

MAINE STATE LEGISLATURE

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ORDER S. P. 205

N I N E T Y - F I R S T L E G I S L A T U R E

Legislative Document

No. 424

H. P. 759

House of Representatives, February 10, 1943.

Referred to Committee on Legal Affairs. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Williams of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-THREE

AN ACT to Amend the Charter of the City of Auburn.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. P. & S. L., 1917, c. 201, Art. II, § 4, amended. Section 4 of Article II of chapter 201 of the private and special laws of 1917, is hereby repealed and the following enacted in place thereof:

'Sec. 4. Regular meetings and qualifications. The council shall meet at the usual place for holding meetings, at 10 o'clock A. M. on the 1st Monday in January in the year 1944, and thereafter on the 1st Monday in October following the regular city election, at which time the mayor-elect and the councilmen-elect shall be sworn to the faithful discharge of their duties by a justice of the peace, or by the city clerk. Thereafter the council shall meet at such time and place as may be prescribed by ordinance or resolution except that it shall meet regularly twice each month.'

Sec. 2. P. & S. L., 1917, c. 201, Art. II, § 7, amended. Section 7 of Article II of chapter 201 of the private and special laws of 1917, as amended by section 3 of chapter 47 of the private and special laws of 1935,

and as amended by section 3 of chapter 24 of the private and special laws of 1941, is hereby further amended to read as follows:

'Sec. 7. Rules and procedure. The council shall keep a record of its proceedings and shall be the judge of the qualification and election of its own members. The council may determine its own rules of procedure and punish members for misconduct. The meetings of the council shall be open to the public. The council shall act only by **oral motion, or written ordinance, order or resolve, except that all acts by the council whereby funds of the city are appropriated or expended shall be by written ordinance, order or resolve**; and all ordinances, orders and resolves, except resolves making appropriations, shall be confined to one subject which shall be clearly expressed in the title. The appropriation resolves shall be confined to the subject of appropriations. No ordinance, **no order for the issue of serial bonds or notes**, and no appropriation resolve shall be passed until it has been read on 2 separate days, except when the requirement of a reading on 2 separate days has been dispensed with by a **4/5 yea or nay** vote of the voting members of the council. The yeas and nays shall be taken upon the passage of all ordinances and entered on the record of the proceedings of the council by the clerk. The yeas and nays shall be taken on the passage of any order or resolve when called for by any member of the council. Every ordinance shall require, on final passage, the affirmative vote of a majority of the voting members of the council. Every ordinance shall be published in full within 10 days after its final passage, **by posting a copy of the same in 2 public places in the city of Auburn, unless some other method of publication is provided by general law**, and shall take effect and be in force ~~after its approval by some justice of the supreme judicial court~~ **from and after the date of said publication.'**

Sec. 3. P. & S. L., 1917, c. 201, Art. III, § 3, amended. Section 3 of Article III of chapter 201 of the private and special laws of 1917 is hereby repealed and the following enacted in place thereof:

'Sec. 3. Powers and Duties. The mayor shall be, ex officio, a member of the superintending school committee, a member of the police pension commission, a member of the firemen pension commission, a trustee of the Auburn Water District, and a trustee of the Auburn Sewerage District. He shall preside at all meetings of the council but he shall have no veto and no vote except in case of a tie. He shall coordinate the functions of the several boards and commission of which he is a member as they relate to each other in the administration of the affairs of the city. He shall communicate, from time to time, to the council such information and rec-

commend such measures as the business and interests of the city may, in his opinion, require. He shall be recognized as the official head of the city for ceremonial purposes, and for all purposes of military law. He shall perform such other duties, as the council may impose, or as are conferred by the general laws of the state that are not inconsistent with his office or the provisions of this charter.'

Sec. 4. P. & S. L., 1917, c. 201, Art. IV, § 1, amended. Section 1 of Article IV of chapter 201 of the private and special laws of 1917 is hereby amended to read as follows:

'Sec. 1. Composition, eligibility, election, tenure of office, special provision. The superintending school committee shall consist of the mayor, ex officio, and 10 other members elected 2 from each ward by and from the inhabitants thereof. No person shall be ineligible to membership on the superintending school committee on account of sex. They shall hold office for a term of 4 years or until their successors are elected and qualified.

The 5 members of the superintending school committee, elected in ~~March, nineteen hundred and seventeen~~ **December, 1941**, for a term of ~~two~~ 4 years, shall continue in office under this charter until the 1st Monday in ~~January, nineteen hundred and nineteen~~ **October, 1945**, or until their successors are elected and qualified.'

Sec. 5. P. & S. L., 1917, c. 201, Art. IV, § 2, amended. Section 2 of Article IV of chapter 201 of the private and special laws of 1917 is hereby amended to read as follows:

'Sec. 2. Organization, qualification, quorum. The superintending school committee shall meet for organization on the 1st Monday in ~~January~~ **October** following the regular city election. The members-elect shall be sworn by a justice of the peace to the faithful discharge of their duties. A majority of the whole number to be elected shall be a quorum.'

Sec. 6. P. & S. L., 1917, c. 201, Art. V, § 1, amended. Section 1 of Article V of chapter 201 of the private and special laws of 1917 is hereby amended to read as follows:

'Sec. 1. Date of elections and procedure as to determining results. On the 2nd ~~Wednesday~~ **Monday** in ~~December~~ **September** in the year ~~nineteen hundred and seventeen~~ **1945**, and biennially thereafter, the qualified voters of each ward shall ballot for a mayor, a councilman, a member of the superintending school committee, a warden and a ward clerk; all the votes

cast for the several officers shall be sorted, counted, declared and registered in open ward meeting, by causing the names of the persons voted for and the number of votes given for each to be written on the ward record at length. The ward clerk shall forthwith deliver to the persons elected warden and ward clerk certification of their election, and shall forthwith deliver to the city clerk a certified copy of the record of such election.

~~In the year nineteen hundred and seventeen, the board of aldermen, and thereafter~~ Thereafterwards, the city council shall, as soon as conveniently may be, examine the copies of the records of the several wards certified as aforesaid, and shall cause the persons who shall have been elected mayor, councilmen, and members of the superintending school committee to be notified in writing of their election; but if it shall appear that no person shall have been elected to any office, or if the person elected shall refuse to accept the office, warrants for another election shall be issued forthwith. At any election, the person receiving the highest number of votes for an office shall be deemed and declared elected to such office.'

Sec. 7. P. & S. L., 1917, c. 201, Art. V, § 2, amended. Section 2 of Article V of chapter 201 of the private and special laws of 1917 is hereby amended to read as follows:

'Sec. 2. Warden and ward clerk; eligibility, tenure, qualification, powers and duties, vacancies; ward meetings; how called. The warden and the ward clerk chosen as provided in the preceding section shall be residents of the wards for which they are elected, and shall hold their offices for 2 years from the 1st Monday in ~~January~~ **October** following the regular city election, or until others have been chosen and qualified in their stead, **except that the wardens and ward clerks chosen at the regular city election for the year 1943 shall hold their offices from the 1st Monday in January, thereafter, until the 1st Monday in October in the year 1945 or until others shall have been chosen and qualified in their stead;** the warden and the ward clerk shall be sworn to the faithful performance of their duties by the person presiding in the ward meeting, or by the clerk thereof, and a certificate of such oath shall be entered by the clerk on the records of said ward. The warden shall preside at all ward meetings with the powers of moderators of town meetings, and if, at any meeting, the warden shall not be present, the clerk of the ward shall call the meeting to order and preside until a warden pro tempore shall be chosen. If neither the warden nor the clerk shall be present, any legal voter in the ward shall preside until a clerk pro tempore shall be chosen and qualified. The clerk shall record all the proceedings and certify the votes given, and deliver over to

his successor in office all such records and journals together with all documents and papers held by him in the capacity of clerk. All ward meetings shall be notified and called by the city council in the manner provided in the laws of this state for notifying ~~and calling~~ town meetings by the selectmen of the several towns.'

Sec. 8. P. & S. L., 1917, c. 201, Art. VI, § 1, amended. Section 1 of Article VI of chapter 201 of the private and special laws of 1917, as amended by section 4 of chapter 47 of the private and special laws of 1935, and as amended by section 1 of chapter 69 of the private and special laws of 1939, and as amended by section 1 of chapter 24 of the private and special laws of 1941, is hereby repealed and the following enacted in place thereof:

'**Sec. 1. Enumeration.** There shall be the following administrative officers and boards:

(a) The following officers and board shall be appointed by ballot by a majority of the voting members of the council at the meeting for organization of the council following the regular city election or as soon thereafter as may be, who shall hold office for a term of 2 years unless herein otherwise specified: city manager, clerk, city solicitor, treasurer, tax collector, auditor, assessors of taxes as provided in section 10 of Article VI of the charter of said city of Auburn, and a health officer for 3 years, subject to the approval of the state commissioner of health and welfare. Said health officer shall appoint plumbing inspectors for a term of 1 year subject to the approval of said commissioner as now provided by general law.

(b) The following officers and boards shall be appointed by the city manager: city engineer, superintendent of streets, wire inspector, inspector of buildings, sealer of weights and measures, city physician, police matron and all other department heads whose positions may be, from time to time, created by ordinances. Upon recommendation of heads of departments, he shall appoint all minor officers and employees.

(c) In the event any office shall become vacant during the term specified herein due to the death, resignation or removal of any official, appointed under paragraph (a) hereof then the council by a majority vote of the voting members thereof, shall appoint a successor for the balance of said unexpired term.'

Sec. 9. P. & S. L., 1917, c. 201, Art. VI, § 2, amended. Section 2 of Article VI of chapter 201 of the private and special laws of 1917 is hereby amended to read as follows:

'Sec. 2. Scope of ordinance or resolve. The council shall have power by ordinance or resolve:

- (a) To create any new appointive office.
- (b) To assign, or authorize the city manager to assign, the duties of 2 or more offices to one officer, **except that the duties of 2 or more officers shall not be assigned to one officer when said duties are incompatible by nature or by law.**
- (c) To divide the duties of any office between 2 or more offices.
- (d) To authorize the appointment of assistants or deputies in any office.'

Sec. 10. P. & S. L., 1917, c. 201, Art. VI, § 3, amended. Section 3 of Article VI of chapter 201 of the private and special laws of 1917, as amended by section 2 of chapter 69 of the private and special laws of 1939, is hereby repealed and the following enacted in place thereof:

'Sec. 3. Civil service commission. The civil service commission shall consist of 3 members, who shall hold no other elective or appointive office under this charter, who shall be appointed by the mayor, to serve for a term of 3 years, except that at the first appointment under this charter one shall be appointed for 1 year, one for 2 years, and one for 3 years, and thereafter, one shall be appointed each year. The commission shall have the following powers and duties:

(1) The commission shall supervise and control, under this charter, the selection for appointment and promotion, lay-off, reinstatement, suspension, and removal of the members of the police department, fire department, city marshal, city electrician, and the chief of the fire department. The commission shall examine all applicants for appointment as city marshal, city electrician, chief of the fire department, policemen or firemen.

(2) All appointments to the office of city marshal, chief of the fire department and city electrician shall be made by the city manager from the eligible list prepared by the civil service commission. At the request of the city manager, the commission shall submit 3 names for each vacancy.

Appointments to offices of chief of fire department, city marshal and city electrician, shall be during good behavior, and shall terminate when the appointee shall have attained his 65th birthday.

(3) All appointments to the police and fire departments, except the chief of the fire department and city marshal, shall be made by the chief or marshal of the respective department subject to the approval of the city

manager from the eligible list prepared by the civil service commission. At the request of the appointing officer, the commission shall submit 3 names for one vacancy; 4 names for two vacancies; 5 names for three vacancies; 6 names for four vacancies; and 7 names for five vacancies, provided that if there be an insufficient number of candidates on the eligible list, the commission shall present the names of such candidates as it has available.

Appointments to either department will be for a probationary period of 6 months. All appointments as regular members of the police department or the fire department shall be made from those who have been so examined.

(4) (a) Any applicant for the appointment of city marshal, chief of the fire department, or city electrician, must be a registered voter who has domiciled in the city of Auburn for at least 3 years prior to the date of filing his application.

(b) Applicants for the position of chief of the police department, chief of the fire department, or city electrician, shall, at the time of their application and appointment, be physically fit and in good health, and shall be not less than 30 years of age, nor more than 65 years of age.

(c) The burden of proof of good character shall in all cases be upon the applicant, who may be required to furnish evidence in addition to the certificates required in his application.

(d) The commission may exclude from examination, refuse to certify as eligible or remove from the eligible list upon sufficient evidence of the following conditions:

1. Dismissal of the applicant from public service or his resignation pending charges.
2. Criminal, infamous, dishonest, immoral or bad conduct of character.
3. The knowingly making of a materially false statement by any person in the application or in his examination and any connivance by him at any materially false statement made in any accompanying certificates, or the commission of or attempt to commit any fraud against service rules during or after examination.

(e) No final action shall be taken by the commission under this rule without giving the person affected an opportunity to be heard.

(5) Applicants for appointment to the fire department shall be not less

than 5 feet 5½ inches in height and weigh not less than 130 pounds and shall be not less than 21 years of age or not over 34 years of age. Applicants for appointment to the call force shall be not less than 21 years of age and not more than 40 years of age.

Applicants for appointment in the fire department who have been serving as call men for not less than 2 years prior to their application may be appointed to the permanent force of the fire department if not over 36 years of age.

Applicants for appointment to the police department shall be not less than 5 feet 8 inches in height and weigh not less than 140 pounds and shall be not less than 21 years of age and not over 30 years of age.

(6) Applications shall be under oath and on blank forms prescribed by the commission and shall be accompanied by certifications or other satisfactory evidence as to character, health and physical conditions, as the commission may require.

Applications shall be filed in the office of the city clerk at the city hall. The city clerk shall forward to the chairman of the civil service commission all applications filed. No applicant will be examined unless the application has been filed, together with such physical examination report as the commission may require, at least 10 days prior to the date of any examination of the police or fire departments.

Any person who has taken an examination may make new application for the same service, and his status shall be determined by the result of the last examination taken.

The applications shall expire at the end of 1 year from the date of the last examination.

Application shall be in the following form:

**APPLICATION FOR APPOINTMENT ON THE POLICE OR FIRE
DEPARTMENT OF THE CITY OF AUBURN**

If application is for appointment to police force, strike out words referring to fire department. If application is for appointment to fire department, strike out words referring to police force.

The applicant will answer the following questions in his own handwriting, date and subscribe the same, and return to the city clerk:

1. When were you born?

2. Are you married?
3. Where were you born and where have you lived since your birth?
4. If you are a naturalized citizen, when and where were you naturalized?
5. How long have you lived continuously in Auburn?
6. In what ward, street and number do you now live?
7. What is your present occupation, and what has it been for the past 2 years?
8. What is your height?
9. What is your weight?
10. Do you use intoxicating liquors?
11. Are you a veteran of any war? If so, give details of service.
12. Have you ever been arrested, convicted or ordered to appear in court, either in this state or elsewhere, for violation of any law? If so, give details in full.
13. Have you ever been upon any fire or police force? If so, when, where and how long?
14. If you once belonged to any fire or police force, why did you leave it?
15. What is the present state of your health? Have you ever suffered any severe sickness? If so, when and what was its character? Have you a regular physician, and if so, whom?

Dated this day of A. D. 19

.....

Applicant

Subscribed and sworn to by said on the day and year before written.

Before me,

.....

Notary Public-Justice of the Peace.

Reference 1.

1. Is the applicant related to you?

2. Has the applicant ever been in your employ?
3. Would you employ him if the opportunity offered?
4. Has the applicant to your knowledge ever used intoxicating liquors, stimulants or narcotic drugs?
5. Do you know if the applicant has ever been arrested, convicted or ordered into court, either in this state or elsewhere, for the violation of any law?
6. I have known the applicant herein mentioned for the period
..... and I have observed his conduct during the period so stated, and found him to be honest, sober, of good character, civil in manner and behavior, that I know nothing to his prejudice and recommend him as a fit person to be a patrolman for the city of Auburn.

Reference 2.

(same as above)

Each applicant shall file with his application a certificate from some reputable physician showing the results of a thorough physical examination, and no examination shall be given the applicant by the civil service commission until such certificate is filed with the commission.

The commission may at any time order a further physical examination, if they deem it proper.

(7) The examination is designed to test the physical, moral and mental qualifications of candidates, including an inquiry into their strength, activity, power or endurance, courage, self-control, judgment, willingness to obey, disposition, quickness of comprehension, manners, bearing, accuracy of perception, thought and expression, promptness, capacity and willingness to learn. The results of each examination shall be filed with the city clerk not later than 30 days after the date of the examination.

(8) After the examinations, the commission shall grade the applicants for each department and shall make and keep separate eligible lists for each department.

(9) Promotion from one grade to another in the police and fire departments shall be made by the chief of the respective departments but no person shall be eligible for promotion until he shall have served at least 12 months in the lower grade.

(10) Any member of the department may be demoted, suspended or

removed for just cause and for reasons specifically given in writing to such members within 24 hours of his demotion, suspension or removal. Sickness or other physical incapacity of sufficient severity to permanently render any member of either of said departments physically unfit to ever adequately perform the duties of his office shall be considered as cause for removal but in every such case such officer shall be entitled to an honorable discharge.

The demotion, removal or suspension of the chief or deputy chief of the fire department, city marshal, and city electrician, shall be by the city manager. A copy of the action taken with reasons therefor shall be forwarded to the civil service commission by the city manager. These officers shall have the right of appeal within 5 days to the civil service commission who shall grant a hearing within 15 days from date of appeal and the accused member shall have right of representation by counsel. The action of the civil service commission shall be final.

Demotion, removal or suspension of other officers shall be by the chief subject to approval by the city manager. If such action is confirmed by the city manager the accused member shall have right of appeal as in the case of the chief or deputy chief, city marshal and city electrician.

The commission may make its own rules for the conduct of hearings before it, and may put witnesses on oath.

The commission may, in event that it deems any charges made frivolous and without justification, recommend to the city council the payment of reasonable counsel and witness fees incurred by any member of the police or fire department in the defense of such frivolous and unjustified charges.

(11) Emergency appointments may be made at any time as provided in the first paragraph hereof for appointments, whenever the city manager shall determine that an emergency exists. All appointments made under this provision shall be for the period of the emergency only, the city manager having the right to determine when the emergency has ended.

(12) Every member of either of said departments whose position falls within the requirements of civil service as herein provided shall have a tenure of office which shall continue during good behavior until he attains the age of 65 years subject only to the right of removal for cause as hereinbefore provided.

Every member of the police and fire departments whose position is subject to civil service under the foregoing provisions of this section shall be

automatically retired from service in said department when he attains the age of 65 years.

(13) The commission shall meet on call of the chairman at the city council chamber in the city building.'

Sec. 11. P. & S. L., 1917, c. 201, Art. VI, § 4, amended. Section 4 of Article VI of chapter 201 of the private and special laws of 1917 is hereby amended to read as follows:

'Sec. 4. Appointive officers; tenure, removal. All appointive officers and boards, whose terms are not specified in this charter shall hold office at the pleasure of the appointing power, ~~except that the city manager, in case the city council proceeds to remove him, after six months of service, may demand and be entitled to written charges and a public hearing before the council, upon the question, prior to the date of his removal, but pending such hearing the council may suspend him from office.~~ Appointive officers and boards whose terms are specified in this charter, may be removed by the council upon written charges, of which the accused shall have notice, and after a public hearing on the same at which the accused may be present and be heard thereon.'

Sec. 12. P. & S. L., 1917, c. 201, Art. VI, § 11, amended. Section 11 of Article VI of chapter 201 of the private and special laws of 1917 is hereby repealed and the following enacted in place thereof:

'Sec. 11. City planning board. The city manager, the chief of the fire department, and the superintendent of streets shall be, ex officio, members of and constitute the planning board.'

Sec. 13. P. & S. L., 1917, c. 201, Art. VI, § 12, amended. Section 12 of Article VI of chapter 201 of the private and special laws of 1917, as amended by section 5 of chapter 47 of the private and special laws of 1933, is hereby repealed and the following enacted in place thereof:

'Sec. 12. Powers and duties of planning board. It shall be the duty of the city planning board to consider and report upon the designs and their relation to the city plan, of all new public ways, lands, buildings, bridges and all other public places and structures, of additions to and alterations in those already existing, and of the layout or plotting of new subdivisions of the city. All acts of the council or of any other branch of the city government affecting the city plan shall be submitted to the board for report and recommendation.

Any matter referred by the council to the board shall be acted upon by

the board within 15 days of the date of reference unless a longer or shorter period is specified by the council.'

Sec. 14. P. & S. L., 1917, c. 201, Art. VI, § 3, repealed. Section 13 of Article VI of chapter 201 of the private and special laws of 1917, as amended by section 6 of chapter 47 of the private and special laws of 1935, is hereby repealed.

Sec. 15. P. & S. L., 1917, c. 201, Art. VII, § 5, amended. Section 5 of Article VII of chapter 201 of the private and special laws of 1917 is hereby amended to read as follows:

'Sec. 5. Annual appropriation resolve. Not later than 1 month after the beginning of the fiscal year the council shall pass an annual appropriation resolve, which shall be based on the budget submitted by the city manager, **said annual appropriation resolve shall be itemized for each department in at least the following 5 subdivisions: (a) Salaries and Wages; (b) Other Services; (c) Supplies and Materials; (d) Fixed Charges; and (e) Capital Outlay.**

The total amount appropriated shall not exceed the estimated revenue of the city.

Before the annual appropriation resolve has been passed, the council may make appropriations for current departmental expenses, chargeable to the appropriations of the year when passed, to an amount sufficient to cover the necessary expenses of the various departments until the annual appropriation resolve is in force.'

Sec. 16. P. & S. L., 1917, c. 201, Art. VII, § 14, amended. Section 14 of Article VII of chapter 201 of the private and special laws of 1917 is hereby amended as follows:

'Sec. 14. Purchasing agent; powers and duties; city manager to act temporarily. The purchasing agent shall purchase all supplies for the city and for the several officers and boards thereof, ~~except supplies for the schools which he shall purchase only.~~ **Purchases of supplies for the schools shall be made by the purchasing agent** upon requisition by the superintending school committee.

The purchasing agent shall see to the delivery of supplies to each department and take and file receipts therefor. He shall conduct all sales of property unfit or unnecessary for the city's use, after such sales have been authorized by the council.

The city manager shall act as purchasing agent until the council by ordinance shall provide for the appointment of a purchasing agent.'

Sec. 17. P. & S. L., 1917, c. 201, Art. VII, additional. Article VII of chapter 201 of the private and special laws of 1917 is hereby amended by adding thereto a new section to be known as section 15.

'Sec. 15. Purchases of supplies to be upon bid; exceptions. All supplies costing \$50 or more purchased for the city and the several officers and boards thereof, including the overseers of the poor, excepting supplies purchased for the superintending school committee, and supplies for emergency purposes, shall be purchased upon sealed bid. The purchasing agent shall maintain a list of all suppliers desiring to receive invitations to bid; suppliers shall be entitled to listing upon written application to the purchasing agent, and shall retain said listing until they shall have failed to bid on 3 consecutive invitations. All invitations to bid shall specify, so far as possible, the kind and quality of the supplies upon which bids are requested, and shall reserve the right to reject any and all bids. If any bid is accepted, it shall be that of the lowest reputable bidder offering to supply the best comparable quality merchandise, material or equipment.'

Sec. 18. P. & S. L., 1917, c. 201, Art. VII, additional. Article VII of chapter 201 of the private and special laws of 1917 is hereby amended by adding thereto a new section to be known as section 16.

'Sec. 16. Fiscal year. Beginning in the year 1945, the fiscal year of the city shall commence on the 1st day of April and end on the 31st day of March of each year.'

Sec. 19. Referendum. This act shall take effect 90 days after the adjournment of this legislature only for the purpose of permitting its acceptance or rejection by the legal voters of the city of Auburn at the next general election therein, or at a special state election, or at any prior city election notified and called by the mayor and council, in the manner prescribed by the charter of said city of Auburn.

The question proposed on said ballot shall be substantially in the following form:

"Shall an act passed by the legislature in the year 1943, entitled, 'An Act to Amend the Charter of the City of Auburn', be accepted?" Otherwise said ballot shall be in form provided by law when a constitutional amendment is submitted to the vote of the people.

If a majority of the qualified voters of the city, present and voting, vote in favor of the acceptance of this act, it shall become operative. The city clerk shall forthwith file with the secretary of state a certificate of the action of the voters thereon.