

HOUSE No. 4049

[LOCAL APPROVAL RECEIVED.]

The Commonwealth of Massachusetts

PRESENTED BY:

Paul K. Frost, Michael O. Moore

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to the charter in the Town of Auburn.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Paul K. Frost	7th Worcester
Michael O. Moore	Second Worcester

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE CHARTER IN THE TOWN OF AUBURN.

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

1 **SECTION 1.** The charter of the town of Auburn which is on file in the office of archivist of the
2 commonwealth, as provided in section 12 of chapter 43B of the General Laws, is hereby amended by
3 striking out section 3.01 and inserting in place thereof the following section:-

4 Section 3.01 Selectmen

5 There shall be a board of selectmen consisting of 5 elected members who shall be compensated in
6 such manner, as the town meeting shall determine. The selectmen who hold office at the time of the
7 adoption of this charter shall continue to serve until their term of office expires. At each town election
8 thereafter, selectmen shall be elected for 3-year terms to succeed those selectmen whose terms of office
9 are expiring. A selectman may serve on not more than 1 appointive committee and shall hold no other
10 elective office or compensated employment under the government of the town of Auburn during the term
11 for which he is elected, nor any compensated appointive town office or employment for 1 year thereafter.

12 The selectmen shall have all powers and duties conferred upon them by the constitution and
13 general laws of the commonwealth and by this charter. The board of selectmen shall appoint and may
14 remove the town manager, the town accountant and the town counsel as hereinafter provided. The board

15 of selectmen shall vote to confirm or deny the appointment of any person designated by the town manager
16 to head any department of municipal government not otherwise provided for by this charter.

17 The selectmen, within 7 days after each annual town election, shall meet, elect a chairperson and
18 otherwise organize and shall fix the time and place of their regular meetings. They shall adopt their own
19 rules of procedure. Three members of the board of selectmen shall constitute a quorum, but no resolution
20 or vote, except a vote to adjourn or to fix the time and place of the next meeting, shall be adopted by less
21 than 3 affirmative votes.

22 **SECTION 2.** Said charter is hereby further amended by striking out section 3.04 and inserting in
23 place thereof the following section:-

24 Section 3.04 Other Elected Officials

25 Elected town officials who hold office at the time of the adoption of this charter shall continue to
26 serve until their terms of office expire. At each town election thereafter when the term of an incumbent
27 expires, except for those officials whose position is no longer designated as an elected position or as
28 otherwise provided by statute or by this charter, there shall be elected a town clerk for a term of 3 years
29 who shall be compensated and who shall appoint assistant town clerks.

30 Elected town officials who hold office at the time of the adoption of this charter shall continue to
31 serve until their terms of office expire. At each town election thereafter when the term of an incumbent
32 expires, except for those officials whose position is no longer designated as an elected position or as
33 otherwise provided by statute or by this charter, there shall be elected:

34 a town clerk for a term of 3 years who shall be compensated and who shall appoint
35 assistant town clerks;

36 members of the Southern Worcester Vocational School Committee for a term of 3 years; and

37 2 trustees of the Auburn Free Public Library for a term of 3 years, each of whom shall serve
38 without compensation except that they may be compensated for actual and necessary expenses
39 incurred in the performance of their official duties.

40 **SECTION 3.** Said charter is hereby further amended by striking out section 3.05 and inserting in
41 place thereof the following section:-

42 Section 3.05 Town Manager

43 (A) The selectmen shall appoint, as soon as practicable after the first town election following
44 adoption of this charter or after the occurrence of any vacancy in such office, for a term of 3 years, a town
45 manager who shall be a person especially fitted by education, training and experience to perform the
46 duties of the office. He need not be a resident of the town or of the commonwealth when appointed but
47 shall become a resident of the town within 12 months of such appointment; provided, however, that the
48 board of selectmen may waive this residency requirement by a vote of four-fifths of the full membership
49 of the board of selectmen. During the 12 months prior to his appointment, the town manager shall not
50 have held any elected office in the town of Auburn but such prohibition shall not include election to the
51 town meeting. The town manager shall be appointed without regard to his political beliefs. He may be
52 appointed for successive terms of office. Before entering upon the duties of the office, the town manager
53 shall be sworn to the faithful and impartial performance thereof by the chairperson of the board of
54 selectmen. He shall execute a bond in favor of town for the faithful performance of his duties in such
55 amount and with surety or sureties as may be fixed or approved by the selectmen.

56 (B) Pending the appointment of a town manager or the filling of a vacancy or during the temporary
57 disability of the town manager, the selectmen shall appoint a suitable person to perform the duties of the
58 office.

59 (C) The selectmen, by a majority vote of the full membership of the board, may remove the town
60 manager upon notice and hearing provided; however, that the non-renewal of any contract of employment
61 at the expiration thereof shall not be considered a removal subject to notice and hearing.

62 **SECTION 4.** Said charter is hereby further amended by striking out section 3.06, as amended by
63 chapter 116 of the acts of 1995, and inserting in place thereof the following section:-

64 Section 3.06 Powers and Duties of the Town Manager

65 In addition to the specific powers and duties provided in this charter, the town manager shall have
66 the general powers and duties enumerated in this section and such other powers and duties which the
67 board of selectmen shall determine:

68 (a) Except as otherwise provided by this charter and subject to the provisions of chapter 31 of the
69 General Laws and any other applicable laws, the town manager shall appoint upon merit and fitness alone
70 the head of each department, subject to the confirmation of such appointment by the board of selectmen,
71 and such other employees of the town as deemed necessary; provided, however, that the chief of the
72 police department shall appoint all police officers and officials pursuant to the provisions of said chapter
73 31 and shall administer the department, including making all rules and regulations dealing with all
74 department property, vehicles, firearms or other weapons, training and paid details and shall assign
75 officers as the chief deems in the best interest of the department and public safety. The chief of the fire
76 department shall appoint all firefighters and fire officials and shall administer the department pursuant to
77 section 42 of chapter 48 of the General Laws.

78 (b) The town manager shall supervise and direct the administration of all departments,
79 committees, boards and offices of the town, except those elected by the voters or appointed by the
80 selectmen, the moderator, or as otherwise provided by this charter. In accordance with this charter and
81 except as otherwise prohibited by the General Laws, the town manager may reorganize, consolidate or
82 abolish any department, commission, board or office under his direction and supervision in whole and in

83 part and may transfer the duties, powers and appropriation of 1 department, commission, board or office
84 to another. The town manager may establish such new departments, commissions, boards or offices, as
85 he deems necessary but subject to appropriation by the town meeting when such action by the town
86 manager shall require an increase in any appropriation voted by the town meeting. The powers described
87 in this subsection shall be known as a reorganization plan and any such reorganization plan shall be
88 accompanied by an explanatory message when submitted. No such reorganization shall be effective until
89 such action is approved or disapproved by vote of the board of selectmen; provided, however, that no
90 amendment to the reorganization plan as submitted shall be made by the board of selectmen.

91 (c) The town manager shall fix the compensation of all town officers and employees and
92 employees appointed by him subject to any applicable provisions of chapters 31 and 150E of the General
93 Laws.

94 (d) The town manager shall attend all regular and special meetings of the board of selectmen and
95 of the town meeting, except meetings at which his removal is being considered.

96 (e) The town manager shall keep full and complete records of his office and shall render, as often
97 as may be required by the board of selectmen, a full report of all operations during the period reported.

98 (f) The town manager shall keep the selectmen fully advised as to the needs of the town and shall
99 recommend to the selectmen for adoption such measures requiring action by them or by the town as he
100 may deem necessary or expedient.

101 (g) The town manager shall have overall jurisdiction over, and be responsible for, the planning,
102 construction, reconstruction, alteration, repair, improvement, use and rental of all town property except
103 the property under the jurisdiction of the school committee and except as otherwise specifically voted by
104 the town or provided by statute.

105 (h)The town manager shall be the chief procurement officer of the town, as that term is defined
106 under chapter 30B of the General Laws, except that the superintendent of schools shall be such officer for
107 the school department. The town manager shall purchase all supplies, materials and equipment and shall
108 award all contracts for all departments and activities of the town except as otherwise provided for by this
109 charter.

110 (i) The town manager shall administer, either directly or indirectly through a person or persons
111 appointed by him in accordance with this charter, all provisions of general and special laws applicable to
112 the town, all by-laws of the town and all regulations of the selectmen.

113 (j) With the approval of the board of selectmen, the town manager shall have the authority to
114 prosecute, defend and compromise any claim or litigation to which the town is a party, and to employ
115 special counsel whenever necessary.

116 (k) The town manager shall perform such other duties consistent with his office as may be
117 required by the by-laws or vote of the town or by vote of the board of selectmen.

118 (l) The town manager shall have access to all town books and papers for information necessary
119 for the proper performance of his duties and may, without notice, cause the affairs of any department or
120 activity under his control or the conduct of any officer or employee appointed by him to be examined.

121 (m) The town manager shall recommend for appointment to the board of selectmen the town
122 accountant and the town council.

123 (n) The town manager shall prepare and recommend an annual budget to the board of selectmen
124 and the finance committee.

125 **SECTION 5.** Said charter is hereby further amended by striking out section 3.07 and inserting in
126 place thereof the following 2 sections:-

127 Section 3.07 Other Appointed Officials

128 Appointed town officials who hold office at the time of the adoption of this charter shall continue
129 to serve until their term of office expires or until removed for cause. Thereafter, when the term of an
130 incumbent expires or an office is vacated for any cause, except as provided by statute or by this charter,
131 the town manager shall appoint such officials subject to paragraph (a) of section 3.06.

132 Each official appointed pursuant to this section shall, within 7 calendar days of his appointment,
133 be sworn to the faithful performance of his duties, ensure that such action is certified by the town clerk,
134 take office immediately upon being so sworn and hold such office until his successor is qualified, he is
135 removed for cause or by operation of law or until such office or position is abolished.

136 Each appointed official shall have all the powers and duties conferred by statute, this charter, by-
137 law, vote of the town or the appointing authority.

138 Any appointment to an appointive position which is made for the purpose of filling a vacancy due
139 to an unexpired term shall be for the duration of the unexpired term.

140 When any appointive board, commission, office or committee is abolished or consolidated, the
141 town manager shall issue a written directive to the appropriate person or persons relative to the
142 disposition of records, property and equipment.

143 Section 3.08. Limitations

144 No elected or appointed town officer, employee, board or committee shall engage, for official
145 town business, the service of any attorney or incur monetary obligations to any attorney, other than town
146 council appointed pursuant to the provisions of section 3.01, unless such engagement is authorized by the
147 town manager. This limitation shall not apply to the board of selectmen and shall not apply to any officer,
148 board or committee specifically authorized by the General Laws to retain the services of an attorney

149 provided that such officer, board or committee has a specific appropriation sufficient to pay for such
150 services.

151 **SECTION 6.** Said charter is hereby further amended by striking out section 4.01 and inserting in
152 place thereof the following section:-

153 Section 4.01 Establishment

154 In addition to a board of selectmen and a school committee as established in sections 3.01 and
155 3.02, there shall be the following boards, commissions and committees:-

- 156 (a) a board of assessors, composed of 3 members appointed by town manager;
- 157 (b) a board of health, composed of 3 members appointed by town manager;
- 158 (c) a board of cemetery commissioners composed of 3 members appointed by town manager;
- 159 (d) a planning board composed of 5 members appointed by town manager;
- 160 (e) a parks commission composed of 3 members appointed by town manager;
- 161 (f) a board of trustees of the Auburn free public library composed of 6 trustees elected by the voters;
- 162 (g) a board of sewer commissioners composed of 3 members appointed by town manager;
- 163 (h) a finance committee composed of 7 members appointed by the board of selectmen;
- 164 (i) a board of appeals composed of 5 members appointed by the board of selectmen;
- 165 (j) a board of registrars composed of 3 members appointed by the board of selectmen;
- 166 (k) a conservation commission composed of 7 members appointed by town manager;
- 167 (l) a historical commission composed of 7 members appointed by town manager;
- 168 (m) a council of on aging composed of 9 members appointed by town manager;
- 169 (n) an industrial development and finance authority composed of 5 members appointed by board of
170 selectmen; and

171 (o) such other boards, commissions and committees as may be required by statute, established by
172 town meeting or by the voters, or deemed necessary by the board of selectmen.

173 The members of each such board, committee or commission shall be appointed in accordance
174 with paragraph (a) of section 3.06; provided, however, that no person shall be eligible for appointment
175 who is not at the time of appointment a registered voter of the town and any person ceasing to be a
176 resident of, and voter in, the town shall thereupon cease to hold any appointment.

177 No board, commission or committee, except the representative town meeting, library trustees and
178 district committee shall be established with an even number of members. The terms of office of the
179 members of each permanent board or standing committee shall be so established as to provide
180 overlapping terms, with as nearly as possible equal numbers expiring each year.

181 **SECTION 7.** Said charter is hereby further amended by striking out section 4.02 and inserting in
182 place thereof the following section:-

183 Section 4.02 Administration

184 All town agencies shall be under the direction and supervision of elected or appointed officials.
185 Except for purposes of investigation, town officials shall deal with town employees solely through the
186 elected or appointed officials who direct or supervise such employees and may not give orders to such
187 employees either publicly or privately.

188 A majority of any board, commission or committee shall constitute a quorum.

189 **SECTION 8.** Said charter is hereby further amended by striking out section 7.04 and inserting in
190 place thereof the following section:-

191 Section 7.04 Severability

192 If any provision of this charter is held invalid, the other provisions of the charter shall not be
193 affected thereby. If the application of the charter or any of its provisions relating to any person or
194 circumstance is held invalid, the application of the charter and its provisions to other persons or
195 circumstances shall not be affected thereby.

196 **SECTION 9.** Said charter is hereby further amended by striking out section 7.05 and inserting in
197 place thereof the following section:-

198 Section 7.05 Existing Law

199 All laws, by-laws, votes, resolutions, rules and regulations or petitions thereof which are in force
200 in the town when any this charter or any amendment thereto takes effect, and which are consistent with
201 this charter or any amendment thereto, shall continue in full force and effect until rescinded or amended.

202 Elected town officials who hold office at the time of the adoption of this charter, or any
203 amendment thereto, shall continue to serve until their term of office expires or until removed for cause.

204 Notwithstanding any general or special law, by-law, vote, rule or regulation to the contrary,
205 insofar as the provisions of this charter, as amended, are inconsistent with the provisions of such general
206 or special law, by-law, vote, rule or regulation, the provisions of this charter, as amended shall be
207 controlling.

208 Notwithstanding any general or special law to the contrary, any town agency, board or
209 commission, the membership of which were originally appointed pursuant to general or special law, and
210 for which this charter or an amendment thereto provides for appointment thereto under paragraph (a) of
211 section 3.06 or section 4.01, shall continue as an agency, board or commission of the town, subject to this
212 charter, as amended.

213 **SECTION 10.** Said charter is hereby further amended by striking out section 7.06 and inserting
214 in place thereof the following section:-

215 Section 7.06 Transition

216 Nothing in this charter shall affect or impair the rights or privileges of persons who are town
217 officials or employees at the time it takes effect.

218 If, at the time this charter, or any amendment thereto, takes effect, a town official holds an office
219 or position in conflict with any provision of this charter, such official shall continue in his office or
220 position until the expiration of his elected or appointed term. If such official holds an appointive office of
221 an indefinite term, he shall serve until a successor is appointed by the appointing authority as specified by
222 this charter, but not later than 30 days following the next annual town election.

223 **SECTION 11.** This act shall be submitted for acceptance to the voters of the town of Auburn at
224 annual town meeting in the form of the following question which shall be placed on the official ballot to
225 be used for the election of town officers at said election: “Shall an act passed by the general court in the
226 year 2008 entitled ‘An Act Relative to the Charter of the Town of Auburn’ be accepted”? The town
227 counsel shall prepare a fair and concise summary of these amendments to the town charter, including a 1-
228 sentence statement describing the effect of a yes or no vote, and such summary shall also be placed on the
229 official ballot.

230 **SECTION 12.** Section 11 shall take effect upon its passage.

231 **SECTION 13.** Sections 1 to 10, inclusive, shall take effect 90 days following acceptance by a
232 majority of the registered voters of the town voting at the election specified in section 11, but not
233 otherwise.