (b) Special Meetings of the City Council - The mayor may call a special  
27 meeting of the city council for any purpose. Notice of the meeting shall,  
28 except in an emergency, which shall be designated by the mayor, be  
29 delivered at least 48 weekday hours in advance of the time set and shall

1 specify the date, time and location of the meeting and the purpose for which  
2 the meeting is to be held. A copy of the notice shall be posted immediately  
3 or as required by the General Laws relative to such a posting.  
4

5 SECTION 3-6: APPROVAL OF MAYOR, VETO

6 Every order, ordinance, resolution or vote adopted or passed by the city  
7 council relative to the affairs of the city, except memorial resolutions, the  
8 selection of city officers by the city council and any matters relating to the  
9 internal affairs of the city council, shall be presented to the mayor for  
10 approval within 3 business days of such adoption or passage. If the mayor  
11 approves of the measure, the mayor shall sign it; if the mayor disapproves  
12 of the measure, the mayor shall return the measure with the specific reason  
13 for such disapproval attached to the measure in writing to the city council.

14 The city council shall enter the objections of the mayor on its records and  
15 not less than 10 business days nor more than 30 days from the date of its  
16 return to the city council, shall again consider the same measure. If the city  
17 council, notwithstanding such disapproval by the mayor, shall again pass the  
18 order, ordinance, resolution or vote by a 2/3 vote of the full council, it shall  
19 then be deemed in force, notwithstanding the failure of the mayor to  
20 approve the same. If the mayor has neither signed a measure nor returned  
21 it to the city council within 10 days following the date it was presented to the  
22 mayor, the measure shall be deemed approved and in force.  
23

24 SECTION 3-7: TEMPORARY ABSENCE OF THE MAYOR

25 (a) Acting Mayor – Whenever, by reason of sickness or other cause, the  
26 mayor is unable to perform the duties of the office, the president of the city  
27 council shall be the acting mayor. The city council, by the affirmative vote of  
28 8 members, shall determine whether the mayor is unable to perform the

1 duties of the office. Notwithstanding any general or special law to the  
2 contrary, the vote shall be taken in public session by a roll call vote.

3 (b) Powers of Acting Mayor – The acting mayor shall have only those powers  
4 of the mayor as are indispensable and essential to conduct the business of  
5 the city in an orderly and efficient manner and on which action may not be  
6 delayed. The acting mayor shall have no authority to make a permanent  
7 appointment or removal from city service unless the disability or absence of  
8 the mayor shall extend beyond 60 days nor shall an acting mayor approve or  
9 disapprove of any measure adopted by the city council unless the time  
10 within which the mayor must act would expire before the return of the  
11 mayor. The city council president serving as acting mayor shall not vote as a  
12 member of the city council.

13 (c) In the event that the city council president is unable to serve as acting  
14 mayor under this section, the city council shall elect, from among its  
15 membership, a city councilor to serve as acting mayor.

16

### 17 SECTION 3-8: DELEGATION OF AUTHORITY BY MAYOR

18 The mayor may authorize a subordinate officer or employee of the city to  
19 exercise a power or perform a function or a duty which is assigned by this  
20 charter, or otherwise, to the mayor and the mayor may rescind or revoke an  
21 authorization previously made; provided, however, that all acts performed  
22 under any such delegation of authority during the period of authorization  
23 shall be and remain the acts of the mayor. Nothing in this section shall be  
24 construed to authorize a mayor to delegate the powers and duties of a  
25 school committee member, the power of appointment to city office or  
26 employment or to sign or return measures approved by the city council.

27

28

29

1 SECTION 3-9: VACANCY IN OFFICE OF MAYOR

2 Whenever a vacancy occurs in the office of mayor by death, removal,  
3 resignation or any other reason during the first through the 41st month of  
4 the term for which the mayor was elected, the city council shall call a special  
5 election to be held within 90 days following the date the vacancy is created  
6 to fill the vacancy for the remainder of the unexpired term. The city council  
7 president shall serve as acting mayor until the vacancy is filled. If a regular  
8 city election is to be held within 150 days after the date the vacancy is  
9 created, a special election need not be held and the position shall be filled by  
10 vote at the regular city election and the person elected shall serve for the  
11 remainder of the unexpired term.

12 If a vacancy occurs during the 42nd month through the end of the term for  
13 which the mayor was elected, the president of the city council shall become  
14 acting mayor, shall exercise all the rights and powers of the mayor and shall  
15 be sworn to the faithful discharge of the mayoral duties. In the event that  
16 the city council president is unable or unwilling to serve, a special meeting of  
17 the city council shall be called by the president and the council shall elect, by  
18 majority vote, 1 of its members to serve as acting mayor for the remainder  
19 of the unexpired term. The individual serving as acting mayor under this  
20 section shall not be entitled to have the words "candidate for reelection"  
21 printed with that person's name on the election ballot. Any person serving as  
22 mayor under this section shall receive the compensation then in effect for  
23 the position of mayor.

24  
25  
26  
27  
28  
29

1 ARTICLE 4

2 SCHOOL COMMITTEE

3

4 SECTION 4-1: COMPOSITION; TERM OF OFFICE; ELIGIBILITY

5 (a) Composition – There shall be a school committee which shall consist of 7  
6 members. Six of these members shall be nominated and elected by the  
7 voters of the city at large. The mayor shall serve, by virtue of the office, as  
8 the chair of the school committee with all of the same powers and duties as  
9 the members elected by the voters as school committee members.

10 (b) Term of Office – The term of office for elected school committee  
11 members shall be 4 years each so arranged that 3 members shall be elected  
12 at each regular city election. Said terms shall begin on the first Monday in  
13 the January succeeding the elected school committee member’s election,  
14 except when that first Monday falls on a legal holiday, in which event the  
15 term shall begin on the following day, and until successors have been  
16 qualified.

17 (c) Eligibility – A school committee member shall, at the time of election, be  
18 a voter. If a school committee member removes from the city during the  
19 term for which that person was elected, that office shall immediately be  
20 deemed vacant and filled in the manner provided in section 4-6.

21

22 SECTION 4-2: SCHOOL COMMITTEE CHAIR, VICE CHAIR, SECRETARY

23 (a) Vice-Chair and Secretary Election and Term - As soon as practicable after  
24 school committee members-elect have been qualified following each regular  
25 city election, as provided in section 9-9, the members of the school  
26 committee shall elect from among its members a vice-chair and a secretary  
27 who shall serve for a 2-year term.

28 (b) Chair, Vice-Chair and Secretary Powers and Duties - The chair shall  
29 prepare the agenda for school committee meetings. The chair shall preside



1 at all meetings of the school committee, regulate its proceedings and decide  
2 all questions of order. The chair shall appoint all members of committees of  
3 the school committee, whether special or standing. The chair shall have the  
4 same powers to vote upon measures coming before the school committee as  
5 any other member of the school committee. The chair shall perform any  
6 other duties consistent with the office that are established by charter,  
7 ordinance or other vote of the school committee. The vice-chair shall preside  
8 in the absence of the chair. The secretary shall cause the records of the  
9 school committee to be kept in accordance with the law.

10

#### 11 SECTION 4-3: PROHIBITIONS

12 No member of the school committee shall hold any other city position. No  
13 former member of the school committee shall hold any compensated  
14 appointed city office or city employment until 1 year following the date on  
15 which that member's service on the school committee terminated. This  
16 section shall not prevent a city officer or other city employee who has  
17 vacated a position in order to serve as a member of the school committee  
18 from returning to the same office or other position of city employment held  
19 at the time the position was vacated; provided, however, that no such  
20 person shall be eligible for any other municipal position until at least 1 year  
21 following the termination of service as a member of the school committee.

22

#### 23 SECTION 4-4: COMPENSATION

24 The city council may, by ordinance, establish the compensation for the  
25 elected members of the school committee. No ordinance increasing or  
26 reducing the compensation of elected members of the school committee  
27 shall be effective unless it has been adopted by a 2/3 vote of the full city  
28 council. No ordinance increasing or reducing the compensation of the elected  
29 members of the school committee shall be effective unless it has been

1 adopted during the first 18 months of the term for which elected school  
2 committee members are elected and unless it provides that the  
3 compensation increase or reduction is to take effect upon the organization of  
4 the city government following the next regular city election.  
5

6 SECTION 4-5: SCHOOL COMMITTEE POWERS AND DUTIES

7 The school committee shall have all powers which are conferred on school  
8 committees by the General Laws and the additional powers and duties  
9 provided by charter, ordinance or otherwise and not inconsistent with the  
10 General Laws. The powers and duties of the school committee shall include:

11 (i) selecting and removing a superintendent of the schools who shall be  
12 charged with the administration of the school system, subject only to policy  
13 guidelines and directives adopted by the school committee and, upon the  
14 recommendation of the superintendent, to establish and appoint assistant or  
15 associate superintendents as authorized by the General Laws;

16 (ii) making all reasonable rules and regulations for the management of the  
17 public school system and for conducting the business of the school  
18 committee as deemed necessary or desirable; and

19 (iii) adopting and overseeing the administration of an annual operating  
20 budget for the school department, subject to appropriation by the city  
21 council; provided, however, that the school committee shall have general  
22 charge and superintendence of all school buildings and grounds and shall  
23 furnish all school buildings with proper fixtures, furniture and equipment;  
24 provided further, that the school committee shall provide ordinary

25 maintenance of all school buildings and grounds, unless a central municipal  
26 maintenance department, which may include maintenance of school  
27 buildings and grounds, is established; provided further, that whenever the  
28 school committee shall determine that additional classrooms are necessary  
29 to meet the educational needs of the community, at least 1 member of the

1 school committee, or a designee of the school committee, shall serve on the  
2 agency, board or committee for the planning or construction of the new,  
3 remodeled or renovated school building.

4  
5 **SECTION 4-6: FILLING OF VACANCIES**

6 Whenever an elected member vacancy occurs on the school committee, the  
7 president of the city council shall, within 30 days following the date of the  
8 vacancy, call a joint meeting of the city council and the school committee to  
9 fill the vacancy. The city council and school committee shall choose a person  
10 to fill the vacancy from among the voters entitled to vote for the office.

11 Persons elected to fill a vacancy by the city council and school committee  
12 shall serve only until the next regular city election, when the office shall be  
13 filled by the voters. The candidate elected to an office filled by appointment  
14 prior to the election shall be sworn to the office immediately to complete the  
15 then unexpired term in addition to the term for which elected. No vacancy  
16 shall be filled under this section if a regular city election is to be held within  
17 120 days following the date the vacancy is declared to exist. Persons serving  
18 as school committee members under this section shall not be entitled to  
19 have the words "candidate for reelection" printed with that person's name on  
20 the election ballot.

21  
22 **ARTICLE 5**

23 **ADMINISTRATIVE ORGANIZATION**

24  
25 **SECTION 5-1: ORGANIZATION OF CITY AGENCIES**

26 The organization of the city into agencies to provide services and administer  
27 the government may be accomplished only through an administrative order  
28 submitted to the city council by the mayor. No administrative order may  
29 originate with the city council. The mayor may, subject only to express

1 prohibitions of a general law or this charter, submit proposals to reorganize,  
2 consolidate or abolish any agency, in whole or in part, or to establish a new  
3 agency as is deemed necessary, establish terms of office and prescribe the  
4 functions and administrative procedures to be followed by all such agencies.  
5 No function assigned by this charter to a particular agency may be  
6 discontinued or assigned to any other agency unless specified by this  
7 charter. The mayor may prepare and submit to the city council,  
8 administrative orders that establish agencies for the orderly, efficient or  
9 convenient conduct of the business of the city. These administrative orders  
10 shall be accompanied by a message from the mayor which explains the  
11 expected benefits and advises the city council if an administrative order shall  
12 require amendments, insertions, revisions, repeal or otherwise of existing  
13 ordinances. Whenever the mayor proposes an administrative order, the city  
14 council shall hold 1 or more public hearings on the proposal giving notice by  
15 publication in a local newspaper, which notice shall describe the scope of the  
16 proposal and the time and place at which the public hearing will be held, not  
17 less than 7 nor more than 14 days following the publication. An organization  
18 or reorganization plan shall become effective at the expiration of 60 days  
19 following the date the proposal is submitted to the city council unless the  
20 city council shall, by a majority vote, within that 60 day period, vote to  
21 disapprove the plan. The city council may vote only to approve or to  
22 disapprove the plan and may not vote to amend or to alter it.

23

#### 24 SECTION 5-2: MERIT PRINCIPLES

25 All appointments and promotions of city officers and employees shall be  
26 made on the basis of merit and fitness demonstrated by examination, past  
27 performance or by other evidence of competence and suitability. Each  
28 person appointed to fill an office or position shall be a person especially

1 fitted by education, training and previous work experience to perform the  
2 duties of the office or position.

3

#### 4 ARTICLE 6

#### 5 FINANCE AND FISCAL PROCEDURES

6

#### 7 SECTION 6-1: FISCAL YEAR

8 The fiscal year of the city shall begin on July 1 and shall end on June 30,  
9 unless another period is required by the General Laws.

10

#### 11 SECTION 6-2: ANNUAL BUDGET MEETING

12 At least 60 days before the beginning of the fiscal year, the mayor shall call  
13 a joint meeting of the city council and school committee, including the  
14 superintendent of schools, to review the financial condition of the city,  
15 revenue and expenditure forecasts and other relevant information prepared  
16 by the mayor in order to develop a coordinated budget.

17

#### 18 SECTION 6-3: SUBMISSION OF OPERATING BUDGET; BUDGET MESSAGE

19 At least 45 days before the beginning of the fiscal year, the mayor shall  
20 submit to the city council a proposed operating budget for all city agencies,  
21 which shall include the school department, for the ensuing fiscal year with an  
22 accompanying budget message and supporting documents. The budget  
23 message submitted by the mayor shall explain the operating budget in fiscal  
24 terms and in terms of work programs for all city agencies. It shall outline the  
25 proposed fiscal policies of the city for the ensuing fiscal year, describe  
26 important features of the proposed operating budget and include any major  
27 variations from the current operating budget, fiscal policies, revenues and  
28 expenditures together with reasons for these changes. The proposed  
29 operating budget shall provide a complete fiscal plan of all city funds and

1 activities and shall be in the form the mayor deems desirable; provided,  
2 however, that the budget shall identify the cost of compensation and the  
3 cost of benefits for elected officials. The school budget, as adopted by the  
4 school committee shall be submitted to the mayor at least 30 days before  
5 the submission of the proposed operating budget to the city council. The  
6 mayor shall notify the school committee of the date by which the proposed  
7 budget of the school committee shall be submitted to the mayor. The mayor  
8 and the superintendent of schools shall coordinate the dates and times of  
9 the school committee's budget process under the General Laws.

10

#### 11 SECTION 6-4: ACTION ON THE OPERATING BUDGET

12 (a) Public Hearing - The city council shall publish in at least 1 local  
13 newspaper a notice of the proposed operating budget as submitted by the  
14 mayor. The notice shall state: (i) the times and places where copies of the  
15 entire proposed operating budget are available for inspection by the public;  
16 and (ii) the date, time and place when a public hearing on the proposed  
17 operating budget will be held by the city council, not less than 14 days after  
18 publication of the notice.

19 (b) Adoption of the Budget - The city council shall adopt the proposed  
20 operating budget, which may have amendments, within 45 days following  
21 the date the proposed budget is filed with the city clerk. In amending the  
22 proposed operating budget, the city council may delete or decrease amounts  
23 except expenditures required by law; provided, however, that except on the  
24 recommendation of the mayor, the city council shall not increase any item in  
25 or the total of the proposed operating budget, unless otherwise authorized  
26 by the General Laws. If the city council fails to take action on an item in the  
27 proposed operating budget within 45 days after its receipt, that amount  
28 shall, without any action by the city council, become a part of the  
29 appropriations for the year and be available for the purposes specified.

1 (c) Availability of the Operating Budget – In addition to any other posting  
2 requirements under law, immediately after the submission of the proposed  
3 budget to the city council, the mayor shall cause the entire budget document  
4 to be posted on the city's website. Said proposed budget document shall  
5 remain posted during the city council review process contained in this article.  
6 After the enactment of the budget, it shall be posted on the city's website  
7 and shall remain there throughout the fiscal year for which it is in effect.  
8 Said budget document shall reflect any amendments made by the city  
9 council and approved by the mayor and shall indicate that it is the final  
10 budget of the city.

11

12 SECTION 6-5: CAPITAL IMPROVEMENT PROGRAM

13 (a) Submission - The mayor shall submit a capital improvement program to  
14 the city council at least 120 days before the start of each fiscal year. The  
15 capital improvement program shall include:

- 16 (1) a general summary of its contents;
- 17 (2) a list of all capital improvements proposed to be undertaken during the  
18 next 5 years, with supporting information as to the need for each capital  
19 improvement;
- 20 (3) cost estimates, methods of financing and recommended time schedules  
21 for each improvement; and
- 22 (4) the estimated annual cost of operating and maintaining each facility and  
23 piece of major equipment involved.

24 This information shall be annually revised by the mayor with regard to the  
25 capital improvements still pending or in the process of being acquired,  
26 improved or constructed.

27 (b) Public Hearing - The city council shall publish in at least 1 newspaper of  
28 general circulation in the city a notice stating: (i) the times and places where  
29 entire copies of the capital improvements program are available for

1 inspection by the public; and, (ii) the date, time and place of a public  
2 hearing on the plan to be held by the city council not less than 14 days after  
3 publication of the notice.

4 (c) Adoption - At any time after the public hearing but before the last day of  
5 the last month of the current fiscal year, the city council shall by resolution  
6 adopt the capital improvements program, which may be amended, provided  
7 that each amendment shall be voted on separately and that an increase in  
8 the capital improvements program as submitted shall clearly identify the  
9 method of financing to accomplish the proposed increase.

10

#### 11 SECTION 6-6: INDEPENDENT AUDIT

12 The city council shall annually provide for an outside audit of the books and  
13 accounts of the city to be conducted by a certified public accountant or a  
14 firm of certified public accountants, which has no personal interest, direct or  
15 indirect, in the fiscal affairs of the city or any of its officers. The mayor shall  
16 annually provide to the city council a sum of money sufficient to satisfy the  
17 estimated cost of conducting the audit as presented to the mayor, in writing,  
18 by the city council. The award of a contract to audit shall be made by the  
19 city council on or before September 15 of each year. The report of the audit  
20 shall be filed in final form with the city council not later than March 1 in the  
21 year following its award. At least every 5 years, the city council shall conduct  
22 a competitive procurement process to retain these auditing services.

23

#### 24 SECTION 6-7: EXPENDITURES IN EXCESS OF APPROPRIATIONS

25 Except as otherwise provided by law, no official of the city of Gardner shall  
26 knowingly or intentionally expend in a fiscal year sums in excess of the  
27 appropriations, awards, grants or gifts duly made in accordance with law or  
28 involve the city in any contract for the future payment of money in excess of  
29 such appropriations, awards, grants or gifts. It is the intention of this section



1 that section 31 of chapter 44 of the General Laws shall be strictly enforced.  
2 Any official who violates this section shall be personally liable to the city for  
3 any amounts so expended to the extent that the city does not recover these  
4 amounts from the person to whom the sums were paid.  
5

6 ARTICLE 7  
7 ELECTIONS  
8

9 SECTION 7-1: PRELIMINARY ELECTIONS

10 A preliminary election to nominate candidates for mayor, councilor-at-large,  
11 ward city councilor, and school committee members shall be held on the  
12 third Tuesday in September in each odd-numbered year in which the  
13 candidates are to be elected, but the city clerk may, with the approval of the  
14 city council, reschedule the preliminary election to the fourth Tuesday in  
15 September to avoid a conflict with any civil or religious holiday. Whenever a  
16 special election to fill a vacancy is to be held, a preliminary election shall be  
17 conducted, if necessary, 28 days before the date established for the special  
18 election; provided, however, that a preliminary election to fill a vacancy for  
19 ward councilor shall be held only in the affected ward.  
20

21 SECTION 7-2: PRELIMINARY ELECTION PROCEDURES

22 (a) Signature Requirements - The number of signatures of voters required to  
23 place the name of a candidate on the official ballot to be used at a  
24 preliminary election shall be as follows: for the office of mayor, not less than  
25 200 certified signatures; for councilor at-large or school committee member,  
26 not less than 100 certified signatures; for the office of ward city councilor,  
27 not less than 75 certified signatures. Signatures of voters shall be made on a  
28 form prescribed by the registrars of voters and shall be made available not  
29 earlier than April 2 in each preliminary election year and those forms shall

1 be submitted to the registrars of voters for certification of the names on or  
2 before the fourteenth day preceding the date fixed for submission to the city  
3 clerk. The forms shall be submitted to the city clerk on or before the close of  
4 business on the forty-fifth day prior to the declared date of the preliminary  
5 election. An individual may appear on the ballot for only 1 office at any  
6 preliminary, regular or special city election.

7 (b) Ballot Position - The order in which names of candidates for each office  
8 appear on the ballot shall be determined by a drawing, by lot, conducted by  
9 the city clerk at least 40 days before the preliminary election. The drawing  
10 shall be open to the public.

11 (c) Determination of Candidates - The 2 people who receive the highest  
12 number of votes for nomination for an office at the preliminary election shall,  
13 except as provided by subsection (d), be the sole candidates for that office  
14 whose names shall be printed on the official ballot to be used at the regular  
15 or special city election at which the office is to be voted upon and no  
16 acceptance of a nomination shall be necessary to its validity. If 2 or more  
17 persons are to be elected to the same office at the regular or special city  
18 election, the several persons equal in number to twice the number to be  
19 elected, receiving at such preliminary election the highest number of votes  
20 for nomination for that office shall, except as provided by subsection (d), be  
21 the sole candidates for that office whose names shall be printed on the  
22 official ballot. If the preliminary election results in a tie vote among  
23 candidates for nomination receiving the lowest number of votes which would  
24 entitle a person receiving the same to have that person's name printed on  
25 the official ballot for the election, all candidates participating in the tie vote  
26 shall have their names printed on the official ballots, although in  
27 consequence thereof there shall be printed on the ballots the names of  
28 candidates exceeding twice the number to be elected.

1 (d) Condition Making Preliminary Unnecessary - If at the expiration of the  
2 time for filing statements of candidates for offices to be voted for at any  
3 preliminary election, not more than twice as many such statements have  
4 been filed with the city clerk for an office as are to be elected to such office,  
5 the candidates whose statements have thus been filed shall be deemed to  
6 have been nominated to the office and those candidates shall be voted on  
7 for such office at the succeeding regular or special city election and the city  
8 clerk shall not print those names on the ballot to be used at the preliminary  
9 election and no other nomination to the office shall be made. If in  
10 consequence it shall appear that no names are to be printed upon the official  
11 ballot to be used at a preliminary election in the city, no preliminary election  
12 shall be held.

13  
14 SECTION 7-3 REGULAR CITY ELECTION

15 The regular city election shall be held on the first Tuesday following the first  
16 Monday in November in each odd-numbered year.

17  
18 SECTION 7-4: BALLOT POSITION, REGULAR CITY ELECTION

19 The order in which names of candidates for each office appear on the ballot  
20 shall be determined by a drawing, by lot, conducted by the city clerk not  
21 later than 7 days after the certification of the preliminary election results. In  
22 the event that there is no preliminary election in advance of the regular city  
23 election, the drawing shall be conducted on the fourth Tuesday in September  
24 prior to the regular city election. In the event that there is no preliminary  
25 election in advance of a special city election, the drawing shall be conducted  
26 on the sixth Tuesday prior to the special city election. The drawing shall be  
27 open to the public.

1 SECTION 7-5: NON-PARTISAN ELECTIONS

2 All elections for city offices shall be non-partisan and election ballots shall be  
3 printed without any party mark, emblem or other political designation.  
4

5 SECTION 7-6: WARDS

6 The territory of the city shall be divided into 5 wards by the city clerk to  
7 consist of nearly an equal number of inhabitants as it is possible to achieve  
8 based on compact and contiguous territory, bounded as far as possible by  
9 the center line of known streets or ways or by other well-defined limits. Each  
10 ward shall be composed of voting precincts established under the General  
11 Laws. The city council shall review these wards to ensure uniformity in the  
12 number of inhabitants at least once every 10 years.  
13

14 SECTION 7-7: APPLICATION OF STATE GENERAL LAWS

15 Except as otherwise expressly provided in this charter and authorized by  
16 law, all city elections shall be governed by the General Laws relating to the  
17 right to vote, the registration of voters, the nomination of candidates, voting  
18 places, the conduct of preliminary, regular and special city elections, the  
19 submission of charters, charter amendments and other propositions to the  
20 voters, the counting of votes, the recounting of votes and the determination  
21 of results.  
22

23 ARTICLE 8

24 CITIZEN PARTICIPATION MECHANISMS  
25

26 SECTION 8-1: CITIZEN INITIATIVE MEASURES

27 (a) Commencement - Initiative procedures shall be started by the filing of a  
28 proposed initiative petition with the city clerk or the secretary of the school  
29 committee. The petition shall be addressed to the city council or to the

1 school committee, shall contain a request for the passage of a particular  
2 measure which shall be set forth in full in the petition and shall be signed by  
3 at least 250 voters. At least 25 signatures must be certified from each ward.  
4 The petition shall be accompanied by an affidavit signed by 10 voters and  
5 containing their residential address stating those voters will constitute the  
6 petitioners committee and be responsible for circulating the petition and  
7 filing it in proper form.

8 (b) Referral to City Solicitor - The city clerk or the secretary of the school  
9 committee shall, immediately following receipt of a proposed petition, deliver  
10 a copy of the petition to the city solicitor. The city solicitor shall, within 15  
11 days following receipt of a copy of the petition, in writing, advise the city  
12 council or the school committee and the city clerk whether the measure as  
13 proposed may lawfully be proposed by the initiative process and whether, in  
14 its present form, it may lawfully be adopted by the city council or the school  
15 committee. If the opinion of the city solicitor is that the measure is not in  
16 proper form, the reply shall state the reasons for this opinion, in full. A copy  
17 of the opinion of the city solicitor shall be mailed to the members of the  
18 petitioners committee.

19 (c) Submission to City Clerk - If the city solicitor determines that the petition  
20 is in a proper form, the city clerk shall provide blank forms for the use of  
21 subsequent signers and shall print at the top of each blank form a fair,  
22 concise summary of the proposed measure, as determined by the city  
23 solicitor, together with the names and addresses of the first 10 voters who  
24 signed the originating petition. The city clerk shall notify the first 10 voters  
25 that the blank forms are issued. Within 30 days following the date of the  
26 notice, the petition shall be returned and filed with the city clerk signed by at  
27 least 10 per cent of the total number of registered voters as of the date of  
28 the most recent regular city election. Signatures to an initiative petition need  
29 not all be on 1 paper, but all papers pertaining to any 1 measure shall be

1 fastened together and shall be filed as a single instrument, with the  
2 endorsement on it of the name and address of the person designated as  
3 filing the papers. With each signature on the petition there shall also appear  
4 the street and number of the residence of each signer. Within 10 days  
5 following the filing of the petition, the registrars of voters shall ascertain the  
6 number of voters that signed the petition and the percentage that number is  
7 of the total number of voters as of the date of the most recent regular city  
8 election. The registrars of voters shall attach to the petition a certificate  
9 showing the results of its examination and shall return the petition to the  
10 city clerk or the secretary of the school committee, depending on how the  
11 petition is addressed. A copy of the registrars of voters' certificate shall also  
12 be mailed to the members of the petitioners committee.

13 (d) Action on Petitions - Within 30 days following the date a petition has  
14 been returned to the city clerk or the secretary of the school committee and  
15 after publication under subsection (f), the city council or the school  
16 committee shall act with respect to each initiative petition by passing it  
17 without change, by passing a measure which is stated to be in lieu of the  
18 initiative measure or by rejecting it. The passage of a measure which is in  
19 lieu of an initiative measure shall be deemed to be a rejection of the  
20 initiative measure. If the city council or the school committee fails to act  
21 within 30 days following the date the measure is returned to it, the measure  
22 shall be deemed to have been rejected on the thirtieth day. If an initiative  
23 measure is rejected, the city clerk or the secretary of the school committee  
24 shall promptly give notice of that fact to the petitioners committee by  
25 certified mail.

26 (e) Supplementary Petitions - Within 60 days following the date an initiative  
27 petition has been rejected, a supplemental initiative petition may be filed  
28 with the city clerk or the secretary of the school committee, but only by  
29 persons constituting the original petitioners committee. The supplemental

1 initiative petition shall be signed by a number of additional voters equal to at  
2 least 5 per cent of the total number of registered voters as of the date of the  
3 most recent regular city election. The signatures on the initial petition filed  
4 under subsection (c) and the signatures on the supplemental petition filed  
5 under this subsection, taken together, shall contain the signatures of at least  
6 15 per cent of the total number of registered voters as of the date of the  
7 most recent regular city election. If the number of signatures to this  
8 supplemental petition is found to be sufficient by the city clerk, the city  
9 council shall call a special election to be held on a date not less than 35 nor  
10 more than 90 days following the date of the certificate of the city clerk that a  
11 sufficient number of registered voters have signed the supplemental  
12 initiative petition and shall submit the proposed measure, without alteration,  
13 to the voters for determination, but if a city election is to be held within 120  
14 days following the date of the certificate, the city council may omit calling  
15 the special election and cause the question to appear on the election ballot  
16 at the approaching election for determination by the voters.

17 (f) Publication - The full text of an initiative measure which is submitted to  
18 the voters shall be published in at least 1 local newspaper not less than 7  
19 nor more than 14 days preceding the date of the election at which the  
20 question is to be voted upon. Additional copies of the full text shall be  
21 available for distribution to the public in the office of the city clerk.

22 (g) Form of Question - The ballots used when voting on a measure proposed  
23 by the voters under this section shall contain a question in substantially the  
24 following form:

25 Shall the following measure which was proposed by an initiative petition take  
26 effect?

27 (Here insert the fair, concise summary of the proposed measure, as  
28 determined by the city solicitor as referenced in subsection (c)).

29 o YES o NO

1 (h) Time of Taking Effect – Subject to section 9-4, if a majority of the votes  
2 cast on the question is in the affirmative, the measure shall be deemed to be  
3 effective immediately, unless a later date is specified in the measure.  
4

#### 5 SECTION 8-2: CITIZEN REFERENDUM PROCEDURES

6 (a) Petition, Effect on Final Vote - If, within 21 days following the date on  
7 which the city council or the school committee has voted finally to approve  
8 any measure, a petition signed by a number of voters equal to at least 15  
9 per cent of the total number of voters as of the date of the most recent  
10 regular city election and addressed to the city council or to the school  
11 committee, protesting against the measure or any part of it is filed with the  
12 secretary of the school committee or city clerk, the effective date of that  
13 measure shall be temporarily suspended. The school committee or the city  
14 council shall immediately reconsider its vote on the measure or part of it  
15 and, if the measure is not rescinded, the city council shall provide for the  
16 submission of the question for a determination by the voters either at a  
17 special election, which it may call at its convenience, within such time as  
18 may be requested by the school committee or at the next regular city  
19 election; provided, however, that pending this submission and  
20 determination, the effect of the measure shall continue to be suspended.

21 (b) Certain Initiative Provisions to Apply - The petition described in this  
22 section shall be termed a referendum petition and section 9-1, as the section  
23 relates to the filing and certification of signatures, shall apply to such  
24 referendum petitions, except that the words "measure or part thereof  
25 protested against" shall be deemed to replace the word "measure" and the  
26 word "referendum" shall be deemed to replace the word "initiative". Subject  
27 to section 9-5, the measure or part thereof protested against shall be null  
28 and void unless a majority of those voting on the question shall vote in favor  
29 of the measure or part thereof protested against at the election.



1 SECTION 8-3: INELIGIBLE MEASURES

2 None of the following shall be subject to the initiative or the referendum  
3 procedures:

4 (1) proceedings relating to the internal organization or operation of the city  
5 council or of the school committee;

6 (2) an emergency measure adopted under the charter;

7 (3) the city budget or the school committee budget as a whole;

8 (4) any appropriation for the payment of the city's debt or debt service;

9 (5) an appropriation of funds to implement a collective bargaining  
10 agreement;

11 (6) proceedings relating to the appointment, removal, discharge,  
12 employment, promotion, transfer, demotion or other personnel action;

13 (7) any proceedings repealing or rescinding a measure or part of it which is  
14 protested by referendum procedures;

15 (8) any proceedings providing for the submission or referral to the voters at  
16 an election; and

17 (9) resolutions and other votes constituting ordinary, routine matters not  
18 suitable as the subject of a referendum petition.

19

20 SECTION 8-4 RECALL

21 (a) Application - Any holder of an elected office in the city, with more than 6  
22 months remaining in the term of office for which the officer was elected,  
23 may be recalled therefrom by the voters of the city in the manner provided  
24 in this section. No recall petition shall be filed against an officer within 6  
25 months after taking office.

26 (b) Recall Petition - A recall petition may be initiated by the filing of an  
27 affidavit containing the name of the officer sought to be recalled and a  
28 statement of the grounds for recall, provided that the affidavit is signed by  
29 at least 500 voters for the office of mayor or councilor-at-large and at least

1 300 voters for any other elected official. The city clerk shall thereupon  
2 deliver to those voters making the affidavit, copies of petition blanks  
3 demanding such recall, copies of which printed forms the city clerk shall  
4 keep available. The blanks shall be issued by the city clerk, with signature  
5 and official seal attached thereto. The blanks shall be dated, shall be  
6 addressed to the city council and shall contain the names of all the persons  
7 to whom the blanks are issued, the number of blanks so issued, the name of  
8 the person whose recall is sought, the office from which removal is sought  
9 and the grounds of recall as stated in the affidavit. A copy of the petition  
10 shall be entered in a record book to be kept in the office of the city clerk.  
11 Said recall petition shall be returned and filed with the city clerk within 28  
12 days after the filing of the affidavit, and shall have been signed by at least  
13 20 percent of the voters of the city for any officer elected at large and signed  
14 by at least 20 percent of the voters of the ward for an officer elected by  
15 ward. The city clerk shall submit the petition to the registrars of voters and  
16 the registrars shall, within 5 days, certify thereon the number of signatures  
17 which are names of voters.

18 (c) Recall Election - If the petition shall be found and certified by the city  
19 clerk to be sufficient, the city clerk shall submit the same with such  
20 certificate to the city council within 5 days, and the city council shall give  
21 written notice of the receipt of the certificate to the officer sought to be  
22 recalled and shall, if the officer does not resign within 5 days thereafter,  
23 order an election to be held on a date fixed by the city council not less than  
24 64 days and not more than 90 days after the date of the city clerk's  
25 certificate that a sufficient petition has been filed; provided, however, that if  
26 any other city election is to occur within 120 days after the date of the  
27 certificate, the city council shall postpone the holding of the recall election to  
28 the date of such other election. If a vacancy occurs in said office after a

1 recall election has been ordered, the election shall not proceed as provided  
2 in this section.

3 (d) Office Holder - The incumbent shall continue to perform the duties of the  
4 office until the recall election. If said incumbent is not recalled, the  
5 incumbent shall continue in office for the remainder of the unexpired term  
6 subject to recall as provided in (f) below. If recalled, the officer shall be  
7 deemed removed and the office vacant. The vacancy created thereby shall  
8 be filled under articles 2, 3, and 4 of this charter for filling vacancies in such  
9 office. A person chosen to fill the vacancy caused by a recall shall hold office  
10 until the next regular city election. Should the person be a candidate in the  
11 subsequent election, that person will not be allowed to have "candidate for  
12 re-election" appear on the ballot at such election.

13 (e) Ballot Proposition - The form of the question to be voted upon shall be  
14 substantially as follows: "Shall [here insert the name and title of the elective  
15 officer whose recall is sought] be recalled?" Yes No  
16 If a majority of the votes cast upon the question of recall is in the  
17 affirmative, such elected officer shall be recalled.

18 (f) Repeat of Recall - In the case of an officer subjected to a recall election  
19 and not recalled thereby, no recall petition shall be filed against such officer  
20 until at least 270 days after the election at which the officer's recall was  
21 submitted to the voters of the city.

22 (g) Office Holder Recalled - No person who has been recalled from an office  
23 or who has resigned from office while recall proceedings were pending  
24 against such person, shall be appointed to any city office within 2 years after  
25 such recall or such resignation.

26

## 27 SECTION 8-5: REQUIRED VOTER PARTICIPATION

28 For any measure to be effective under initiative procedure and for any  
29 measure to be declared null and void under a referendum procedure and for

1 any recall election, at least 20 per cent of the voters as of the most recent  
2 regular city election must vote at an election that includes on the ballot  
3 submission to the voters of 1 or more initiative or referendum or recall  
4 questions. For recall of a ward councilor, 20 per cent of the affected ward's  
5 voters must vote.

6  
7 **SECTION 8-6: SUBMISSION OF OTHER MATTERS TO VOTERS**

8 The city council may on its own motion and shall at the request of the school  
9 committee, if a measure originates with that body and pertains to affairs  
10 under its jurisdiction, submit to the voters at a regular city election for  
11 adoption or rejection a measure in the same manner and with the same  
12 force and effect as are provided for submission by initiative or referendum  
13 petitions.

14  
15 **SECTION 8-7: CONFLICTING PROVISIONS**

16 If 2 or more measures passed at the same election contain conflicting  
17 provisions, only the 1 receiving the greatest number of affirmative votes  
18 shall take effect.

19  
20 **ARTICLE 9**

21 **GENERAL PROVISIONS**

22  
23 **SECTION 9-1: CHARTER CHANGES**

24 This charter may be replaced, revised or amended in accordance with any  
25 procedure made available under the state constitution or by the General  
26 Laws.

1 SECTION 9-2: SPECIFIC PROVISION TO PREVAIL

2 To the extent that a specific provision of this charter conflicts with any  
3 provision expressed in general terms, the specific provision of the charter  
4 shall prevail.

5  
6 SECTION 9-3: RULES AND REGULATIONS

7 A copy of all rules and regulations adopted by a city agency shall be placed  
8 on file in the office of the city clerk not later than the effective date of the  
9 rule or regulation and shall be available for review by any person who  
10 requests such information at any reasonable time. Unless an emergency  
11 exists, as determined by the mayor, no rule or regulation adopted by a city  
12 agency shall become effective until at least 5 days following the date it is  
13 filed.

14  
15 SECTION 9-4: PERIODIC REVIEW OF ORDINANCES

16 Not later than July 1, at 5-year intervals, in each year ending in a 5 or in a  
17 0, the mayor and city council shall provide for a review to be made of some  
18 or all of the ordinances of the city to prepare a proposed revision or  
19 recodification of them. This review shall be made by a special committee to  
20 be established by ordinance. All members of the committee shall be voters  
21 of the city. The special committee shall file its report with the city clerk at a  
22 date specified by ordinance. The review of city ordinances shall be under the  
23 supervision of the city solicitor.

24  
25 SECTION 9-5: PERIODIC REVIEW OF CHARTER

26 Not later than July 1, at 10-year intervals, in each year ending in a 3, the  
27 mayor and city council shall provide for a review to be made of the city  
28 charter. This review shall be made by a special committee whose  
29 composition and term shall be determined by ordinance, provided however,

1 that members of the committee shall be voters of the city but shall not hold  
2 any elected or appointed office or position within the city. The special  
3 committee shall file its report with the city clerk at a date specified by  
4 ordinance. Copies of any recommendations shall be made available to the  
5 public at a cost not to exceed the actual cost of the reproduction.

6  
7 SECTION 9-6: UNIFORM PROCEDURES GOVERNING MULTIPLE-MEMBER  
8 BODIES

9 (a) Officers - All appointed multiple-member bodies shall elect a chair, a  
10 vice-chair and a secretary and any other officer it deems necessary.

11 (b) Meetings - All appointed multiple-member bodies of the city shall meet  
12 regularly at the times and places that the multiple-member body, by the  
13 body's own rules, prescribe. Special meetings of any multiple-member body  
14 shall be held at the call of the chair or by a majority of the members of the  
15 body. Notice of the meeting shall be posted as required by law. Except as  
16 may otherwise be authorized by law, all meetings of all multiple-member  
17 bodies shall at all times be open to the public.

18 (c) Meeting Documents and Submissions - Each appointed multiple-member  
19 body shall determine its own rules and order of business. Each multiple-  
20 member body shall provide for the keeping of agendas, minutes and related  
21 submissions of its proceedings. All such documents shall be a public record  
22 and certified copies shall be placed on file in the office of the city clerk within  
23 a reasonable period from the date of approval.

24 (d) Voting - If requested by a member, or as otherwise required, a vote of  
25 an appointed multiple-member body shall be taken by a roll call vote and the  
26 vote of each member shall be recorded in the minutes, but if the vote is  
27 unanimous, only that fact need be recorded.

28 (e) Quorum - A majority of the members of an appointed multiple-member  
29 body shall constitute a quorum. Unless some other provision is made by the

1 multiple-member body's own rules while a quorum is present, except on  
2 procedural matters, a majority of the full membership of the body shall be  
3 required to vote on any matter representing an exercise of the powers of the  
4 multiple-member body. General Laws related to a vote to meet in "executive  
5 session" shall always require a majority of members of the body.  
6

#### 7 SECTION 9-7: REFERENCES TO GENERAL LAWS

8 All references to General Laws contained in the charter refer to the General  
9 Laws of the commonwealth and are intended to refer to and to include any  
10 amendments or revisions to such chapters or sections or to the  
11 corresponding chapters and sections of any rearrangement, revision or  
12 recodification of such statutes enacted or adopted subsequent to the  
13 adoption of this charter.  
14

#### 15 SECTION 9-8: COMPUTATION OF TIME

16 In computing time under this charter the day of the act or event after which  
17 the designated period of time begins to run shall not be included. The last  
18 day of the period shall be included, unless it is a Saturday, Sunday or legal  
19 holiday, in which event the period shall be extended to the next day which is  
20 not a Saturday, Sunday or legal holiday. When the period of time designated  
21 is fewer than 7 days, intermediate Saturdays, Sundays and legal holidays  
22 shall not be included, when the period is 7 days or more, Saturdays,  
23 Sundays and legal holidays shall be included.  
24

#### 25 SECTION 9-9: OATHS OR AFFIRMATIONS FOR THE OFFICE OF MAYOR, CITY 26 COUNCIL, SCHOOL COMMITTEE, CITY CLERK

27 A mayor-elect, the city council members-elect, and the school committee  
28 members-elect shall, on the first Monday in the January of each even-  
29 numbered year, meet and take an oath or affirmation to the faithful

1 discharge of the duties of their office by the city clerk. If the first Monday in  
2 January of such even-numbered years falls on a legal holiday, the oaths or  
3 affirmations shall be taken on the following day. Upon receiving the oath or  
4 affirmation, each official shall document the same by signing an oath or  
5 affirmation that shall be kept in a bound book maintained by the city clerk.  
6 In the case of the absence of the mayor-elect or any member-elect of the  
7 city council or school committee on the day the oath is administered, the  
8 oath or affirmation may at any time thereafter be administered to that  
9 person by the city clerk, the assistant city clerk, a judge of a court of record  
10 or by a justice of the peace. Modifications to this section may be prescribed  
11 by ordinance.

12  
13 SECTION 9-10: CERTIFICATE OF ELECTION OR APPOINTMENT

14 Every person who is elected or appointed to an office or as a member of a  
15 multiple-member body shall receive a certificate of that election or  
16 appointment from the city clerk. Except as otherwise provided by law, every  
17 person who is elected or appointed to an office or as a member of a  
18 multiple-member body, before performing any act under this election or  
19 appointment, shall take and subscribe to an oath or affirmation to qualify to  
20 enter upon the duties. A record of this oath or affirmation shall be kept by  
21 the city clerk.

22  
23 SECTION 9-11: LIMITATION ON OFFICE HOLDING

24 Unless otherwise allowed by law or this charter, no person shall  
25 simultaneously hold more than 1 city office or position of employment. This  
26 section may be waived by the mayor upon the appointment of a person to  
27 an additional office or position of employment by filing a notice of the waiver  
28 with an explanation and justification with the city clerk.

29



1 SECTION 9-12: FELONY CONVICTION

2 An elected official who has been convicted of a state or federal felony while  
3 holding office shall be deemed to have vacated the office.

4  
5 SECTION 9-13: ENFORCEMENT OF CHARTER PROVISIONS

6 It shall be the duty of the mayor to see that the charter is faithfully followed  
7 and complied with by all city agencies and city employees. Whenever it  
8 appears to the mayor that a city agency or city employee is failing to follow  
9 this charter the mayor shall, in writing, cause notice to be given to that  
10 agency or employee directing compliance with the charter. If it shall appear  
11 to the city council that the mayor personally is not following the charter the  
12 city council shall, by resolution, direct the attention of the mayor to those  
13 areas in which it believes there is a failure to comply with the charter. The  
14 procedures made available in chapter 231A of the General Laws may be  
15 used to determine the rights, duties, status or other legal relations arising  
16 under this charter, including any question of construction or validity which  
17 may be involved in such determination.

18  
19 ARTICLE 10

20 TRANSITIONAL PROVISIONS

21  
22 SECTION 10-1: CONTINUATION OF EXISTING LAWS

23 All general or special laws, city ordinances and rules and regulations of or  
24 pertaining to the city of Gardner, including special acts creating regional  
25 entities and arrangements of which the city is a member, that are in force  
26 when this charter takes effect, and not specifically or by implication repealed  
27 by this charter, shall continue in full force and effect until amended or  
28 repealed, rescinded by law or until they expire by their own limitation. In  
29 any case in which this charter is found to be inconsistent with any general or

1 special law that would otherwise be applicable, this charter shall be deemed  
2 to prevail. Every inconsistency between the prior law and this charter shall  
3 be decided in favor of this charter.

4  
5 **SECTION 10-2: CONTINUATION OF GOVERNMENT AND ADMINISTRATION**

6 Except as specifically provided for in this charter, all city agencies shall  
7 continue to perform the duties of the agency until re-elected, reappointed or  
8 until successors to the respective positions are duly appointed or elected or  
9 until the duties have been transferred and assumed by another city agency.

10  
11 **SECTION 10-3: TRANSFER OF RECORDS AND PROPERTY**

12 All records, property and equipment of a city agency, or part thereof, the  
13 powers and duties of which are assigned in whole or in part to another city  
14 agency, shall be transferred immediately to that agency.

15  
16 **SECTION 10-4: EFFECT ON OBLIGATIONS**

17 All official bonds, recognizance, obligations, contracts and other instruments  
18 entered into or executed by or to the city before the adoption of this charter  
19 and all taxes, assessments, fines, penalties and forfeitures, incurred or  
20 imposed, due or owing to the city, shall be enforced and collected and all  
21 writs, prosecutions, actions and causes of action, except as otherwise  
22 provided in this charter, shall continue without abatement and remain  
23 unaffected by the charter. No legal act done by or in favor of the city shall  
24 be rendered invalid by reason of the adoption of this charter.

25  
26 **SECTION XX.** This charter shall take effect upon its ratification by the voters  
27 and in accordance with the following schedule:

- 1 (1) All city officers and employees shall continue to perform the duties of the  
2 office in the same manner and to the same extent as previously performed  
3 prior to the ratification by the voters of this charter.
- 4 (2) The first election of officers under this charter shall be held on November  
5 3, 2015, to elect a mayor for a 4-year term, members of the city council for  
6 2-year terms, and 3 members of the school committee for 4-year terms. The  
7 3 members of the school committee elected at the 2013 regular city election  
8 shall continue to hold office for the remainder of the terms for which they  
9 were elected. A preliminary election nominating candidates to be elected  
10 shall be held on September 15, 2015, if necessary, under article 7 of the  
11 charter.
- 12 (3) On January 4, 2016 the persons elected in November 2015 shall be  
13 sworn to the faithful performance of their duties.
- 14 (4) Not later than 30 days following the date of the ratification of this charter  
15 by the voters, the city clerk shall give to each member of the general court  
16 who represents the city of Gardner or a portion thereof a copy of the vote  
17 ratifying this charter.
- 18 (5) Immediately after the election at which this charter is adopted, the city  
19 council shall appoint 4 persons to a committee to begin a review of the city  
20 ordinances to prepare such revisions and amendments as may be needed or  
21 necessary to bring the ordinances into conformity with the charter and to  
22 fully implement the charter. The city clerk shall be the fifth member of that  
23 committee. The committee shall submit a report, with recommendations,  
24 within 1 year following its establishment and may submit interim reports  
25 with recommendations at any time; and provided, further that the city  
26 solicitor, or special counsel appointed for this express purpose, shall serve as  
27 an advisor to the committee.
- 28 (6) Not later than September 30, 2015, the mayor shall promulgate a series  
29 of administrative orders under article 5 of the charter.

1 (7) Until such time as modified under article 5 of the charter, chapter 511 of  
2 the acts of 1991 relative to the terms of the license commissioners shall  
3 remain in effect.

4 (8) Until such time as another level of compensation is established under the  
5 charter, the initial compensation for the mayor, city councilors and school  
6 committee members shall be that which is in effect on the date of the 2013  
7 regular city election.

8 (9) The mayor and the city council in office at time this charter is adopted  
9 and the mayor and successor city council elected under this charter, may  
10 adopt measures that clarify, confirm or extend any of the transitional  
11 provisions in order that the transition may be made in the most expeditious  
12 manner possible; provided, that such authority shall not extend beyond 5  
13 years from the date of voter approval of this act.

14  
15 SECTION XX. The following question shall be placed on the ballot to be used  
16 at a special city election to be held in the city of Gardner concurrently with  
17 the biennial state election on November 4, 2014: Shall an act entitled "An  
18 Act Revising the Charter for the City of Gardner" be accepted?

19 The city solicitor shall prepare the summary of the proposed special act  
20 charter which shall appear on the ballot along with the question provided in  
21 this section.

22 If a majority of votes cast in answer to the question is in the affirmative, the  
23 city shall be taken to have accepted the charter of the city of Gardner, but  
24 not otherwise.

25  
26 SECTION XX. This act shall take effect upon its passage.

# 2015 Law Department Review

# CITY OF GARDNER LAW DEPARTMENT

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GARDNER MA

March 3, 2015

## VIA HAND DELIVERY

James Walsh, President  
Gardner City Council  
City of Gardner  
95 Pleasant Street  
Gardner, MA 01440

Re: Law Department Charter Review for the City of Gardner

Dear President Walsh:

The Law Department has been asked to perform a comprehensive legal review of the existing City Charter of the City of Gardner ("Charter"). Specifically the Law Department has been asked to provide a section by section legal review identifying any provisions which are "obsolete, in conflict with state or federal law, or otherwise unenforceable."

This analysis does not address stylistic changes which may be appropriate given the fact that the current Charter was drafted almost one hundred years ago. Notation is made of those sections which are merely historical or relate to the initial procedure employed in adopting the Charter. Such sections are eligible for updating in any proposed re-write or amendment to the existing Charter as they may now be obsolete.

Massachusetts has long recognized each municipality's right to self-governance. However, this right does not exist, except for the blessing of the Commonwealth's legislative body, the General Court. See *Bd. of Appeals of Hanover v. Hous. Appeals Comm. in Dep't of Cmty. Affairs*, 363 Mass. 339, 356 (1973) ("What the State gave, it could also take away because 'the towns of the Commonwealth possess no inherent right to self-government.'") The power resides in the General Court to "erect and constitute municipal or city governments." See *Paddock v. Town of Brookline*, 347 Mass. 230, 237-38 (1964). However, the power to control local municipal governments is limited; such control by the state legislature must be 'for the good and welfare of [the] commonwealth.' *Id.* at 239.

In 1966, the Massachusetts Declaration of Rights was amended to codify the right of municipalities to engage in self-government for “essentially local matters.” This amendment, known as the Home Rule Amendment (the “HRA”) firmly established “the customary and traditional liberties of the people with respect to the conduct of their local government, and to grant and confirm to the people of every city and town the right of self-government in local matters, subject to the provisions of this article and to such standards and requirements as the general court may establish by law in accordance with the provisions of this article.” *Mass. Const. Amend. Art. 2, § 1.*

This power includes the power to adopt, amend, and revise municipal charters. *Mass. Const. Amend. Art. 2, § 2.* However, any such charter must be consistent with the constitution and the laws of the Commonwealth of Massachusetts. *Id.* Furthermore, the HRA does provide for certain categories of laws that may not be governed by municipal charters. These include elections (other than local elections), taxes, borrowing, disposal of park land, private laws governing civil relationships, and defining felonies, or imposing imprisonment. *Mass. Const. Amend. Art. 2, § 7.* The limitation on elections does not include elections to adopt charter commissions or approve revisions to charters.

On its face, the Charter can be perceived as a simple document, however, when viewed in the context of the complexity of state and federal laws, the Charter itself becomes more complex. In light of the voluminous nature of the state and federal laws which *may* have some limited impact on the Charter, an exhaustive and detailed review of every potentially relevant state or federal statute or regulation is not feasible. Therefore, the Charter was reviewed in the context of certain applicable Massachusetts constitutional standards and existing state law. While certain sections of the existing charter require little comment, others are worthy of more robust discussion. Nevertheless, a serious attempt has been made, in the interest of brevity, to dispense with lengthy dissertations more appropriate for legal scholarly discourse.

There are certain general principles which must guide the review and revision process of any municipal charter. First and foremost, is the standing principle that a municipal charter has the force of law except when it contradicts with an existing state law. See *Kowalczyk v. Town of Blackstone*, 48 Mass. App. Ct. 58, 59 (1999) (“Municipal charters duly adopted in accordance with G.L. c. 43B have the effect of law so long as they present no conflict with laws enacted by the Legislature.”) To the extent that a municipal charter provision simply restates a matter which is addressed by Massachusetts law, such provision is superfluous as the state law will control. Nevertheless, a municipal charter, at the local level, is analogous to the state or federal constitution; all other local ordinances are subservient to the municipal charter.

Of primary importance in a municipal charter is the structure of the legislative and executive branches of local government and assurances that there is an appropriate separation of these branches. Such a separation of powers is essential to the efficient and effective operation of

local government. The City of Gardner, in the original adoption of its Charter established a Plan B form of government organized in accordance with M.G.L. c. 43, §§ 56 – 63. As a Plan B city, the mayor is the Chief Executive Officer, and the City Council is the legislative body. See *M.G.L. c. 43, §§ 58 & 59*. Thus the mayor's office is limited in its function to the executive functions of government, as the city council is limited in its function to the legislative functions of government. As the chief executive officer, a mayor of a Plan B city is considered a "weak mayor." However, this designation simply refers to the mayor's power of appointment. See *M.G.L. c. 43, § 52*. In all other respects the executive authority of a mayor, and the legislative authority of a city council in a Plan A and Plan B city, are the same.

Undergirding the separation of powers is Article 30 of the Massachusetts Declaration of Rights, which states:

In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men. *Mass. Const. Pt. 1, art. XXX* see also *In re Opinion of the Justices to the Governor*, 369 Mass. 990, 992 (1976) ("The concept of separation of powers is fundamental to our form of government, and is embodied in art. 30 of the Declaration of Rights.")

This separation of powers and the principle that no branch of government shall ever exercise the function of another is fundamental to our democratic form of government, and essential to the effective and efficient work of government.

I now direct your attention to the analysis of each section of the Charter.

## SECTION 1

Section 1 is predominantly introductory and historical. Those aspects declaring the City of Gardner as a "body corporate and politic" do have legal significance and do not require any change at this time.

## SECTION 2

Section 2 is largely procedural and historical and is, therefore, obsolete. This action has been completed and is no longer necessary as a substantive provision within the Charter. Those aspect of Section 2 which establish the number of Wards and the procedure for dividing the City into Wards are appropriate and necessary and could be revised for stylistic reasons.



### **SECTION 3**

Section 3 is largely procedural and historical and is, therefore, obsolete. This action has been completed and is no longer necessary as a substantive provision within the Charter.

### **SECTION 4**

There is nothing in Section 4 that is, per se, unlawful or obsolete. It is relevant to point out that M.G.L. c. 43, §58 provides for a two year term for a mayor in a Plan B city. Therefore, the current Charter language does not conflict with current Massachusetts law. There may be valid reasons to expand this term, however, such discussions are left to public and legislative discourse.

### **SECTION 5**

There is nothing in Section 5 that is, per se, unlawful or obsolete. It is relevant to point out that M.G.L. c. 43, §59 provides for a two year term for city councilors in a Plan B city. Therefore, the current Charter language does not conflict with current Massachusetts law.

### **SECTION 6**

Section 6 is, in part, incongruous with current Massachusetts law in respect to the appointment of the City Auditor and the City Treasurer. These issues are discussed in more detail below in the relevant sections discussing the appointment process of these Department Heads.

### **SECTION 7**

Other than stylistic changes to update the language in Section 7, no changes are necessary.

### **SECTION 8**

Section 8 does not in its entirety contradict any current state law. It should be noted that any hearing conducted in accordance with Section 8 must be conducted in strict compliance with the Open Meeting Law. Section 7 of the Charter also has to be implemented in conjunction with Section 8 of the Charter. The relationship between these two sections is discussed below.

### **SECTION 9**

Section 9 does, in part, contradict current Massachusetts case law. While there is no statute, per se, which defines specific municipal employees as “executive” or “legislative,” Massachusetts courts have looked to the functions of various municipal officials in determining the appropriate branch of government in which certain municipal officers belong. There is little question that the City Clerk is a legislative office and should be appointed by the City Council without approval of the mayor. See *City of Somerville v. Labor Relations Comm'n*, 53 Mass. App. Ct. 410 (2001). However, the same cannot be said for the City Auditor and the City Treasurer/Collector

positions. As stated by the Massachusetts Department of Revenue in its 2008 Financial Management Review of the City of Gardner: "Daily management of finances in a city is a core executive function." See *City of Gardner Financial Management Review*, p. 6 (2008). It should not go unnoticed that the first recommendation of the Department of Revenue in this report was to Improve the Coordination of Financial Functions. This recommendation consisted of two parts, 1) that the mayor establish a financial management team, and 2) that the city grant the mayor's office appointment authority over all financial offices. *Id.* This recommendation is supported by Massachusetts case law holding that the function of the auditor is executive not legislative. *King v. Mayor of Quincy*, 270 Mass. 185, 187 (1930) ("Intrinsically the functions of an auditor of accounts of a city are executive and administrative rather than legislative.") The shifting of the auditor and treasurer/collector appointments from the legislative branch to the executive branch would also eliminate the violation of the separation of powers inherent in the current appointment process.

The City of Gardner has two branches of government, the legislative branch and the executive branch. Each City Department is categorized as executive or legislative depending on the function of the various departments. Based on the current structure of the City's Departments, all functions of financial management fall under the legislative branch of government when the functions of these offices clearly belong to the executive branch. The City Council has both the appointment authority for the primary financial officers in the City, and the sole authority to remove these officers. See *City of Gardner Charter, Section 8*. The current appointment/removal process for the auditor and treasurer/collector, therefore, allows the legislative branch of government to exercise an inordinate amount of control over the executive functions of government. Since the City Council has appointment authority and the authority to remove persons from these positions, the persons holding these positions answer only to the City Council as their appointing authority.

It follows, therefore, that the City Council, as the appointing authority, is responsible for overseeing and managing the day to day activities of the municipal officers it appoints and implementing disciplinary and other corrective action when necessary. Thus, it is the appointing authority that can control the tasks, methods, and performance of these municipal offices. Since these are essentially executive offices, the City Council has the potential to completely control and interfere in the executive financial management of the City. This is a violation of Massachusetts law. "It is when [the legislature] attempts to interfere with action taken by the executive department . . . and thus to project itself into a field of action which belongs to another department, that art. 30 of the Declaration of Rights is violated." *Opinion of the Justices to the Senate*, 375 Mass. 827, 841, 3 (1978).

It is important to review and determine the salient functions of each position to determine its proper place within the branches of municipal government. The MA Department of Revenue, being the regulatory agency which oversees municipal finance matters is in a unique position to

conduct this analysis. Much weight, therefore, should be given to the recommendations made by the Department of Revenue in its 2008 Financial Management Review of the City of Gardner.

#### SECTION 10

Section 10 is self-limiting. The council's power to take any steps in compliance with Section 10 is limited in that all such action must be done in compliance with Massachusetts law. There is, therefore, nothing in Section 10 which conflicts with any Massachusetts statute.

#### SECTION 11

Section 11 appears to contradict Massachusetts law governing increases to the salaries of mayors and elected councilors.

M.G.L. c. 39 sec. 6A titled *Municipal Salaries; Increase and decreases; Procedure*, provides, in part:

*Notwithstanding the provisions of any city charter to the contrary, the mayor and the members of the city council, or other legislative body of a city, shall receive for their services such salary as the city council...shall by ordinance determine . . . . No increase or reduction in such salaries shall take effect during the year in which such increase or reduction is voted, and no change in such ordinance shall be made between the election of a new council ...and the qualification of the new council...."* (e.g. between Nov. and Jan. immediately following a regular city election).

M.G.L. c. 43 sec.17A titled *Salaries of mayor, city manager and council* provides,

in part:

The Mayor or city manager and the members of the city council shall receive for their services such salary as the city council shall by ordinance determine... No increase or reduction in the salaries of mayor or city councilors shall take effect during the year in which such increase or reduction is voted, and no change in such salaries shall be made between the election of a new council and the qualification of the new council.

M.G.L. c. 44 sec.33A titled *Salary provisions in Budget; requirements and limitations*, provides:

The annual budget shall include sums sufficient to pay the salaries of officers and employees fixed by law or by ordinance. *Notwithstanding any contrary provision of any city charter*, no ordinance providing for an increase in the salaries or wages of municipal officers or employees shall be enacted except by two thirds vote, nor unless it is to operative for more than three months during the calendar year in

which it is passed.” (needs to be operative on or before September 30 of the calendar year in which it is passed).

Section 11 provides that:

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.

When the statutes and the Charter are read together, they appear to be contradictory. In fact, one statute, M.G.L. c. 44, § 33A seems to stand out since it dictates that any increase in the salaries of municipal officers or employees must be operative for three months of the year in which the ordinance is passed. The intent of this requirement is so that the city council that passes the increases bears some of the financial burden of the increases. Unfortunately the statute does not define the terms municipal officer or employee. Both the Mayor and members of the City Council are employees of the City. Therefore, it would appear on its face as though this statute dictates requirements for the setting of the Mayor’s salary. It appears therefore, that any increase in the mayor’s salary by ordinance must be operative for three months in the year in which the ordinance is passed.

However, contrast this with M.G.L. c. 39, § 6A and M.G.L. c. 43, § 17A which mandate that no increase in the mayor’s or city council’s salaries shall be effective in the calendar year in which the increase is passed and the City Charter which prohibits the increase (or decrease) of the mayor’s salary during his or her term. Because of the language in M.G.L. c. 39, § 6A and M.G.L. c. 43, § 17A which specifically apply to mayors and city councils, the only way to reconcile M.G.L. c. 44, § 33A, which requires that increases in the salaries of officers and employees fixed by ordinance “be operative for more than three months during the calendar year in which it is passed” is to conclude that M.G.L. c. 44, § 33A does not apply to ordinances setting the salaries of the mayor or city councilors. Admittedly there is no legal support for this conclusion other than the specific language of M.G.L. c. 39, § 6A and M.G.L. c. 43, § 17A which apply directly to salaries of mayors and city councilors and, therefore operates independently of M.G.L. c. 44, § 33A.

It is the opinion of the Law Department, therefore, that the only way to address the mayor’s salary and city councilors’ salaries without violating the Charter is to comply with M.G.L. c. 39, § 6A and M.G.L. c. 43, § 17A and ignore M.G.L. c. 44, § 33A. Therefore, there are two prohibitions with which the City Council must comply when contemplating an increase in the mayor’s or councilor’s salaries 1) M.G.L. c. 39, § 6A and M.G.L. c. 43, § 17A require that no

increase or reduction in the mayor or city council salaries shall take effect *during the year in which such increase or reduction is voted*, and 2) the Charter prohibits changing the mayor's salary during the term for which he (or she) is elected. These statutes and the Charter can be applied in a consistent manner. In order to do this, the Council can pass a change in the salary of the mayor and councilors any time between January after the new council has been elected and the next council election, however the change cannot be effective until the beginning of the next mayoral and council term. However, being cognizant of the principle set forth in M.G.L. c. 44, § 33A that a city council cannot pass on a financial burden to a future council of which it has not born a portion, the City Council, in passing any measure increasing the mayoral or councilor salaries should place a priority on meeting full compliance with the statutory provisions to the deference of the Charter.

**SECTION 12**

There is nothing within Section 12 which appears to conflict with state or federal law.

**SECTION 13**

There is nothing within Section 13 which appears to conflict with state or federal law.

**SECTION 14**

There is nothing within Section 14 which appears to conflict with state or federal law.

**SECTION 15**

There is nothing within Section 15 which appears to conflict with state or federal law.

**SECTION 16**

There is nothing within Section 16 which appears to conflict with state or federal law.

**SECTION 17**

There is nothing within Section 17 which appears to conflict with state or federal law.

**SECTION 18**

There is nothing within Section 18 which appears to conflict with state or federal law.

**SECTION 19**

There is nothing within Section 19 which appears to conflict with state or federal law.

**SECTION 20**

There is nothing within Section 20 which appears to conflict with state or federal law.



## **SECTION 21**

While the establishment of the first city election is merely historical at this point, and therefore, obsolete, there is nothing in Section 21 which appears to conflict with state or federal law. This section is necessary to establish the day on which city elections are to be held.

## **SECTION 22**

Local election is an inherent local matter and therefore, there is nothing unlawful about Section 22 of the Charter.

## **SECTION 23**

Local election is an inherent local matter and therefore, there is nothing unlawful about Section 23 of the Charter.

As set forth in Section 23, the oath of office is to be administered to the mayor-elect and city councilors-elect on the first Monday in January after an election. If the mayor-elect, or a councilor-elect is absent from that meeting the Charter allows the oath of office to be administered at any meeting thereafter. This provision presents an interesting problem, since no limitations are placed on the duration of the absence. However, to place a time limit on this could result in a disenfranchisement of a person duly elected by the registered voters of Gardner. On the other hand, leaving an office vacant for an extended period of time could disenfranchise a group of voters who remain unrepresented for a long period of time. If this section is read in conjunction with Section 32 of the Charter, procedures for filling a vacancy, the issue is further complicated as the term "vacancy" is undefined in the Charter. M.G.L. c. 43, § 59A defines vacancy as being the result of the death, removal, or resignation of the elected person. The current charter provides no mechanism to remove a person elected as either mayor or councilor. It is the opinion of the Law Department that the Charter should be amended to include removal procedures in the event a duly elected person fails to take the oath of office for an extended period of time in order to create a vacancy and invoke the procedures to fill such vacancy.

## **SECTION 24**

There is nothing inherently unlawful about Section 24. However, it is problematic that Section 24 allows for the passage of ordinances to define how the legislative powers of the Council may be exercised. Ordinances are subject to executive approval or veto. As such, this would be an inappropriate encroachment of the executive branch on the legislative branch. Please refer to the above discussion on the separation of the branches of government for the legal basis.

## **SECTION 25**

There is nothing inherently unlawful about Section 25. However, it must be noted that since the adoption of the Charter, the Massachusetts legislature has passed laws defining public records

and establishing certain matters which are exempt from such public discourse. Therefore, a mayor cannot be compelled to answer questions concerning information which has legally been determined to be exempt from public disclosure and thus risk violating state or federal law in doing so. By way of example, personnel records are recognized as being largely confidential as are enrollment records and claim records for health insurance. Therefore, Section 25 cannot be used to compel the mayor or another to disclose to the City Council the names of all health insurance claimants and the nature of their claims. Such a disclosure would violate both Massachusetts and Federal privacy laws.

#### **SECTION 26**

For the most part, the passage of an ordinance is a local matter. In certain circumstances the legislature has passed statutes controlling specific categories of ordinances. For instance M.G.L. c. 40A strictly controls how local zoning ordinances are passed and administered. The procedures set forth in Section 26, and those following, to the extent that they contradict with M.G.L. c. 40A are unenforceable. Each ordinance which the council seeks to pass should be reviewed by legal counsel prior to formal action.

#### **SECTION 27**

Subject to any restrictions set forth in specific state laws to the contrary (see discussion of Section 26 above), there is nothing within Section 27 which appears to conflict with state or federal law.

#### **SECTION 28**

Subject to any restrictions set forth in specific state laws to the contrary (see discussion of Section 26 above), there is nothing within Section 28 which appears to conflict with state or federal law.

#### **SECTION 29**

Subject to any restrictions set forth in specific state laws to the contrary (see discussion of Section 26 above), there is nothing within Section 29 which appears to conflict with state or federal law.

#### **SECTION 30**

There is nothing within Section 30 which appears to conflict with state or federal law.

#### **SECTION 31**

There is nothing within Section 31 which appears to conflict with state or federal law. However, it must also be stated that the City Council has no authority to structure, determine, or otherwise establish or abolish positions (see Section 10 of the Charter) within the mayor's office. See

*Boston City Council v. Menino*, 2000 WL 744356 (2000). This legal restriction does not apply to the appropriation of money to fund the positions within the mayor's office.

### **SECTION 32**

There is nothing within Section 32 which appears to conflict with state or federal law. However see the discussion in Section 23 above which highlights the need to add provisions to the Charter to address the lack of a definition of the term "vacancy."

### **SECTION 33**

Section 33 violates Massachusetts law in that the City of Gardner lacks any legal authority to assess term of imprisonment pursuant to the HRA. Furthermore, state law has fully occupied the area of conflicts of interests through the passage of the Commonwealth of Massachusetts ethics laws and the application of those laws to all municipal employees. Therefore, this section is both contradictory with existing state law, and it is also obsolete.

### **SECTION 34**

All contracts which the City seeks to enter into, whether for goods or services are governed by M.G.L. c. 30B. Therefore, Section 34 is obsolete.

### **SECTION 35**

All contracts which the City seeks to enter into, whether for goods or services are governed by M.G.L. c. 30B. There is nothing in Section 35 which is, per se, unlawful or obsolete. However, any contracts entered into in accordance with Section 35 would be subject to the provisions of M.G.L. c. 30B.

### **SECTION 36**

Section 36 is self-limiting. The City Council's power to take land by eminent domain in compliance with Section 36 is limited in that all such action must be done in compliance with M.G.L. c. 79. There is, therefore, nothing in Section 36 which conflicts with any Massachusetts statute. The taking of land by eminent domain is also heavily regulated by federal law and the awarding of damages to persons displaced by such taking.

### **SECTION 37**

There is nothing in Section 37 that is, per se, unlawful. The language in Section 37 which discusses the first election of the first school committee is historical in nature and is, therefore, obsolete.



### **SECTION 38**

Language in Section 38 which makes provision for the civil service appointment of certain School Department employees is obsolete given that legislation has been passed removing certain positions within the School Department from Civil Service. There are no Civil Service positions within the School Department. Therefore this language is now obsolete.

### **SECTION 39**

There is nothing in Section 39 that is, per se, unlawful or obsolete.

### **SECTION 40**

There is nothing in Section 40 that is, per se, unlawful or obsolete.

### **SECTION 41**

There is nothing in Section 41 that is, per se, unlawful or obsolete.

### **SECTION 42**

Section 42, if followed, constitutes a violation of M.G.L. c. 30A, the Massachusetts Open Meeting Law (the "OML"). This section of the Charter allows four members of the School Committee to call a private meeting, i.e. an executive session. Unless the reasons for such a private meeting met the exceptions to the OML allowing executive session, a "private" meeting of the School Committee would violate the OML. Since the OML fully governs the conduct of a public meeting, this section of the charter is largely obsolete.

### **SECTION 43**

Section 43 presents a procedural problem. Nowhere in Section 43, is the term "vacancy" defined. Similar procedures should be adopted as discussed above in Sections 23 and 32.

### **SECTION 44**

The filing of initiative petitions with the City Council is governed by M.G.L. c. 43, § 37 and the statutory sections which follow. While there is nothing in Section 44 which is contrary to the process set forth in M.G.L. c. 43, § 37, et seq., Section 44 of the Charter, therefore is superfluous as state law controls the filing of local initiative petitions. It should also be noted that initiative petitions have been held unconstitutional unless the initiative petition sets forth the full text of the law or measure proposed by the petition. See *Opinion of the Justices to the House of Representatives*, 422 Mass. 1212 (1996).

#### **SECTION 45**

Section 45 of the Charter follows M.G.L. c. 43, § 38 and is, therefore, superfluous. However, Section 45 does not contain the provisions for filing objections which are set forth in M.G.L. c. 43, § 38. To the extent that Section 45 of the Charter and M.G.L. c. 43, § 38 differ, the statute will control.

#### **SECTION 46**

Section 46 of the Charter follows M.G.L. c. 43, § 39. There is conflict between the Charter and § 39. M.G.L. c. 43, § 39 requires the City Council to act on a petition signed by 15% of the registered voters in the City where the Charter requires 20%. Section 46 of the Charter should be either eliminated (since the state statute controls) or be amended so as to conform to M.G.L. c. 43, § 39. It is, nevertheless, the opinion of the Law Department that any provision in the Charter which is exhaustively governed by state law is superfluous.

#### **SECTION 47**

Section 47 of the Charter follows M.G.L. c. 43, § 40. There is conflict between the Charter and § 40. M.G.L. c. 43, § 40 requires action on a petition signed by 8% to 15% of the registered voters in the City where the Charter requires 8% to less than 20%. Section 47 of the Charter should be either eliminated (since the state statute controls) or be amended so as to conform to M.G.L. c. 43, § 40. It is, nevertheless, the opinion of the Law Department that any provision in the Charter which is exhaustively governed by state law is superfluous.

#### **SECTION 48**

M.G.L. c. 43, § 42 controls the process set forth in Section 48 of the Charter. It is the opinion of the Law Department that Section 48 of the Charter is, therefore, superfluous.

#### **SECTION 49**

M.G.L. c. 43, § 43 controls the process set forth in Section 49 of the Charter. It is the opinion of the Law Department that Section 49 of the Charter is, therefore, superfluous.

#### **SECTION 50**

M.G.L. c. 43, § 44 controls the process set forth in Section 50 of the Charter. It is the opinion of the Law Department that Section 50 of the Charter is, therefore, superfluous.

#### **SECTION 51**

Section 51 of the Charter is subject to M.G.L. c. 43, § 41 which states: "The ballots used when voting upon a proposed measure under section thirty-nine or forty, or a measure or part thereof protested against under the following section, shall contain only a fair, concise summary of the

measure, as determined by the city solicitor, which shall follow the question, 'Do you approve of a measure summarized below?'"

The portion of Section 51 requiring that in order to pass, a proposed measure shall not pass without affirmative votes of at least 1/3 of the whole number of registered voters is addressed by M.G.L. c. 43, § 50 and also requires an affirmative vote of a majority of those voting on the measure. Therefore, it is the conclusion of the Law Department that Section 51 of the Charter is unlawful.

## SECTION 52

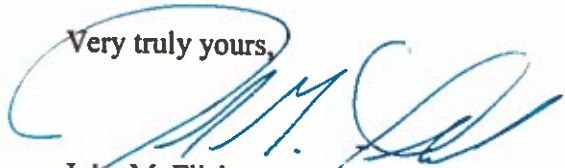
Section 52 presents an interesting dilemma if a new charter were passed. The first paragraph of Section 52 is historical in nature and is, therefore, obsolete. The second paragraph, however, requires further review. There may be laws which were accepted by the Town of Gardner prior to Gardner becoming a City which only apply to towns. These laws would still apply to Gardner as a City because of this section. It must be determined if there are any such laws which would then require legislative action to be codified into an ordinance, or otherwise adopted, if such laws are still applicable to the efficient operation of the City.

## SECTION 53

Section 53 is largely historical in nature and is, therefore, obsolete.

I trust that this review has provided sufficient information to the City Council on this matter. If the Council has any more detailed questions about specific sections of the Charter, the Law Department would be happy to review those sections.

Very truly yours,



John M. Flick

Cc: Mark P. Hawke, Mayor