

**HOUSE . . . . . No. 4049**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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  
2 of the commonwealth, as provided in section 12 of chapter 43B of the General Laws, is hereby  
3 amended by 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  
6 compensated in such manner, as the town meeting shall determine. The selectmen who hold  
7 office at the time of the adoption of this charter shall continue to serve until their term of office  
8 expires. At each town election thereafter, selectmen shall be elected for 3-year terms to succeed  
9 those selectmen whose terms of office are expiring. A selectman may serve on not more than 1  
10 appointive committee and shall hold no other elective office or compensated employment under  
11 the government of the town of Auburn during the term for which he is elected, nor any  
12 compensated appointive town office or employment for 1 year thereafter.

13           The selectmen shall have all powers and duties conferred upon them by the constitution  
14 and general laws of the commonwealth and by this charter. The board of selectmen shall appoint  
15 and may remove the town manager, the town accountant and the town counsel as hereinafter  
16 provided. The board of selectmen shall vote to confirm or deny the appointment of any person  
17 designated by the town manager to head any department of municipal government not otherwise  
18 provided for by this charter.

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

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

26           Section 3.04 Other Elected Officials

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

33           Elected town officials who hold office at the time of the adoption of this charter shall  
34 continue to serve until their terms of office expire. At each town election thereafter when the

35 term of an incumbent expires, except for those officials whose position is no longer designated as  
36 an elected position or as otherwise provided by statute or by this charter, there shall be elected:

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

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

40 and

41 2 trustees of the Auburn Free Public Library for a term of 3 years, each of whom shall  
42 serve without compensation except that they may be compensated for actual and necessary  
43 expenses incurred in the performance of their official duties.

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

46 Section 3.05 Town Manager

47 (A) The selectmen shall appoint, as soon as practicable after the first town election  
48 following adoption of this charter or after the occurrence of any vacancy in such office, for a  
49 term of 3 years, a town manager who shall be a person especially fitted by education, training  
50 and experience to perform the duties of the office. He need not be a resident of the town or of  
51 the commonwealth when appointed but shall become a resident of the town within 12 months of  
52 such appointment; provided, however, that the board of selectmen may waive this residency  
53 requirement by a vote of four-fifths of the full membership of the board of selectmen. During  
54 the 12 months prior to his appointment, the town manager shall not have held any elected office  
55 in the town of Auburn but such prohibition shall not include election to the town meeting. The

56 town manager shall be appointed without regard to his political beliefs. He may be appointed for  
57 successive terms of office. Before entering upon the duties of the office, the town manager shall  
58 be sworn to the faithful and impartial performance thereof by the chairperson of the board of  
59 selectmen. He shall execute a bond in favor of town for the faithful performance of his duties in  
60 such amount and with surety or sureties as may be fixed or approved by the selectmen.

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

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

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

70 Section 3.06 Powers and Duties of the Town Manager

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

74 (a) Except as otherwise provided by this charter and subject to the provisions of chapter  
75 31 of the General Laws and any other applicable laws, the town manager shall appoint upon  
76 merit and fitness alone the head of each department, subject to the confirmation of such

77 appointment by the board of selectmen, and such other employees of the town as deemed  
78 necessary; provided, however, that the chief of the police department shall appoint all police  
79 officers and officials pursuant to the provisions of said chapter 31 and shall administer the  
80 department, including making all rules and regulations dealing with all department property,  
81 vehicles, firearms or other weapons, training and paid details and shall assign officers as the  
82 chief deems in the best interest of the department and public safety. The chief of the fire  
83 department shall appoint all firefighters and fire officials and shall administer the department  
84 pursuant to section 42 of chapter 48 of the General Laws.

85 (b) The town manager shall supervise and direct the administration of all departments,  
86 committees, boards and offices of the town, except those elected by the voters or appointed by  
87 the selectmen, the moderator, or as otherwise provided by this charter. In accordance with this  
88 charter and except as otherwise prohibited by the General Laws, the town manager may  
89 reorganize, consolidate or abolish any department, commission, board or office under his  
90 direction and supervision in whole and in part and may transfer the duties, powers and  
91 appropriation of 1 department, commission, board or office to another. The town manager may  
92 establish such new departments, commissions, boards or offices, as he deems necessary but  
93 subject to appropriation by the town meeting when such action by the town manager shall  
94 require an increase in any appropriation voted by the town meeting. The powers described in  
95 this subsection shall be known as a reorganization plan and any such reorganization plan shall be  
96 accompanied by an explanatory message when submitted. No such reorganization shall be  
97 effective until such action is approved or disapproved by vote of the board of selectmen;  
98 provided, however, that no amendment to the reorganization plan as submitted shall be made by  
99 the board of selectmen.

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

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

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

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

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

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

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

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

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

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

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

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

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

138 Section 3.07 Other Appointed Officials

139 Appointed town officials who hold office at the time of the adoption of this charter shall  
140 continue to serve until their term of office expires or until removed for cause. Thereafter, when

141 the term of an incumbent expires or an office is vacated for any cause, except as provided by  
142 statute or by this charter, the town manager shall appoint such officials subject to paragraph (a)  
143 of section 3.06.

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

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

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

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

#### 156 Section 3.08. Limitations

157 No elected or appointed town officer, employee, board or committee shall engage, for  
158 official town business, the service of any attorney or incur monetary obligations to any attorney,  
159 other than town council appointed pursuant to the provisions of section 3.01, unless such  
160 engagement is authorized by the town manager. This limitation shall not apply to the board of  
161 selectmen and shall not apply to any officer, board or committee specifically authorized by the



162 General Laws to retain the services of an attorney provided that such officer, board or committee  
163 has a specific appropriation sufficient to pay for such services.

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

166 Section 4.01 Establishment

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

169 a board of assessors, composed of 3 members appointed by town manager;

170 a board of health, composed of 3 members appointed by town manager;

171 a board of cemetery commissioners composed of 3 members appointed by town manager;

172 a planning board composed of 5 members appointed by town manager;

173 a parks commission composed of 3 members appointed by town manager;

174 a board of trustees of the Auburn free public library composed of 6 trustees elected by the  
175 voters;

176 a board of sewer commissioners composed of 3 members appointed by town manager;

177 (h) a finance committee composed of 7 members appointed by the board of selectmen;

178 (i) a board of appeals composed of 5 members appointed by the board of selectmen;

179 (j) a board of registrars composed of 3 members appointed by the board of selectmen;

180 (k) a conservation commission composed of 7 members appointed by town manager;

181 (l) a historical commission composed of 7 members appointed by town manager;

182 (m) a council of on aging composed of 9 members appointed by town manager;

183 (n) an industrial development and finance authority composed of 5 members appointed  
184 by board of selectmen; and

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

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

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

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

198 Section 4.02 Administration

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

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

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

206 Section 7.04 Severability

207 If any provision of this charter is held invalid, the other provisions of the charter shall not  
208 be affected thereby. If the application of the charter or any of its provisions relating to any  
209 person or circumstance is held invalid, the application of the charter and its provisions to other  
210 persons or circumstances shall not be affected thereby.

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

213 Section 7.05 Existing Law

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

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

221 Notwithstanding any general or special law, by-law, vote, rule or regulation to the  
222 contrary, insofar as the provisions of this charter, as amended, are inconsistent with the  
223 provisions of such general or special law, by-law, vote, rule or regulation, the provisions of this  
224 charter, as amended shall be controlling.

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

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

232 Section 7.06 Transition

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

235 If, at the time this charter, or any amendment thereto, takes effect, a town official holds  
236 an office or position in conflict with any provision of this charter, such official shall continue in  
237 his office or position until the expiration of his elected or appointed term. If such official holds  
238 an appointive office of an indefinite term, he shall serve until a successor is appointed by the

239 appointing authority as specified by this charter, but not later than 30 days following the next  
240 annual town election.

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

248 SECTION 12. Section 11 shall take effect upon its passage.

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