

HOUSE No. 4944

By Ms. Polito of Shrewsbury, petition (accompanied by bill, House, No. 4944) of Karyn E. Polito and others (by vote of the town) relative to the town manager in the town of Westborough. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

PETITION OF:

Karyn E. Polito
Paul J. P. Loscocco
George N. Peterson, Jr.

Pamela P. Resor

In the Year Two Thousand and Eight.

AN ACT RELATIVE TO THE TOWN MANAGER IN THE TOWN OF WESTBOROUGH

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

SECTION 1. The charter of the town of Westborough, 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 is hereby amended by striking out Articles 3, 4, 5, 6 and 7 and inserting place thereof the following 5 articles.

ARTICLE 3

Elected Officials

Section 3-1 General Provisions

(a) Elected Offices - The offices to be filled by ballot of the whole Town shall be a Board of Selectmen, a Moderator, a School Committee, a

Housing Authority, a Planning Board, the Town Clerk, the Trustees of the Public Library, and such members of regional authorities or districts as may be established by statute, interlocal agreement, or otherwise.

(*99ATM voted to change Town Treasurer/elected to Town Treasurer/Collector/appointed - see Section 3-2(d) Special Act approved by Legislature July 8, 1999).

(b) Eligibility - Any voter shall be eligible to hold any elective Town office; but no person shall at the same time serve in more than one elected office, as defined in Section 3-1(a).

(c) Election - The regular elections for Town offices shall be held annually on such date as may from time to time be fixed in the Bylaws of the Town.

Section 3-2 Selectmen: Composition, Term of Office, Compensation, Powers and Duties, Etc.

(a) Composition, Term of Office - There shall be a Board of Selectmen consisting of *five(5) members elected by the voters for terms of three years each, so arranged that the term of office of as nearly an equal number of members as is possible shall expire each year. *

(* Approved by 91 ATM Added by Chap. 381 of the Acts of 1991 accepted by vote of Annual Town Election 1992).

(b) Compensation - The Selectmen shall receive for their services such compensation as may annually be provided for that purpose by appropriation.

(c) Powers and Duties in General - The executive powers of the Town shall be vested in the Board of Selectmen, and may be exercised by them jointly or through the Town agencies and offices under their general supervision and control. As chief executive officers of the Town, the Board of Selectmen is responsible for any aspect of the Town's government that is not granted to another elected Officer, Board, Commission, or Committee. The Board of Selectmen shall cause the laws and orders for the government of the Town to be enforced and shall cause a record of all their official acts to be kept and for that purpose and to aid them in their official duties, they shall have a Town Manager.

(d) Appointments - The Board of Selectmen shall appoint the following:

- Key Personnel of the Town (as defined in Section 5-2 (a) of this Charter),
- Other personnel of the Town (as defined in Section 5-2 of this Charter),
- Town boards, commissions, or committees for which Section 5-2 of this Charter has explicitly designated the Board of Selectmen as the appointing authority, and
- Any other Town boards, commissions, or committees, special or standing, permanent or ad hoc as may from time to time be established by the Board or by Town Meeting unless another

appointing authority is specified in the Town Meeting action or in this Charter.

(e) Investigations - The Board of Selectmen may make investigations or may authorize the Town Manager to investigate the affairs of the Town and the conduct of any Town department, office, or agency including any doubtful claims against the Town. The report of the results of such investigation shall be placed on file in the Office of the Board of Selectmen and a report summarizing the results of such investigation shall be printed in the next annual Town Report.

(f) *Eligibility - I. Notwithstanding any general or special law to the contrary, a person employed by the Town of Westborough shall not be eligible to hold the office of Selectman in the Town of Westborough while so employed.

2. An employee holding the office of Selectman in the Town of Westborough on the effective date of this Act may serve the remaining period of his term, but shall be ineligible for re-election while so employed.

3. This Act shall take effect upon its passage.

(* 2001ATM voted to add this section Special Act approved by Legislature Sept. 21, 2001).

Section 3-3 Moderator: Term of Office, Compensation Powers and Duties, Etc.

(a) Term of Office - At each Town election, at which the term of office expires, a Moderator shall be chosen by the voters for a term of three (3) years.

(b) Compensation - The Moderator shall receive for his services such compensation as may annually be provided for that purpose by appropriation.

(c) Powers and Duties - The Moderator shall have the powers and duties provided for that office by statute, by the Charter, by Bylaw and by other vote of the Town Meeting.

(d) Appointments - The Moderator shall appoint for fixed overlapping terms the following Boards or Committees as specified:

- All members of the Advisory Finance Committee,
- All members of the Personnel Board,
- Two (2) members of the Capital Expenditure Planning Committee, and
- Such other committees special or standing as may from time to time be established by Town Meeting with the Moderator as the appointing authority.

These appointments shall be made such that the terms of office of as nearly an equal number of members shall expire each year.

Section 3-4 School Committee: Composition, Term of Office, Powers and Duties, etc.

(a) Composition, Term of Office - There shall be a School Committee consisting

of five (5) members elected by the voters for three year terms so arranged that the terms of office of as nearly an equal number of members expire each year as possible.

(b) Compensation - School Committee members shall serve without salary.

(c) Powers and Duties - The School Committee shall have all of the powers and duties school committees may have under the Constitution and General Laws of the Commonwealth, and it shall have such additional powers and duties as may be authorized by the Charter or Bylaw.

Section 3-5 Housing Authority: Composition, Term of Office, Powers & Duties, Etc.

(a) Composition, Term of Office - There shall be a Housing Authority consisting of five (5) members four (4) elected by the voters and one (1) appointed by the Commissioner of Community Affairs of the Commonwealth for five (5) year overlapping terms such that the term of office of one (1) member shall expire each year.

(b) Powers and Duties - The Housing Authority shall have all of the powers and duties which such authorities may have under the General Laws.

Section 3-6 Planning Board: Composition, Term of Office, Powers and Duties, Etc.

(a) Composition, Term of Office - There shall be a Planning Board consisting of five (5) members elected by the voters for five (5) year terms so arranged that the terms of office of as nearly an equal number of members expire each year as is possible.

(b) Powers and Duties - The Planning Board shall have all of the powers and duties planning boards may have under the Constitution and Laws of the Commonwealth. The Board may also exercise such additional powers and duties as may from time to time be assigned to them by the Charter, by Bylaw, or by other vote of the Town Meeting.

(c) Appointments - The Planning Board shall appoint the following:

- Planning Board personnel (as defined in Section 5-2 of this Charter) and
- Town boards, commissions, or committees for which Section 5-2 of this Charter has explicitly designated the Planning Board as the appointing authority.

Section 3-7 Town Clerk: Term of Office, Powers and Duties, etc.

(a) Term of Office - There shall be a Town Clerk elected by the voters for a term of three (3) years.

(b) Powers and Duties - The Town Clerk shall have all the powers and duties town clerks may have under the Constitution and laws of the Commonwealth. The Clerk may also exercise such additional powers and duties as may from

time to time be assigned to the Clerk by the Charter, by Bylaw or by other vote of the Town Meeting.

[Section 3-8 Town Treasurer: Terms of Office. Powers and Duties, etc.- DELETED (99ATM voted to change to appointed Treasurer-Collector- See Section 3-1 (a)]

Section 3-9 Board of Library Trustees: Composition, Term of Office, Powers and Duties, Etc.

(a) Composition, Term of Office - There shall be a Board of Library Trustees consisting of nine (9) members elected by the voters for three (3) year terms so arranged that the terms of three (3) members shall expire each year.

(b) Powers and Duties - The Board of Library Trustees shall have custody and management of the Public Library, and of all property of the Town relating thereto.

(c) Appointments - The Board of Library Trustees shall appoint the following:

- Library personnel (as defined in Section 5-2 of this Charter).

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Section 4-1 Appointment, Qualifications, Term

The Board of Selectmen shall appoint a Town Manager for an indefinite term, not to exceed three (3) years, and fix his compensation within the amount appropriated by the Town. The Town Manager shall be appointed solely on the basis of his executive and administrative qualifications. He shall be especially fitted by education, training, and experience to perform the duties of the office.

*The Town Manager need not be a resident of the Town or the Commonwealth at the time of his appointment, but must establish residence in Westborough or in a town contiguous to Westborough within one year following the date of appointment. Failure to establish such residence shall be deemed to be a resignation from the office of the Town Manager. *

(* Amended by Chapter 254 of the Acts of 1989 approved by Town Meeting on March 18, 1989; Special Act approved by Legislature July 19, 1989*).

He shall not have served as a member of the Board of Selectmen for at least eighteen (18) months prior to his appointment. He shall be bonded by a surety company and the cost of said bond shall be borne by the Town. He shall devote full time to the office and shall not hold any other public office, elective or appointive, nor engage in any other business or occupation during his term, unless such action is approved in advance in writing by the Board of Selectmen. The Town may from time to time by Bylaw establish such additional qualifications as seem necessary and appropriate.

Section 4-2 Powers and Duties

The Town Manager shall be the chief administrative officer of the Town and shall be responsible to the Board of Selectmen for the administration of all Town affairs placed in his charge by or under the Charter. He shall have the following powers and duties:

(a) The Town Manager shall appoint the following:

- Town boards, commissions, or committees, and other town personnel for which Section 5-2 of this Charter has explicitly designated the Town Manager as the appointing authority,
- Members of other Town boards, commissions, or committees and other personnel for which the Board of Selectmen, Town By-Law, or Town Meeting action has directed the Town Manager to act as appointing authority as long as that appointing authority does not contradict an appointing authority designated in this charter, and
- The members of any advisory committee formed by the Town Manager as allowed in the Town's Organization Plan (as described in Section 5-2 of this charter).

These appointments shall become effective on the fifteenth day following the day notice of the appointment is filed with the Board of Selectmen unless the Board of Selectmen shall within that period by a majority of all of its members vote to reject the said appointment.

Furthermore, he shall participate fully in the duties and obligations of the Town Manager as described in the Town's Organization Plan described in Section 5-2 of this charter.

(b) He shall direct and supervise the administration of all functions under his control.

(c) He shall administer the compensation and benefits of all Town officers and employees appointed by him, within the limits established by appropriations and by Town Bylaws as set by the Salary Administration Plan.

(d) He shall attend all regular and special meetings of the Board of Selectmen, unless excused at his own request, and shall have a voice, but no vote, in all of its discussions. (e) He shall attend all sessions of the open Town Meeting and answer all questions directed to him by the voters of the Town which relate to his office.

(f) He shall see that all of the provisions of the General Laws, of the Charter, of the votes of the Town Meeting and votes of the Board of Selectmen, which require enforcement by him or officers subject to his direction and supervision, are faithfully carried out.

(g) He shall prepare and submit both the Annual Budget and capital outlay program as provided in Article 6.

(h) He shall be responsible for the keeping of full and complete records of the finances and administrative activities of the Town and shall render a full report to the Board of Selectmen at the end of each fiscal year and otherwise as they may require.

(i) He shall keep the Board of Selectmen informed as to the financial condition and needs of the Town and shall make such recommendations to the Board of Selectmen as he deems necessary or expedient.

(j) He shall have full jurisdiction over the rental and use of all Town facilities, except schools and libraries and lands held for conservation purposes. He shall be responsible for the maintenance and repair of all Town property, excluding school and library buildings, placed under his control by this Charter or Bylaws or State Statutes.

(k) He shall be responsible for the appointment, subject to the approval of the Board of Selectmen, of any necessary building and facilities committees having to do with the preparation of plans and supervision of work on all construction, reconstruction, alterations, improvements and other undertakings authorized by the Town, except schools and libraries.

(l) He may inquire at any time into the conduct of office of any officer or employee, or department, board or commission under his control.

(m) He shall keep a full and complete inventory of all property of the Town,

both real and personal within his jurisdiction.

(n) He shall negotiate, purchase, and service contracts involving any subject within his jurisdiction. These proposed contracts shall be subject to final approval and execution by the Board of Selectmen.

(o) He shall purchase or acquire all equipment, supplies, and services required by Town agencies under his control, and may make such purchases for agencies not under his control upon receipt of a proper requisition.

(p) He shall perform any other duties required by the Bylaws, the votes of Town Meeting, or the votes of the Board of Selectmen.

Section 4-3 Acting Town Manager (Temporary Absence)

By letter filed with the Town Clerk, the Town Manager shall designate a qualified Town administrative employee or officer to perform the routine duties of the Town Manager during his temporary absence and he shall have no appointive powers. During his absence, the Board of Selectmen may not revoke such designation until at least fifteen (15) days have elapsed, whereupon it may appoint another qualified Town administrative employee or officer to serve until the Town Manager shall return. If a letter has not been filed with the Town Clerk, the Board of Selectmen, by a majority vote, may appoint an Acting Town Manager to serve in the absence of the Town Manager. The time limit for the period of this appointment shall be sixty (60) days with a maximum of one extension.

Section 4-4 Removal

The Board of Selectmen may remove the Town Manager from office in accordance with the following procedure:

(a) The Board of Selectmen shall adopt a preliminary resolution of removal by the affirmative vote of a majority of all of its members, which must state the reasons or reason for removal. This preliminary resolution may suspend the Town Manager for a period not to exceed forty-five (45) days. A copy of the resolution shall be delivered to the Town Manager forthwith.

(b) Within five (5) days following delivery of the preliminary resolution, the Town Manager may request a public hearing by filing a written request for such a hearing with the Board of Selectmen. This hearing shall be held at a meeting of the Board of Selectmen not later than thirty (30) days after the request is filed nor earlier than twenty (20) days. The Town Manager may file a written statement in justification of his time in office with the Board of Selectmen, provided that the statement is received in their office more than forty-eight (48) hours in advance of the public hearing.

(c) The Board of Selectmen may adopt a final resolution of removal, which may be made effective immediately, by the affirmative vote of a majority of all of its members at any time after ten (10) days following the date of delivery of a copy of the preliminary resolution to the Town Manager, if he has not requested a public

hearing, or, any time after the public hearing if he has requested one. Within ten (10) days following their vote to make their resolution final but in no event later than forty-five (45) days from the date of adoption of the first resolution the Board' must, by majority vote of the full membership, either affirm or dismiss the final resolution of removal. Failure to affirm a final resolution of removal shall nullify the vote to dismiss the Town Manager. The Town Manager shall continue to receive his salary until the effective date of a final resolution of removal. The action of the Board of Selectmen in suspending or removing the Town Manager shall be final. It is the intention of this provision to vest all authority and fix all responsibility for such suspension or removal in the Board of Selectmen.

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Administra
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Section 5-1 Creation of Departments, Divisions, Agencies and Offices

The organization or reorganization of the Town into operating departments, divisions, offices, and agencies may be accomplished in the following manner subject to the express prohibitions in State Statute and the provisions of the Charter:

- (a) Bylaws - The Town Meeting may, by Bylaw, reorganize, consolidate, or abolish any Town agency, in whole or in part; establish such new Town agencies as it deems necessary or advisable, and prescribe the functions of all such entities.
- (b) Organization Plan - The Board of Selectmen, after consultations with the Town Manager, may from time to time prepare and submit to the Town Meeting, plans of organization which establish operating divisions for the orderly, efficient, or convenient conduct of the business of the Town.
- (c) Whenever the Board of Selectmen prepares such a plan, it shall hold one or more public hearings on the proposal giving notice by publication in a newspaper of general circulation in the Town at least seven (7) days prior to the hearing. This notice shall describe the scope of the proposal and the time and place at which the hearing will be held. Following such public hearing, the Board of Selectmen shall submit to the Town Meeting by a warrant article, their proposal which may have been amended subsequent to the public hearing. To

the extent any such plan contains features that conflict with this Charter, the warrant articles must include proposed Charter amendments such that this Charter will accurately reflect and allow the proposed change.

(d) An organization or reorganization plan shall become effective at the expiration of thirty (30) days following the action of the Town Meeting. Section 5-2 Organization Plan: Appointing Authorities

Elected officials are responsible for determining and evaluating the policies, priorities, and programs of their respective departments and are also responsible for the effective administration, management, and operation of their respective departments within Town Government.

The Town's Organization Plan recognizes that the elected officials will often rely on the work of other commissions, committees, groups, and employees to accomplish their responsibilities.

Section 5-2 (a) Elected Officials: Appointing Boards, Commissions, and Committees All Elected Officials and Boards (as designated in Section 3 of this charter) may appoint committees to gather, provide, or otherwise report on information of interest to the Official or Board unless a different appointing authority is specified in this charter or in the Town's By-Laws.

As chief executive officers of the Town, the Board of Selectmen is the appointing authority for and shall appoint, for fixed overlapping terms, the members of the following Boards, Commissions, and Committees:

- Zoning Board of Appeals,
- Conservation Commission,
- Recreation Commission,
- Country Club Operating Committee,
- Representative to the Capital Expenditure Planning Committee,
- Council on Aging,
- Chapter 61A Study Committee,
- Emergency Planning Committee,
- Historical Commission,
- Housing Partnership Committee,
- MBTA Advisory Board,
- Open Space Preservation Committee,
- Central Massachusetts Regional Planning Commission (Westborough members),
- Westborough/Shrewsbury Wastewater Treatment Plant Board (Westborough members),
- Water Resources Management Committee,

- Trustees of Soldiers' Memorials,
- Veterans Advisory Board,
- Walkup-Robinson Fund Committee,
- Sandra Pond/Conservation Area Wardens,
- Youth Commission (known as Westborough Youth and Family Services),
- Westborough Cultural Council,
- Industrial Development Commission, and
- Westborough TV, Inc (independent non-profit - town representatives).

Those members of the Insurance Advisory Committee to be appointed by the Town shall be appointed by the Board of Selectmen, in accordance with M.G.L. c. 32B Section 3.

In accordance with its planning functions, the Planning Board is the appointing authority for the following Board:

- Design Review Board

Section 5-2 (b) Elected Officials: Appointing Town Employees

The elected officials and Boards shall appoint employees to manage and perform duties for their respective departments in the following manner:

- Board of Selectmen: The Board of Selectmen shall appoint the following department heads (known as "Key Personnel") for terms not to exceed three (3) years, except for the Fire Chief who shall be appointed for an indefinite term (M.G.L. c. 48, § 42-44):
 - The Town Manager (as defined in Section 4-1 of this charter),
 - The Town Counsel,
 - The Police Chief,
 - The Fire Chief, and
 - The Department of Public Works (DPW) Manager.

[Note: The classification of a Town employee as a Key Personnel is for purposes of determining the appointing authority and the appointment process. It is not intended to have any effect on compensation, benefits, privileges, term, renewals of term, job description, responsibilities, authority, duties or performance.]

The Board of Selectmen shall also appoint the following:

- Police Officers upon nomination by the Police Chief,
- Police Dispatchers upon nomination by the Police Chief,
- Election Officials, for fixed terms, upon nomination by the Town Clerk, and

- Registrars of Voters, for fixed overlapping terms, upon nomination by the Town Clerk.

The Board of Selectmen, in consultation with the Town Manager, shall appoint the Animal Control Officer for a fixed term and shall nominate for appointment, in accordance with M.G.L. c. 140 § 151, the Animal Inspector.

- Housing Authority:

The Housing Authority shall appoint its department head: the Director of the Housing Authority. The Housing Authority may appoint other employees of the Housing Authority or, with express written consent, may delegate such appointments to the Director of the Housing Authority.

- Planning Board:

The Planning Board shall appoint its Department Head: the Town Planner. The Planning Board may appoint other employees of the Planning Department or, with express written consent, may delegate such appointments to the Town Planner.

- Town Clerk:

The Town Clerk acts as a Department Head and shall appoint all employees in the Town Clerk's department. The Town Clerk shall nominate candidates for Election Officials and Registrars of Voters to the Board of Selectmen.
Board of Library Trustees:

The Board of Library Trustees shall appoint its Department Head: the Library Director. The Board of Trustees may appoint other employees of the Town's Library department or, with express written consent, may delegate such appointments to the Library Director.

Section 5-2 (c) Boards, Commissions, or Committees Appointed by the Board of Selectmen: Appointing Town Employees

Any board, commission, or committee appointed by the Board of Selectmen that has a Department Head shall appoint their Department Head and any assistant(s) to the Department Head with the concurrence of the Town Manager.

Other employees of such departments are appointed by the respective Department Head.

Section 5-2 (d) Appointed Key Personnel: Appointing Town Employees

The Town's Key Personnel are responsible for managing and operating their respective department. The Key Personnel are granted significant authority to appoint the employees in their respective department in the following manner:

- The Town Manager shall appoint, for fixed terms, the following positions with the concurrence of the Board of Selectmen:
 - Any Assistant Town Manager,
 - The Chief Assessor,
 - Town Accountant,
 - Treasurer/Collector,
 - Commissioners of Trust Funds, and
 - Veterans' Agent/Director of Veterans' Services/Burial Agent/Graves Officer

- The Town Manager shall appoint, for fixed terms, the following positions:
 - Building Commissioner,
 - Zoning Enforcement Officer,
 - Building Inspector(s),
 - MIS/GIS Director,
 - Wiring Inspector(s),
 - Plumbing and Gas Inspector(s),
 - Affirmative Action Officer,
 - Sexual Harassment Officer,
 - Constable(s),
 - Fence Viewer,
 - Insect & Pest Control Officer,
 - Measurer of Wood,
 - Municipal Hearings Officer,
 - Sealer of Weights and Measures, and
 - Weight Masters at Tate & Lyle.

- The Police Chief shall nominate candidates for the positions of Police Officers and Police Dispatchers to the Board of Selectmen. The Police Chief shall appoint all other employees of the Police Department.

- The Fire Chief shall appoint all employees of the Fire Department.

- The Department of Public Works Manager shall appoint all employees of the Department of Public Works.

- The Town Counsel shall appoint any employees of the Town's Legal

Department.

Section 5-2 (e) Town Manager: Appointing Administrative Boards, Commissions, and Committees

As the chief administrative officer of the town, the Town Manager shall appoint, for fixed overlapping terms, the members of the following Boards, Commissions, and Committees:

- Board of Assessors,
- Board of Health,
- Municipal Building Committee, and
- Disability Affairs Committee.

The determination of whether a particular Board, Commission or Committee is primarily related to the Administration of the Town shall be determined by the Board of Selectmen unless the Board, Commission, or Committee is specifically listed in this Section 5 .2 (e) of the Town's Charter.

Section 5-3 Organization Plan: Processes

This section further documents the processes that shall be used to implement the Town's Organization Plan.

Section 5-3 (a) Determination of Key Personnel

The addition or deletion of positions from the list of Key Personnel specified in Section 5-2 (b) may be enacted by the Town Meeting adoption of a warrant article that modifies Section 5-2 (b).

Section 5-3 (b) Use of Search Committees

The process of appointing Key Personnel shall incorporate the use of a Search Committee except in the case of a reappointment.

The Town Manager shall be a member of any Search Committee for Town Counsel, Police Chief, Fire Chief, or Department of Public Works Manager.

Appointing authorities may specify the use of a Search Committee for other town employees in their respective departments.

Where no specific search committee process is prescribed by state statute, this Charter, the Town's By-Laws, or action of the Town Meeting, the search committee process shall be determined by the appointing authority.

Section 5-3 (c) Town-Wide Management Team

As chief administrative officer of the Town, the Town Manager shall lead the town-wide management team consisting of the Town's Key Personnel and the head of each town department.

- (1) Regardless of how appointed, the head of each town department shall be considered a member of the Town Manager's management team for the purpose of assuring common town personnel, financial, administrative

and technology use practices, and for the purpose of fostering effective communications among town departments.

(2) The Town Manager shall participate in the performance review process of the Town's Key Personnel and shall provide evaluative comments to the Chairman of the Board of Selectmen during this process.

(3) The Town Manager shall provide evaluative comments to the appointing authority of each department head for use in the respective performance review process.

Section 5-3 (d) Town Appointment Processes

(1) Precedence of Appointing Authority. In cases where: (a) State statute prescribes an appointing authority or appointing process, or where: (b) the Town has accepted a State statute covering any appointments or positions mentioned in this Charter and that statute prescribes an appointment process for that appointment or provision, the state appointing process shall control.

(2) Filling vacancies: Key Personnel and Department Heads. All vacancies for any Key Personnel or Department Head position shall be filled in the manner as prescribed for its initial appointment. However, the Appointing Authority may appoint an acting Key Personnel or Department Head for up to a total of four, 3 month periods (for a maximum of one year). In cases where the appointment of the permanent position requires the concurrence of another body or officer, such body or officer must concur with the appointment of any acting Key Personnel or Department Head. Any such temporary appointment by the Appointing Authority shall cease upon the proper and complete filling of the vacancy by the prescribed method.

Section 5-3 (e) Processes Related to Boards, Commissions, and Committees

(1) Appointing Authority for new Boards, Commissions, and Committees. Boards, Commissions and Committees created by the Board of Selectmen shall be appointed in one of two ways, depending on the primary nature of the board, commission, or committee. Members of bodies that are primarily of a policy making nature shall be appointed by the Board of Selectmen. Members of bodies that are primarily of an administrative nature shall be appointed by the Town Manager.

(1-1) With regard to any board, commission, or committee newly created by the Board of Selectmen, the determination of the

appointing authority shall be made by the Board of Selectmen unless and until Town Meeting action indicates a specific appointing authority.

- (2) Appointing Authority for Administrative Advisory Boards. The Town Manager may create and appoint ad hoc committees that are solely advisory to the Town Manager.
- (3) Filling Vacancies on Boards, Commissions, or Committees. Notwithstanding any contrary special or general law, all vacancies on any board, commission, or committee for permanent and temporary positions shall be filled in the same manner as prescribed for the initial appointment.

Section 5-4 Staffing Plan

The Town Manager shall cause to be prepared a plan establishing staffing requirements within the Town agencies created by administrative reorganization or by Bylaw, and it shall become effective within thirty (30) days following the date of Town Meeting action. To the extent any such staffing plan conflicts with this Charter, the warrant articles must include proposed Charter amendments so that such plan will conform to the Charter as so amended.

Section 5-5 Publication of Administrative Organization and Staffing Plan

For the convenience of the public, the administrative organization and any amendment thereto shall be printed as an appendix to, but not an integral part of, the Salary Administration Plan of the Town of Westborough.

Section 5-6 Merit Principle

All appointments and promotions of Town officers and employees shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence and suitability, such as past performance or seniority.

ARTICLE 6

Finance and Fiscal Procedures

Section 6-1 Fiscal Year

The fiscal year of the Town shall be as required by the General Laws.

Section 6-2 Submission of Budget and Budget Message

No less than ten(10) days before the end of the calendar year, or not less than ninety(90) days prior to the date of the start of the Annual Town Meeting, whichever is later, the Town Manager shall submit to the Board of Selectmen

and file with the Advisory Finance Committee and Capital Expenditures Planning Committee a proposed budget for the ensuing fiscal year with an accompanying budget message and supporting documents.

Section 6-3 Budget Message

The message of the Town Manager shall explain the budget for all Town agencies, both in fiscal terms and in terms of work programs. It shall outline proposed financial policies of the Town for the ensuing fiscal year, describe important features of the budget, indicate any major variations from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the Town's debt position, and include other material as the Town Manager deems desirable, or the Board of Selectmen may require.

Section 6-4 The Budget

The budget shall provide a complete financial plan of all Town funds and activities, including the budget adopted by the School Committee for the ensuing year. Except for the school budget or as may be required by Statute or by the Charter, it shall be in the form which the Town Manager deems desirable or the Board of Selectmen may require.

In his presentation of the budget, the Town Manager shall utilize modern concepts of fiscal presentation so as to furnish maximum information and the best financial control. The Budget shall show in detail all estimated income from the proposed property tax levy and other sources and all proposed expenditures, including debt service for the following year. The budget shall be arranged to show the actual and estimated income and expenditures for the previous, current and ensuing fiscal years and shall indicate in separate sections:

- (a) Proposed expenditures for current operations during the ensuing fiscal year, detailed by agency and position in terms of work programs, and the method of financing such expenditures.
- (b) Proposed capital expenditures during the ensuing fiscal year, detailed by town agency, and the proposed method of financing each such capital expenditure; and
- (c) Estimated surplus revenue and free cash at the end of the current fiscal year, including estimated balances in any special accounts established for specific purposes.

Section 6-5 Action on the Budget

The Board of Selectmen, the Advisory Finance Committee, and the Capital Expenditures Planning Committee shall jointly hold one or more public hearings

o the proposed budget not less than fourteen(14) days prior to the Town Meeting session at which it is to be submitted for adoption. Copies of the proposed budget, the current capital improvement program provided for in Section 6-6, and the recommendations of the Advisory Finance Committee, if any, shall be made available for distribution to the public at or prior to the public hearing.

Section 6-6 Capital Improvement Program

The Town Manager shall submit a capital improvement program to the Board of Selectmen, the Advisory Finance Committee, and the Capital Expenditures Planning Committee at least one hundred twenty(120) days before the start of each fiscal year. It shall be based on material prepared by the Capital Expenditures Planning Committee, including:

- (a) a clear, concise general summary of its contents;
- (b) a list of all capital improvements proposed to be undertaken during the next ensuing five(5) years, with supporting information as to the need for each such capital improvement;
- (c) the cost estimates, methods of financing, and recommended time schedules for each improvement; and
- (d) the estimated annual cost of operating and maintaining each facility and piece of major equipment involved. This information is to be annually revised by the Capital Expenditures Planning Committee with regard to the capital improvements still pending or in the process of being acquired, improved, or constructed.

The **Capital Expenditures Planning Committee** shall be composed of the Town Treasurer/ Collector*; one member of the Advisory Finance Committee, appointed by and from it; one member of the Planning Board, appointed by and from it; one of the Selectmen, appointed by and from their Board; and three(3) additional members shall initially be appointed for terms of not over three(3) years so that they expire in successive years. Thereafter, the three appointments by the Moderator shall be for a three(3) year term. Vacancies shall be filled for the unexpired terms and in the manner of the original appointments.

(*Changed from "Treasurer" 99ATM)

Section 6-7 Financial Public Records

Statements summarizing the budget and the capital improvements program and related warrant articles as adopted by the Town Meetings shall be made available at the Office of the Town Manager for examination by the public not more than twenty (20) days following their adoption.

ARTICLE 7
General Provision

Section 7-1 Elections

The articles in the warrant for every Town Meeting, as far as they relate to the election of the Board of Selectmen, School Committee, Moderator, other Town officers, to referenda and all other matters to be acted upon and determined by ballot shall be acted upon and determined by the voters in their respective precincts.

The regular Town elections shall be taken on official ballots without party or political designation on the date fixed in the Bylaws of the Town.

Section 7-2 Charter Changes

The Charter may be replaced, revised, or amended in accordance with the procedures made available by Article LXXXIX of the amendments to the State Constitution and any legislation enacted to implement the said amendment.

Section 7-3 Severability

The provisions of the Charter are severable. If any provision of the Charter is held invalid, the other provisions of the Charter shall not be affected thereby. If the application of the Charter or any of its provisions to any person or circumstance is held invalid, the application of the Charter and its provisions to other persons and circumstances shall not be affected thereby.

Section 7-4 Specific Provisions Shall Prevail

To the extent that any specific provision of the Charter shall conflict with any provision expressed in general terms, the specific provisions shall prevail.

Section 7-5 Rules and Regulations

A copy of all rules and regulations adopted by a Town agency shall be filed in the Office of the Town Clerk and made available for review by any person who requests such information. Such rules and regulations shall not become effective until ten(10) days following the date they are so filed.

Section 7-6 Publication of Bylaws

Copies of the Bylaws shall be made available for distribution, provided, however, that a charge not exceed the actual cost per copy of reproduction may be charged.

Section 7-7 Procedures

(a) Meetings - All multiple-member bodies of the Town, whether elected or appointed or otherwise constituted, shall meet regularly at such times and places within the Town as they may prescribe. Special meetings of any multiple-member body shall be held on the call of the respective chairman or by one-third of the members thereof by suitable written notice delivered to the residence or place of business of each member at least twenty-four(24) hours in advance of the time set. A copy of the said notice shall also be posted on the Town bulletin board(s). Special meetings of any multiple-member body shall also be called within one(1) week after the date of the filing with the Town Clerk of a petition signed by at least fifty(50) voters and which states the purpose or purposes for which the meeting is to be called.

All meetings of all multiple-member bodies shall be open and public; however, the multiple-member body may recess for the purpose of discussing in a closed or executive session limited to its own membership, but including the Town Manager or the Superintendent of Schools as appropriate, except when his conduct of office is to be discussed, any matter which would tend to defame or prejudice the character or reputation of any person which would affect the public security, or which might have direct fiscal effect on the Town, provided that the general subject matter for consideration is expressed in the motion calling for such session and that final action on the matter is not taken until the multiple-member body has come back into formal session; provided, however, that if the taking of such votes would defeat the lawful purpose of such executive session they may be taken in the said executive session and may remain secret so long as their publication would defeat the lawful purpose of such executive session, but no longer.

(b) Agenda - Except in a case of a special emergency, at least twenty four(24) hours before any meeting of a multiple-member body is to be held, a rough agenda shall be posted on the Town Hall bulletin board. The multiple-member body may change agenda at free will by majority vote. Any person may request audience with any Board. The Board is required to hold audience with this person before adjournment.

(c) Rules and Journal - Each multiple-member body shall determine its own rules and order of business unless otherwise provided by the Charter or Bylaw, and shall provide for keeping a journal of its proceedings. Those rules and journals shall be a public record kept available in a place convenient to the public at all times.

(d) Voting - Except on procedural matters, all votes of all multiple-member bodies shall be taken by a call of the roll and the ayes and nays shall be recorded in the journal provided, however, that if the vote is unanimous, only that fact need be recorded.

(e) Quorum - A majority of the members of the multiple-member body shall constitute a quorum, but a small number may adjourn. No other action of the multiple-member body shall be valid or binding unless ratified by the affirmative vote of the majority of the full multiple-member body.

Section 7-8 Removals and Suspensions

Any Town employee, except the Town Manager, involved in administrative or technical operation of the Town, not subject to the provisions of the State Civil Service Law, whether appointed for a fixed or an indefinite term, may be suspended or removed from office by the appointing authority for good cause. The term cause shall include, but not be limited to the following: incapacity other than temporary illness, inefficiency, insubordination, and conduct unbecoming the office.

Any appointed officer or employee of the Town may be suspended from office by the appointing authority if such action is deemed by them necessary to protect the interests of the Town. However, no suspension shall be for more than fifteen (15) days. Suspension may be co-terminus with removal and shall not interfere with the right of the officer or employee under the removal procedure given below.

The appointing authority, when removing any such officer or employee, shall act in accordance with the following procedure:

(a) A written notice of the intent to remove and a statement of the cause or causes therefore shall be delivered by registered mail to the last known address of the person sought to be removed.

(b) Within five(5) days following delivery of such notice the officer or employee may request a public hearing before the Personnel Board at which he may be represented by counsel, shall be entitled to present evidence, call witness, and to question any witness appearing at the hearing.

(c) Between one(1) and ten(10) days after the public hearing is adjourned, or if the officer or employee fails to request a public hearing between six(6) and fifteen(15) days following delivery of the notice of the intent to remove, the appointing authority shall take final action, either removing the officer or employee or notifying him that the notice is rescinded.

Nothing in this Section shall be construed as granting a right to such a hearing when a person who has been appointed for a fixed term is not re-appointed when his original term expires.

Section 7-9 References to General Laws

All references to the General Laws contained in the Charter refer to the General Laws of the Commonwealth of Massachusetts and are intended to include any amendments or revisions to such Chapters and Sections, or to the corresponding Chapters and Sections of any rearrangement of the General Laws enacted subsequent to the adoption of the Charter.

Section 7-10 Computation of Time

In computing time under the Charter, of seven(7) days or less, "days" shall refer to secular days and shall not include Sundays or legal holidays, state and federal. If more than seven(7) days, then every day shall be counted.

Section 7-11 Definitions

Unless another meaning is clearly apparent from the manner in which the word is used, the following words as used in the Charter shall have the following meanings:

(a) Charter - The word "Charter" shall mean this Charter and any amendments to it made through any of the methods provided under Article LXXXIX of the amendments to the State Constitution.

- (b) Town - The Word "Town" shall mean the Town of Westborough.
- (c) Town Agency - The words "town agency" shall mean any board, commission, committee, department or office of the Town of Westborough.
- (d) Voters - The word "voters" shall mean registered voters of the Town of Westborough.
- (e) Multiple-Member Body - The words "multiple-member body" shall mean every board, commission, committee, sub- committee of the Town government however elected or appointed or otherwise constituted.

Section 7-12 Independent Audit

In the event that the Commonwealth fails in any fiscal year to provide for the independent audit of all records and accounts of the Town, the Board of Selectmen may provide for such audits. The audits may be made by a certified public accountant, or firm of such accountants, who have no personal interests, direct or indirect, in the fiscal affairs of the Town government or any of its officers.