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CITY OF GARDNER
MASSACHUSETTS 01440-2630

OFFICE OF THE
CITY COUNCIL



November 17, 2016

CITY COUNCIL INFORMAL MEETING

Date: Monday, November 21, 2016
Time: 7:00 P.M.
Location: City Council Chamber, 2nd Floor, City Hall

ANNOUNCEMENT - Any person may make a video or audio recording of an open session of a meeting, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. Any person intending to make such recording shall notify the Chair forthwith. All documents referenced or used during the meeting must be submitted in duplicate to the City Clerk, pursuant to the Open Meeting and Public Records Law. All documents shall become part of the official record of the meeting.

AGENDA

9234 – Law Department Charter Review.

NOTICE: The listing of Agenda items are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

CITY COUNCIL OF GARDNER

JAMES M. WALSH
Council President

PETITION

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

6
7 AN ACT RELATIVE TO THE CHARTER OF THE CITY OF GARDNER.

8
9 *Be it enacted by the Senate and House of Representatives in General Court assembled,*
10 *and by the authority of the same, as follows:*

11
12 SECTION 1. Section 9 of the charter of the city of Gardner, which is on file in the
13 office of the archivist of the commonwealth, as provided in section 12 of chapter 43B of
14 the General Laws, as appearing in the 2008 Official Edition, is hereby amended by
15 inserting after the first sentence the following words:- The person so removed shall
16 receive a copy of the reasons for removal and may, if desired, to contest the same before
17 the city council and may be represented by counsel at the hearing.

18
19 SECTION 2. Said Charter is hereby further amended by striking from Section 12 the
20 words “fourth Tuesday” and inserting in place thereof the following words:- seventh
21 Tuesday.

22
23 SECTION 3. Said charter is hereby further amended by striking out section 23 and
24 inserting in place thereof the following section:- On the first Monday in January or on the
25 following day whenever said first Monday shall also be New Year’s Day, the mayor-elect
26 and the councilors-elect shall meet and be sworn to the faithful discharge of their duties.
27 The oath may be administered by the city clerk or by any justice of the peace, and a
28 certificate that the oath has been taken shall be entered on the journal of the city council.
29 At any meeting no more than sixty (60) days thereafter the oath may be administered, in
30 the presence of the city council, to any councilor absent from the meeting on the first
31 Monday in January. The Council may, upon a two thirds vote extend the period of time in
32 which a councilor-elect has to take the oath of office up to ninety (90) additional days. If

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33 the mayor-elect fails to take the office as set forth herein, the office of Mayor shall be
34 filled pursuant to Section 32. If the mayor-elect continues in his or her failure to take the
35 oath of office for a period of six (6) months after the first Monday in January, the office
36 shall be deemed vacant and thereafter filled in accordance with Section 32.

37

38 SECTION 4. Said charter is hereby further amended by striking out section 31 and
39 inserting in place thereof the following section:- The civil service laws shall not apply to
40 the appointment of any position within the mayor's office, and the mayor may remove
41 such appointees without a hearing and without making a statement of the cause for their
42 removal.

43

44 SECTION 5. Said charter is hereby further amended by striking out section 32 and
45 inserting in place thereof the following section:- If a vacancy occurs in the office of
46 mayor by death or resignation, before the last six months of the term of office, the city
47 council shall order an election to fill the same for the unexpired term; and if such vacancy
48 occurs in the office of the mayor in the last six months of said term, the president of the
49 city council shall succeed thereto for the unexpired term.

50

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

56

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

63

PETITION

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

70

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

75

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

78

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

81

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

86

87 SECTION 9. Said charter is hereby further amended by striking out section 43 and
88 inserting in place thereof the following section:- On the first Monday in January the
89 school committee members -elect shall appear before the city council and be sworn to the
90 faithful discharge of their duties. The oath may be administered by the city clerk or by
91 any justice of the peace. At any meeting no more than sixty (60) days thereafter the oath
92 may be administered, in the presence of the city council and the school committee, to any
93 school committee member-elect absent from the meeting on the first Monday in January.
94 The school committee may, upon a two thirds vote extend the period of time in which a

PETITION

95 school committee member-elect has to take the oath of office up to ninety (90) additional
96 days. If a vacancy occurs in the school committee by failure to elect, or otherwise, the
97 city council and the remaining members of the school committee shall meet in joint
98 convention and elect a suitable person to fill the vacancy until the next regular city
99 election. The mayor, if present, shall preside at the convention.

100

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

108

109 1. Pass said measure without alteration, subject to the referendum vote provided
110 by this act or

111

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

119

120 SECTION 11. Said charter is hereby further amended by striking out section 47 and
121 inserting in place thereof the following section:- If an initiative petition be signed by
122 registered voters equal in number to at least eight per cent but less than fifteen per cent of
123 the total number of registered voters, and said measure be not passed without alteration
124 within twenty days by the city council or the school committee, as provided in the

PETITION

125 preceding section, then such proposed measure, without alteration, shall be submitted by
126 the city clerk to a vote of the registered voters of the city at the next regular city election.

127

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

130

131

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

135

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

138

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

141

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

CITY COUNCIL'S STUDY OF THE LAW DEPARTMENT'S CHARTER REVIEW

CURRENT CHARTER PROVISIONS	LAW DEPARTMENT CHARTER REVIEW March 3, 2015	COUNCIL REVIEW INFORMAL MEETING MINUTES May 26, 2015 & February 1, 2016	COUNCIL INFORMAL DECISION	LAW DEPARTMENT RECOMMENDATIONS December 1, 2015 & August 26, 2016 Correspondence	DRAFT LEGISLATION (SECTIONS)
<p>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.</p>	<p>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.</p>		<p>No changes recommended.</p>		
<p>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.</p> <p>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.</p>	<p>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.</p>		<p>No changes recommended.</p>		
<p>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</p>	<p>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.</p>		<p>No changes recommended.</p>		

CITY COUNCIL'S STUDY OF THE LAW DEPARTMENT'S CHARTER REVIEW

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<p>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.</p>					
<p>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.</p>	<p>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.</p>		<p>No changes recommended.</p>		
<p>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).</p> <p>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.</p>	<p>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.</p>		<p>No changes recommended.</p>		
<p>SECTION 6. All heads of departments and members of municipal boards, except the school</p>	<p>SECTION 6 Section 6 is, in part, incongruous with</p>		<p>No changes recommended.</p>		

CITY COUNCIL'S STUDY OF THE LAW DEPARTMENT'S CHARTER REVIEW

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<p>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.</p>	<p>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.</p>				
<p>SECTION 7. In making his appointments the mayor shall sign and file with the city clerk a certificate in the following form:</p> <p>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.</p> <p>Or the following form, as the case may be:</p> <p>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.</p>	<p>SECTION 7 Other than stylistic changes to update the language in Section 7, no changes are necessary.</p>		<p>No changes recommended.</p>		
<p>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.</p>	<p>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.</p>	<p>5/26/2015 Informal Meeting: Charter Section 8. President Walsh cited the Law Department's Comment under Section 8, noting that "it 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." He noted that statutes and amendments thereto would make the Charter's provisions subservient, adding that any hearing must comply with the Open Meeting Law. He recommended retaining the existing Charter language.</p>	<p>No changes recommended.</p>		

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<p>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.</p>	<p>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 <i>City of Somerville v. Labor Relations Comm'n</i>, 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 <i>City of Gardner Financial Management Review</i>, 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. <i>Id.</i> This recommendation is supported by Massachusetts case law holding that the function of the auditor is executive not legislative. <i>King v. Mayor of Quincy</i>, 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.</p> <p>The City of Gardner has two branches of government, the legislative branch and</p>	<p>5/26/2015 Informal Meeting: President Walsh read aloud Section 9, as follows: “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.” He noted that much of the City Solicitor’s comments “Were not legal analysis,” but “more policy analysis,” citing the Solicitor’s reliance on the <u>Department of Revenue’s Financial Management Report</u>. He questioned whether the positions of Auditor, Collector, and Treasurer should fall under the executive office.</p> <p>Councillor Graves stated that the City Council never had day-to-day oversight of any City Hall employee. “Just because we appoint these positions, it doesn’t mean that we supervise them on a day-to-day basis,” he said. Mr. Graves noted that the position of City Assessor, appointed by the Mayor, encountered “day-to-day problems” in recent years, adding that the current system of “checks and balances” works well.</p> <p>Councillor Patrick Gerry noted that the City Clerk reports directly to the City Council and communicates with the Council daily.</p> <p>President Walsh agreed, noting that the Council does not supervises the Clerk’s day-to-day activities, whose principal duties are mandated by State and local laws, regulations, and Council rules and policies.</p> <p>Referencing the Law Department’s comments about the three Council-appointed positions, Mr. Walsh stated that the Solicitor’s comments are part of the Administrations’ effort to grant the Mayor appointing</p>	<p>The Council will seek draft language from the HR Director concerning due process for termination situations.</p>		<p>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.</p>

CITY COUNCIL'S STUDY OF THE LAW DEPARTMENT'S CHARTER REVIEW

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	<p>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 <i>City of Gardner Charter, Section 8</i>. 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.</p> <p>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." <i>Opinion of the Justices to the Senate</i>, 375 Mass. 827, 841, 3 (1978).</p> <p>It is important to review and determine</p>	<p>authority over all three, reiterating that the Law Department's comments are not legal analysis, but policy analysis.</p> <p>Councillor Gerry said that he has very little interest in the Collector and Treasurer's positions, but that in a corporation, the Auditor is chosen by the shareholders, and that it makes perfect sense that the Council appoints the Auditor.</p> <p>Councillor Nathan Boudreau asked if the Mayor is "supervising" the Council appointees on a day-to-day basis, since he isn't.</p> <p>President Walsh, citing recent issues with a Council appointee, said "it is only our problem where there is a problem."</p> <p>Councillor Morgan recommended retaining all four Council appointees, adding that if there is a supervisory or management problem, then it should be fixed and then move forward.</p> <p>Councillor Ronald Cormier suggested that the Council be careful to study the position and not the individual holding the office. "We have to look at the policy of checks and balances, and not involve individual personalities," he said.</p> <p>President Walsh concurred; then asked, "Is our present structure not in balance?"</p> <p>Councillor James Johnson agreed that the Council should retain all four appointees, but questioned whether language be considered that would address day-to-day supervision.</p> <p>Mr. Walsh suggested that language could be incorporated that would provide the Mayor with day-to-day supervision.</p>			

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	<p>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.</p>	<p>Councillor Graves stated that he was unaware of any of the Council's appointees whose activities are supervised on a day-to-day basis.</p> <p>President Walsh remarked that it has never been an issue until the Mayor decided that he wanted the power of appointment over the three positions.</p> <p>Councillor Gerry cited School Committee policy, whereby a member of the Committee cannot give orders to any School Department employee.</p> <p>Councillor Cormier added that in the City Council's Committee structure, the Committees serve as liaisons to the various departments and boards, but do not manage them.</p> <p>President Walsh and Councillor Morgan stated that due to the nature of the City Clerk's position as Clerk of the City Council, they do not support adding any language that would grant executive oversight.</p> <p>Councillor Vance asked, "What stops the Mayor from making a policy change?"</p> <p>Responding to Councillor Vance's question, Councillor Graves said that any policy change from the Mayor, paired with an opinion from the City Solicitor, "is just that – an opinion." Mr. Walsh agreed.</p> <p>Mr. Graves suggested that if the Council and the Mayor have conflicting positions in legal matters, then the Council should consider hiring its own legal counsel.</p> <p>Mr. Walsh suggested making no changes to Section 9.</p> <p>Councillor Vance cited the City</p>			

CITY COUNCIL'S STUDY OF THE LAW DEPARTMENT'S CHARTER REVIEW

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		<p>Clerk's February 21, 2012 <u>Memorandum to the City Council</u> Regarding City Charter Observations, questioning the removal clause that contains "no due process."</p> <p>President Walsh noted that there are State laws that govern employment-related actions that provide for hearings and other human resource-related processes.</p> <p>The Council will seek draft language from the HR Director concerning due process for termination situations.</p>			
<p>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.</p>	<p>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.</p>	<p>5/26/2015 Informal Meeting: President Walsh cited the Law Department's comment, as follows: "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." Councillor Gerry stated that Section 10 of the Charter might be in conflict with Section 4. Councillor Cormier remarked that the Mayor has the power to veto any measure he deems appropriate. No changes were recommended.</p>	<p>No changes recommended.</p>		
<p>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.</p> <p>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</p>	<p>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 <i>Municipal Salaries; Increase and decreases; Procedure</i>, provides, in part: <i>Notwithstanding the provisions of any city charter to the contrary</i>, the mayor and the</p>	<p>5/26/2015 Informal Meeting: President Walsh cited the Law Department's comment in Section 11, which says that "Section 11 appears to contradict Massachusetts law governing increases to the salaries of mayors and elected councilors." Councillor Graves, citing the Solicitor's comments, suggested that</p>	<p>No changes recommended.</p>		

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<p>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.)</p>	<p>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 <i>during the year in which such increase or reduction is voted</i>, 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).</p> <p>M.G.L. c. 43 sec.17A titled <i>Salaries of mayor, city manager and council</i> 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.</p> <p>M.G.L. c. 44 sec.33A titled <i>Salary provisions in Budget; requirements and limitations</i>, provides: The annual budget shall include sums sufficient to pay the salaries of officers and employees fixed by law or by ordinance. <i>Notwithstanding any contrary provision of any city charter</i>, 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).</p> <p>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. <i>His salary shall not be increased or</i></p>	<p>the problem for voting to increase the Mayor’s salary is a matter of timing.</p> <p>Mr. Walsh stated that the salary of the Mayor should be changed only for the term of the next Mayor, as it is currently written.</p> <p>Councillor Vance questioned the implementation schedule for any increase in the Mayor’s salary if the Mayor’s term is extended to four years, asking if increases could be staggered over a period of time.</p> <p>President Walsh said that it could, as long as the salary schedule complies with the Charter and State law.</p> <p>No changes were recommended.</p>			

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	<p><i>diminished during the term for which he is elected.</i></p> <p>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.</p> <p>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.</p> <p>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</p>				

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	<p>that M.G.L. c. 44, § 33A does not apply to ordinances setting the salaries of the mayor or city councilors.</p> <p>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.</p> <p>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 <i>during the year in which such increase or reduction is voted</i>, 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.</p>				

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<p>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).</p>	<p>SECTION 12 There is nothing within Section 12 which appears to conflict with state or federal law.</p>	<p>5/26/2015 Informal Meeting: President Walsh noted the City Solicitor's comment that "There is nothing within Section 12 which appears to conflict with state or federal law." The City Clerk suggested that the scheduling of a Preliminary Election be changed to be consistent with State Primaries, which are held on the seventh Tuesday preceding biennial state elections. He added that like state primaries and general elections, planning and administration of municipal preliminaries and elections require significant lead time for ballot printing and programming, voter registration, absentee balloting, certification, poll worker training, etc. On straw vote, the Council agreed to the proposed change.</p>	<p>On straw vote, the Council agreed to the proposed change to schedule a Preliminary Election to be consistent with State Primaries, which are held on the seventh Tuesday preceding biennial state elections.</p>		<p>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.</p>
<p>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:</p> <p>STATEMENT OF CANDIDATE</p> <p>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</p>	<p>SECTION 13 There is nothing within Section 13 which appears to conflict with state or federal law.</p>	<p>5/26/2015 Informal Meeting: Councillor Vance stated that the Council reviews the number of signatures that a candidate must obtain in order to have his/her name printed on the ballot. He suggested a candidate for Councillor-at-Large be required to obtain more signatures than a candidate for a Ward Council seat, which he said should remain at 50. He stated that, at times, candidates are not the most qualified, so fewer might be eligible to appear on the ballot if it is made more difficult. President Walsh asked Councillor Vance if he is qualified to determine the qualifications of a candidate. Councillor Vance suggested that an increase in the number of signatures would make it more challenging.</p>	<p>On straw vote, the Council decided to retain the current process.</p>		

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<p>and the only ballots used at the preliminary election. They shall be headed as follows:</p> <p>OFFICIAL PRELIMINARY BALLOT</p> <p>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).</p>					
<p>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).</p> <p>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).</p>	<p>SECTION 15 There is nothing within Section 15 which appears to conflict with state or federal law.</p>		No changes recommended.		
<p>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</p>	<p>SECTION 16 There is nothing within Section 16 which appears to conflict with state or federal law.</p>		No changes recommended.		

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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 17 There is nothing within Section 17 which appears to conflict with state or federal law.		No changes recommended.		
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 18 There is nothing within Section 18 which appears to conflict with state or federal law.	Councillor Vance commented on the Charter's requirement that Preliminary election returns must be published in the local newspaper, noting that posting returns online would be more cost effective and would eventually reach more people with advancing technology and through a greater number of mediums. He added that the Charter's provision "locks-in" the City by obligating it to publish election returns in a newspaper, even if <i>The Gardner News</i> is no longer published. Councillor James Johnson asked if an "online newspaper" is published in Gardner. Councillor Patrick Gerry questioned whether the City's only option would be to strike the Charter provision. Councillor Cormier noted that State law requires that the returns be published. On straw vote, two in favor, seven opposed, the Charter provision was left unchanged.	On straw vote, two in favor, seven opposed, the Charter provision was left unchanged.		
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	SECTION 19 There is nothing within Section 19 which appears to conflict with state or federal law.	5/26/2015 Informal Meeting: Councillor Patrick Gerry questioned why the Charter Review Committee disregarded Section 19 in its entirety in its Recommendations.	No changes recommended.		

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<p>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.</p> <p>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.</p>					
<p>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</p>	<p>SECTION 20 There is nothing within Section 20 which appears to conflict with state or federal law.</p>		<p>No changes recommended.</p>		

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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 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.		No changes recommended.		
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 22 Local election is an inherent local matter and therefore, there is nothing unlawful about Section 22 of the Charter.		No changes recommended.		
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 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	5/26/2015 Informal Meeting: President Walsh addressed the Law Department's Comment that the Charter does not provide a mechanism to remove a person elected as either mayor or councilor. He cited the City Solicitor's opinion 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." Councillor Graves and President Walsh suggested that the Law Department draft language that would address any such vacancy to include a timeframe, the definition of "vacancy," and powers of the Council to determine whether a vacancy exists. Councillor Morgan recommended that language also be provided to protect removal of persons elected	5/25/2015 Informal Meeting Draft language that would provide for the oath of office to be administered to the mayor-elect and city councilors-elect on another day in the event that the first Monday in January after an election falls on a State or Federal holiday. 2/1/2016 Informal Meeting On straw vote, Councillors agreed to a 60-day period to take the oath and 120 days by two-thirds.	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 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 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 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.

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	<p>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.</p>	<p>who are subsequently called to military service. He added that 45 days would be sufficient for a person elected to take the oath of office.</p> <p>Councillor Vance suggested that the Charter should also include a provision to recall an elected official for delinquency in office.</p> <p>President Walsh stated that he preferred to have the Law Department draft language to address the Council's position on the vacancy question. Councillor Graves noted that the current Charter does not mention the office of School Committee.</p> <p>The Council also agreed to request that the City Solicitor draft language that would provide for the oath of office to be administered to the mayor-elect and city councilors-elect on another day in the event that the first Monday in January after an election falls on a State or Federal holiday.</p> <p><u>2/1/2016 Informal Meeting</u> President Walsh opened the discussion by posing the question, "What happens if the oath is not taken?" He said that he spoke with Attorney Michelle Tassinari, Director and Legal Counsel, State Elections Division, and City Solicitor John Flick concerning adding a Charter provision that in the event that a Councillor-elect fails to take the oath of office in a certain amount of time, then that would constitute a vacancy. He suggested language that would provide that the failure to take the oath of office within 60 to or 90 days of the election would constitute a vacancy.</p> <p>Councillor Scott Graves agreed, suggesting 30 days.</p> <p>President Walsh noted that Attorney Tassinari cited a Massachusetts</p>			

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		<p>municipal Charter that empowers the City Council to determine “what constitutes a vacancy.”</p> <p>Councillor Ronald Cormier questioned, “What constitutes a vacancy now?”</p> <p>Mr. Walsh responded, “Death or resignation” within the meaning of Section 32.</p> <p>Councillor Matthew Vance stated that a thirty day window is too short if a vacancy needs to be filled by the Council.</p> <p>Councillor James Boone questioned whether a Councillor-elect might qualify for an extension to the amount of time to take the oath if a good reason is presented to the Council, such as an overseas military deployment.</p> <p>President Walsh stated that language could be incorporated that would permit the Council, by majority or by two-thirds vote, to determine whether “good cause” exists to extend the period of time for a Councillor-elect to take the oath of office. He suggested that a period of up to 120 days be incorporated if the Council determines, by a two-thirds vote, that “good cause exists.”</p> <p>On straw vote, Councillors agreed to a 60-day period to take the oath and 120 days by two-thirds.</p>			
<p>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.</p> <p>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</p>	<p>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</p>	<p>5/26/2015 Informal Meeting: President Walsh cited the last two words of the Section, “by it,” referring to rules adopted by the City Council that are not subject to any mayoral action (approval, veto). He noted the Solicitor’s comments that Section 24 might be amended to</p>	<p>No changes recommended.</p>		

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<p>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.</p> <p>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.</p> <p>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.</p>	<p>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.</p>	<p>address the problem that an Ordinance be required to define legislative powers, which infringes on the Council's power to establish its own rules without Mayoral interference. He noted that there are exceptions, but suggested that the Council make no changes to the Section. Councillors agreed to leave the Section as written.</p>			
<p>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.</p>	<p>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.</p>	<p><u>5/26/2015 Informal Meeting:</u> President Walsh noted that State Law supersedes the Charter and that new laws could be passed at any time that would supersede the Charter. He added that it has been the City's practice to follow the statutes. Councillors agreed to leave the Section as written.</p>	<p>No changes recommended.</p>		
<p>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</p>	<p>SECTION 26 For the most part, the passage of an ordinance is a local matter. In certain</p>		<p>No changes recommended.</p>		

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<p>or safety of the people or their property.</p> <p>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.</p> <p>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.</p>	<p>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.</p>				
<p>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.</p>	<p>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.</p>		<p>No changes recommended.</p>		
<p>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.</p>	<p>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.</p>		<p>No changes recommended.</p>		
<p>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.</p> <p>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.)</p>	<p>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.</p>		<p>No changes recommended.</p>		

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<p>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.</p>	<p>SECTION 30 There is nothing within Section 30 which appears to conflict with state or federal law.</p>		<p>No changes recommended.</p>		
<p>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.</p>	<p>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 <i>Boston City Council v. Menino</i>, 2000 WL 744356 (2000). This legal restriction does not apply to the appropriation of money to fund the positions within the mayor's office.</p>	<p>5/26/2015 Informal Meeting: Councillor Vance suggested striking "stenographers" and "telephone operators" from Section 31. After discussion, Councillors agreed that "telephone operators" were considered antiquated and should be stricken. Councillors agreed to seek language to revise the section to include "any position within the Mayor's office."</p>	<p>Councillors agreed to seek language to revise the section to include "any position within the Mayor's office."</p>		<p>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.</p>
<p>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.</p>	<p>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."</p>	<p>5/26/2015 Informal Meeting: President Walsh suggested that language be added to clarify the definition of the term "vacancy," as mentioned under Section 23. The Council agreed to add language.</p>	<p>5/26/2015 Informal Meeting: Add language that clarifies the definition of the term "vacancy," as mentioned under Section 23.</p>	<p>SECTION 32. 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</p>	<p>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</p>

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<p>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.</p> <p>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.</p> <p>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.</p> <p>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.)</p>		<p>2/1/2016 Informal Meeting: President Walsh noted the City Solicitor's recommendation to add the words "by death or resignation" to Section 32 as it pertains to a vacancy in the office of Mayor.</p> <p>Councillor Graves disagreed with the City Solicitor's recommendation, saying that his recommendation "limits what is deemed to be a vacancy."</p> <p>Mr. Walsh noted that the current language provides for coverage when the Mayor is absent.</p> <p>Councillor Graves suggested that the City Council should be empowered to determine whether a Mayoral vacancy exists.</p> <p>Councillor Ronald Cormier questioned whether the City Council could take legal action to determine whether a vacancy exists by inserting the words "or otherwise," suggesting that language could be added to declare a vacancy by two-thirds vote of the City Council.</p> <p>President Walsh said that he anticipates a problem with the City Council being granted the power to declare a vacancy in the office of Mayor. He suggested that if the Council decides to pursue language to declare a vacancy, that a definition of "otherwise" would be necessary. He suggested that an extended absence from office could constitute a vacancy.</p> <p>Councillor James Johnson suggested adding "or incapacity to fulfill the functions of the office."</p> <p>Mr. Walsh commented that the removal for incapacity to fulfill the functions of the office would be better suited for a recall provision.</p>	<p>2/1/2016 Informal Meeting: On straw vote, Councillors unanimously agreed to add "by death, resignation, or otherwise" to Section 32.</p>	<p>unexpired term.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.)</p>	<p>shall succeed thereto for the unexpired term.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.)</p>

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		<p>Councillor Marc Morgan questioned whether a provision should be added that establishes a timetable for performance or for dereliction of duties.</p> <p>President Walsh remarked that the voters elected the Mayor and that they can remove him/her at the next election if the Mayor is derelict in his/her duties, adding that there could be constitutional issues by having the City Council determine what constitutes "dereliction of duty."</p> <p>On straw vote, Councillors unanimously agreed to add "by death, resignation, or otherwise" to Section 32.</p>			
<p>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</p>	<p>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.</p>	<p>5/26/2015 Informal Meeting: Councillor Graves suggested that the Section should be stricken, since the Solicitor opined that it violates state law. The Council agreed to strike the Section.</p>	<p>The Council agreed to strike the Section.</p>		<p>SECTION 6. Said charter is hereby further amended by striking out section 33 in its entirety.</p>

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<p>association, or solicits or takes part in the making of the contract.</p> <p>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.</p>					
<p>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).</p>	<p>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.</p>	<p><u>5/26/2015 Informal Meeting</u> The Council agreed that the Section is obsolete, as it is addressed under Massachusetts Procurement Law.</p>	<p>The Council agreed to strike the Section</p>		<p>SECTION 7. Said charter is hereby further amended by striking out section 34 in its entirety.</p>
<p>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</p>	<p>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</p>		<p>No changes recommended.</p>		

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<p>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.)</p>	<p>provisions of M.G.L. c. 30B.</p>				
<p>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.</p>	<p>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.</p>		<p>No changes recommended.</p>		
<p>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</p>	<p>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.</p>		<p>No changes recommended.</p>		

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<p>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).</p>					
<p>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.</p>	<p>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.</p>		<p>No changes recommended.</p>		
<p>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.</p>	<p>SECTION 39 There is nothing in Section 39 that is, per se, unlawful or obsolete.</p>		<p>No changes recommended.</p>		
<p>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</p>	<p>SECTION 40 There is nothing in Section 40 that is, per se, unlawful or obsolete.</p>		<p>No changes recommended.</p>		

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<p>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.</p>					
<p>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.</p>	<p>SECTION 41 There is nothing in Section 41 that is, per se, unlawful or obsolete.</p>		<p>No changes recommended.</p>		
<p>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.</p>	<p>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.</p>	<p>5/26/2015 Informal Meeting: Councillor Graves suggested that the Law Department provide language to revise the Section. President Walsh added that revised language be drafted the removes the obsolete portions and amends the remainder to comply with State law.</p> <p>2/1/2016 Informal Meeting: President Walsh noted the City Solicitor's recommendation that the first sentence be stricken and to leave the remainder of the Section.</p> <p>Councillor James Boone noted that the School Committee operates by Robert's Rules of Order which addresses open meetings and executive sessions.</p> <p>Mr. Walsh recommended that the Council support the City Solicitor's recommendation.</p> <p>On straw vote, Councillors unanimously agreed to strike the first sentence.</p>	<p>5/26/2015 Informal Meeting: Seek language to revise the section to remove the obsolete portions and amend the remainder to comply with State law.</p> <p>2/1/2016 Informal Meeting: On straw vote, Councillors unanimously agreed to strike the first sentence.</p>	<p>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 in private. 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.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>	<p>5/26/2015 Informal Meeting: President Walsh suggested that language be added to clarify the definition of the term "vacancy," as mentioned under Sections 23 and 32. The Council agreed to add language.</p> <p>2/1/2016 Informal Meeting:</p>	<p>5/26/2015 Informal Meeting: Add language to clarify the definition of the term "vacancy," as mentioned under Sections 23 and 32.</p> <p>2/1/2016 Informal Meeting:</p>	<p>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 city council</p>	<p>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 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</p>

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		<p>President Walsh suggested that language be inserted that would obligate members of the School Committee to take the oath of office, as the Mayor and City Councillors are required by Section 23 of the Charter.</p> <p>Councillor Paul Tassone recommended that the Section be amended to change the manner by which a School Committee vacancy is filled. He suggested that the next highest vote getter in the most recent election be named to fill the position. He noted that the process to fill a vacancy would be quicker than by a joint convention.</p> <p>On straw vote, the Council agreed to seek language that would incorporate "by death, resignation, or otherwise" as reasons for a vacancy; obligating members of the School Committee to take the oath of office under Section 23; that the next highest vote getter in the most recent municipal election be named to fill a vacancy; and, that a period of time be established for a person elected to the School Committee to take the oath of office.</p>	<p>On straw vote, the Council agreed to seek language that would incorporate "by death, resignation, or otherwise" as reasons for a vacancy; obligating members of the School Committee to take the oath of office under Section 23; that the next highest vote getter in the most recent municipal election be named to fill a vacancy; and, that a period of time be established for a person elected to the School Committee to take the oath of office.</p>	<p>and 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.</p>	<p>administered, in the presence of the city council and 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.</p>
<p>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.</p>	<p>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 <i>Opinion of the Justices to the House of Representatives</i>, 422 Mass. 1212 (1996).</p>		<p>No changes recommended.</p>		
<p>SECTION 45. Signatures to initiative petitions</p>	<p>SECTION 45</p>				

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<p>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.</p> <p>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.</p> <p>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.</p>	<p>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.</p>		<p>No changes recommended.</p>		
<p>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 –</p> <ol style="list-style-type: none"> 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 	<p>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.</p>	<p>5/26/2015 Informal Meeting: The Council agreed to request that the Solicitor prepare a revision to the Section so that it conforms to the Statute.</p> <p>2/1/2016 Informal Meeting: President Walsh cited the City Solicitor's recommendation that the words "twenty per cent" in the first sentence be changed to "fifteen per cent" in order to comply with State law and that subsection 2 be amended by inserting language to establish the election process.</p> <p>Solicitor's Recommended Change: SECTION 46. 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</p>	<p>5/26/2015 Informal Meeting: Revise section to conform to the Statute.</p> <p>2/1/2016 Informal Meeting: No further changes were recommended.</p>	<p>SECTION 46. 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 -</p> <ol style="list-style-type: none"> 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 	<p>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 -</p> <ol style="list-style-type: none"> 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.

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election.		<p>voters that the petition has been signed by the required percentage of registered voters, either -</p> <ol style="list-style-type: none"> 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. <p>Councillor Scott Graves questioned the City Solicitor's use of the words "date of the qualification" in subsection 2, as opposed to the Charter's current language that reads "date of the certificate of the registrars of voters." He also questioned the application and/or interpretation of the word "either" immediately before subsections 1 and 2, suggesting that the word be replaced with the words "or in the alternative."</p>		the voters at such approaching 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,	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	5/26/2015 Informal Meeting: The Council agreed to request that the Solicitor prepare a revision to the Section so that it conforms to the Statute. 2/1/2016 Informal Meeting: Councillors agreed with the City	5/26/2015 Informal Meeting: Revise section to conform to the Statute. 2/1/2016 Informal Meeting: Councillors agreed with the City	SECTION 47. If an initiative petition be signed by 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	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 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

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<p>shall be submitted by the city council to a vote of the registered voters of the city at the next regular city election.</p>	<p>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.</p>	<p>Solicitor's recommendation to replace the words "twenty per cent" to "fifteen per cent" in Section 47 and replace the words "city council" with "city clerk."</p>	<p>Solicitor's recommendation to replace the words "twenty per cent" to "fifteen per cent" in Section 47 and replace the words "city council" with "city clerk."</p>	<p>alteration, shall be submitted by the city clerk to a vote of the registered voters of the city at the next regular city election.</p>	<p>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.</p>
<p>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 of 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.</p> <p>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</p>	<p>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.</p>	<p>5/26/2015 Informal Meeting: Councillor Vance suggested that the Section be stricken, since the Solicitor cited its "superfluosness." He added that if people want to know the history of the Charter, "that it what libraries are for." On straw vote, the Council agreed to retain the Section.</p>	<p>No changes recommended.</p>		

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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 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.		No changes recommended.		
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 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.		No changes recommended.		
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 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.	5/26/2015 Informal Meeting: The Council agreed to strike the Section in its entirety since the Solicitor determined that it is "unlawful."	The Council agreed to strike the Section in its entirety since the Solicitor determined that it is "unlawful."		SECTION 12. Said charter is hereby further amended by striking out section 51 in its entirety.

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<p>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.</p> <p>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.</p>	<p>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.</p>		No changes recommended.		
<p>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).</p>	<p>SECTION 53 Section 53 is largely historical in nature and is, therefore, obsolete.</p>		No changes recommended.		