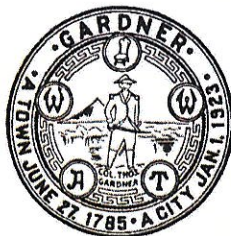


*Mayor
Michael J. Nicholson*



*City Council President
Elizabeth J. Kazinskas*

February 23, 2023

Hon. Robert L. Rice, Esq., Chair
And City Charter Review Committee Members
Gardner City Hall, Rm 125
95 Pleasant Street
Gardner, MA 01440

RE: Proposed Charter Amendments For Consideration

Dear Chairman Rice and Charter Review Committee Members,

As requested in the Notice of Public Hearing posted on the City's website and in Gardner Magazine on Thursday, February 16, 2023 and in the Gardner News on Tuesday, February 21, 2023, we are hereby submitting this joint proposal in writing to the Committee for your review and consideration.

Aside from the below proposals, it is also our belief that the pronoun and personnel references throughout the document be made in a more gender neutral manner, as the City has had several female officials, appointees, and employees since incorporated as a City in 1923.

Thank you for your service to the City in this capacity and we look forward to collaborating with the Committee through the process of reviewing our City Charter.

Respectfully submitted,

Michael J. Nicholson
Mayor, City of Gardner

Elizabeth J. Kazinskas
President, Gardner City Council

Section 1:

No change

Section 2:

Deleted in its entirety

Section 3:

deleted in its entirety

Section 4:

SECTION 4. THE OFFICE OF THE MAYOR

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.**

Section 5:

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.

Section 6:

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.
- c) All persons duly appointed and confirmed shall be sworn to the faithful discharge of their duties. Failure to take such oath of office within sixty days of confirmation by the City Council, or for those positions not subject to confirmation by the City Council filing of the appointment certificate with the City Clerk, shall constitute a vacancy in that position for which the mayor shall to appoint an individual to serve.

Section 7:

~~Deleted in its entirety~~

Section 8:

No change

Section 9:

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.**

Section 10:

No Change

Section 11:

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.)~~

Section 12:

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).~~

Section 13:

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 (MGL c. 53, § 10, as amended) days prior to the preliminary election, he~~

~~Each candidate 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. Nomination papers for use in the nomination of candidates to be voted for at City elections shall be prepared, and on request furnished, by the City Clerk. Nomination papers for use in the nomination of candidates for all offices shall be available for use on or before the fifteenth Tuesday preceding the last Tuesday in May of each odd numbered year. No candidate shall be prohibited from making exact copies of such forms provided by the City Clerk for the purpose of collecting signatures for such nominations, nor shall any such copies be rejected for certification or submittal to the City Clerk. The City Clerk shall forthwith issue to the candidate or other person filing such nomination papers a certificate acknowledging the time and date of the receipt thereof and the total number of signatures that have been certified for nomination.~~

~~In the event of a special election, nomination papers shall be due to the City Clerk's Office at least fifty days preceding the preliminary election.~~

~~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 Tuesday, the ____ day 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 15:

No change

Section 16:

No change

Section 17:

no change

Section 18:

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:

no change

Section 20:

no change

Section 21:

no change

Section 22:

~~Remove in its entirety~~

Section 23:

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.**

Section 24:

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, **present and voting**, shall be necessary to adopt any motion, resolution or ordinance, **unless otherwise specified under the General Laws.**
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, **as required by the General Laws.** All legislative sessions shall be open to the public, **unless exempted under the Open Meeting Law for purposes of Executive Session**, 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 **the public.** ~~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:

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.

Section 26:

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 Change

Section 28:

No Change

Section 29:

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.)~~

Section 30:

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.

Section 31:

Delete in its entirety

Section 32:

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 **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** ~~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 seventy-five (75%) 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.)~~

Section 33:

Delete in its entirety

Section 34:

Delete in its entirety

Section 35:

Delete in its entirety

Section 36:

No Changes

Section 37:

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).~~

Section 38:

SECTION 38. The school committee shall elect **annually** a superintendent of schools except as provided ~~in section forty one of chapter seventy one of~~ **under 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, **except in cases where the first Monday falls on News Years Day, in which case the School Committee shall organize on the subsequent day**, 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:

No change

Section 40:

no change

Section 41:

no change

Section 42:

No Change

Section 43:

SECTION 43: On the first Monday in January the school committee members -elect shall appear before the School Committee 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.

Section 44:

No Change

Section 45:

No Change

Section 46:

No Change

Section 47:

No Change

Section 48:

No change

Section 49:

No Change

Section 50:

No change

Section 51:

Delete in its entirety

Section 52:

No change

Section 53:

Delete in its entirety

NEW SECTION 54:

Following a joint convention of the Mayor, School Committee, and City Council to appoint a representative to the Montachusett Regional Technical School Committee, the person appointed 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 City Council, to the individual appointed by the joint convention. The joint convention 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 position of Representative to the Montachusett Regional Vocational Technical School Committee by failure to elect, failure to take oath of office, or otherwise, the city council and the school committee shall meet in joint convention and elect a suitable person to fill the vacancy for the remainder of the term. The mayor, if present, shall preside at the convention.

OTHER PROPOSALS:

Repeal of the following session laws:

- 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

- 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.