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CITY OF GARDNER
MASSACHUSETTS 01440-2630

OFFICE OF THE
CITY COUNCIL



CITY OF GARDNER

NOTICE OF PUBLIC COMMENT

The City Council is soliciting public comment on a Home Rule Petition to amend the Charter of the City of Gardner. The Petition proposes to amend Sections 9, 12, 23, 31, 32, 33, 34, 42, 43, 46, 47, and 51 of the Charter. The complete Petition is available on the City Council's website at www.gardner-ma.gov/324/City-Council, or in the City Clerk's Office, Room 121, City Hall and at Levi Heywood Memorial Library, 55 West Lynde Street. Written comments on the proposed amendments may be submitted by mail to: City Clerk, 95 Pleasant Street, Room 121, Gardner, MA 01440, by fax to: 978-630-2589 or by e-mail to: aagnelli@gardner-ma.gov. The deadline for submission of public comment is the close of business on Wednesday, December 14, 2016.

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

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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.

CHARTER

FOR THE

CITY OF GARDNER

MASSACHUSETTS



As Amended to November 8, 1989

CHARTER

FOR THE

CITY OF GARDNER

MASSACHUSETTS

As Amended to November 8, 1989

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

AN ACT TO INCORPORATE THE CITY OF GARDNER

Be it enacted, etc., as follows:

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

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

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

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

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

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

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

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

CERTIFICATE OF APPOINTMENT

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

Mayor.

Or the following form, as the case may be:

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

Mayor.

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

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

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

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

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

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

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

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

STATEMENT OF CANDIDATE

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

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

(Signed)

Commonwealth of Massachusetts

Worcester, SS

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

(Signed)

Justice of the Peace or (Notary Public)

My Commission Expires

PETITION ACCOMPANYING STATEMENT OF CANDIDATE

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

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

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

OFFICIAL PRELIMINARY BALLOT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 25. The city council may at any time request from the mayor specific information upon any municipal matter within its jurisdiction, and may request his presence to answer

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

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

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

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

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

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

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

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

SECTION 30. Every order, ordinance, resolution and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it he shall sign it; if he disapproves it he shall return it, with his objections in writing, to the city council, which shall enter his objections at large on its records, and again consider it. If the city council, notwithstanding such disapproval of the mayor, shall again pass such order, ordinance, resolution or vote by a two thirds vote of all the members of the

city council, it shall then be in force, but such vote shall not be taken for seven days after its return to the city council. Every such order, ordinance, resolution or vote shall be in force if it is not returned by the mayor within ten days after it was presented to him. This section shall not apply to budgets submitted under section thirty-two of chapter forty-four of the General Laws or to appropriations by the city council under section thirty-three of said chapter.

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

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

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

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

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

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

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

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

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

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

SECTION 35. All contracts made by any department, board or commission in which the amount involved is one thousand dollars or more shall be in writing, and no such contract shall be deemed to have been made or executed until the approval of the mayor and of the department or board making the contract is affixed thereto. Any contract made as aforesaid may be required to be accompanied by a bond with sureties satisfactory to the board of officials having the matter in charge, or by a deposit of money, certified check or other security conditioned on the faithful performance thereof, and such bonds or other securities shall be deposited with the city treasurer until the contract has in all respects been carried out; and no such contract shall be altered except by a written agreement of the contractor, the sureties on his bond, and the officer, department or board making the contract, with the approval of the mayor affixed thereto. (Section 35 is given as amended by Chapter 191 of the Acts of 1960, section 2.)

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

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

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

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

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

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

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

SECTION 42. All meetings of the school committee shall be open to the public, except that when requested by not less than four members of the committee, any particular meeting shall

be private. The vote on any particular measure shall be by the call of yeas and nays, when it is so requested by not less than two members of the committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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