

SENATE No. 2528

Senate, Tuesday, January 3, 2017 – Text of the Senate amendment (Senator Eldridge) to the House Bill relative to the charter of the town of Westborough (House, No. 4411).

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

1 SECTION 1. “The charter of the town of Westborough, which is on file in the office of
2 the archivist of the commonwealth, as provided in section 12 of chapter 43B of the General
3 Laws, is hereby amended by striking out articles 1 to 8, inclusive, and inserting in place thereof
4 the following 8 articles:-

5 ARTICLE 1

6 Incorporation; Short Title; Powers; Definitions

7 Section 1-1 Incorporation

8 The inhabitants of the town of Westborough, within the corporate limits as established by
9 law, shall continue to be a body corporate and politic with perpetual succession under the name
10 “Town of Westborough”.

11 Section 1-2 Short Title

12 This instrument shall be known and may be cited as the Westborough Home Rule
13 Charter.

14 Section 1-3 Powers

15 Subject only to an express limitation on the exercise of any power or function by a
16 municipality in the constitution or law, it is the intent and the purpose of the voters of the town of
17 Westborough to secure through the adoption of this charter all of the powers it is possible to
18 secure for a municipal government under the constitution and law.

19 Section 1-4 Construction

20 The powers of the town under this charter are to be construed liberally in its favor and the
21 specific mention of a particular power is not intended to limit in any way the general powers of
22 the town as stated in section 1-3.

23 Section 1-5 Intergovernmental Relations

24 Subject to the applicable requirements of the constitution or law, the town may exercise
25 its powers or perform its functions and may participate in the financing thereof, jointly or in
26 cooperation, by contract or otherwise, with a state, a civil division or an agency of a state, the
27 United States government or an agency of the United States government.

28 Section 1-6 Definitions

29 As used in this charter, the following words shall have the following meanings, unless the
30 context clearly requires otherwise:

31 “Charter”, this charter and any amendments to it under article LXXXIX of the
32 Amendments to the Constitution of the Commonwealth.

33 “Town”, the town of Westborough.

34 “Town agency”, a board, commission, committee, department or office of the
35 town.

36 “Voters”, the registered voters of the town.

37 “Multiple-member body”, every board, commission, committee and subcommittee of the
38 town government, whether elected, appointed or otherwise constituted.

39 ARTICLE 2

40 Legislative Branch

41 Section 2-1 Town Meeting

42 The legislative powers of the town shall continue to be exercised by a town meeting open
43 to all registered voters of the town.

44 Section 2-2 Presiding Officer

45 The moderator, as provided for in section 3-3, shall preside at all sessions of the town
46 meeting. The moderator shall, at the first session of each annual and special town meeting,
47 nominate a deputy moderator to serve in the event of the moderator’s absence or disability;
48 provided, however, that the town meeting shall ratify the nomination.

49 The moderator shall perform such other duties as may from time to time be assigned to
50 the office of moderator by by-law or other vote of the town meeting.

51 Section 2-3 Time of Meeting

52 The annual and fall town meetings of the town shall be held on the dates that may from
53 time to time be set forth in the by-laws of the town for the transaction of business relating to the
54 prudential affairs of the town.

55 Section 2-4 Availability of Town Officials at Town Meeting

56 Every town officer and head of each department shall attend all sessions of the town
57 meeting to provide the town meeting with information pertinent to matters appearing in the
58 warrant.

59 If a town officer or department head is to be absent due to illness or other reasonable
60 cause, the town officer or department head shall designate a deputy to attend the town meeting.

61 Section 2-5 Clerk of the Meeting

62 The town clerk or a designee shall serve as clerk of the town meeting. The clerk shall
63 give notice of all town meeting sessions to the public, keep the journal of its proceedings and
64 perform other duties that may be assigned by the charter, by by-law or by other vote of the town
65 meeting.

66 Section 2-6 Quorum

67 The quorum necessary to conduct business shall be established by by-law.

68 Section 2-7 General Powers and Duties

69 All powers of the town shall be vested in the town meeting except as otherwise provided
70 by law or by this charter. The town meeting shall provide for the exercise of all of the powers of

71 the town and for the performance of the duties and obligations imposed upon the town for which
72 no other provision is made by by-law or by the charter.

73 Section 2-8 Warrants

74 The articles that are to be acted upon by the annual town meeting shall be presented in
75 writing to the board of selectmen not less than 30 days before the annual town meeting. These
76 articles shall then be filed with the town clerk 3 days after the expiration of the 30 days. The
77 board of selectmen shall issue warrants calling into session the town meeting at regular intervals
78 as may be established by by-law. The board of selectmen shall place on the warrants the subjects
79 in accordance with the law that are requested of them, in writing, by the boards and individuals.
80 A copy of each warrant shall forthwith be posted on the town clerk's web site and the town web
81 site and any other location chosen by the town clerk. The board of selectmen shall have a copy
82 mailed to the place of residence of the town moderator. Additional copies of all warrants shall be
83 available for distribution in the office of the town clerk before the date on which the town
84 meeting is to convene and that complies with the General Laws. Articles for a special town
85 meeting shall follow the procedures under the General Laws.

86 ARTICLE 3

87 Elected Officials

88 Section 3-1 General Provisions

89 (a) Elected Offices - The offices to be filled by ballot of the whole town shall be a board
90 of selectmen, a moderator, a school committee, a housing authority, a planning board, the town

91 clerk, the trustees of the public library and the members of regional authorities or districts that
92 may be established by statute, inter-local agreement or otherwise.

93 (b) Eligibility - A voter shall be eligible to hold an elective town office; provided,
94 however, that a person shall not at the same time serve in more than 1 elected office, as defined
95 in subsection (a).

96 (c) Election - The regular elections for town offices shall be held annually on the date that
97 may from time to time be fixed in the by-laws of the town.

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

100 (a) Composition, Term of Office - There shall be a board of selectmen consisting of 5
101 members to be elected by the voters for terms of 3 years so arranged that the terms of office of as
102 nearly an equal number of members as is possible shall expire each year.

103 (b) Compensation - The selectmen shall receive for their services the compensation that
104 may annually be provided for by appropriation.

105 (c) Powers and Duties in General - The executive powers of the town shall be vested in
106 the board of selectmen and may be exercised by the board of selectmen jointly or through the
107 town agencies and offices under the board's general supervision and control. As chief executive
108 officers of the town, the board of selectmen shall be responsible for the aspects of the town's
109 government that is not otherwise granted to another elected officer, board, commission or
110 committee. The board of selectmen shall cause the laws and orders for the government of the

111 town to be enforced and shall cause a record of all its official acts to be kept and, for that purpose
112 and to aid it in its official duties, there shall be a town manager.

113 (d) Appointments - As chief executive officers of the town, the board of selectmen shall
114 be the appointing authority for and shall appoint for fixed overlapping terms members of the
115 following boards, commissions and committees and any other town board, commission or
116 committee, special or standing, permanent or ad hoc, that may from time to time be established
117 by the board or town meeting, unless another appointing authority is designated in the town
118 meeting or this charter:

119 (i) zoning board of appeals;

120 (ii) conservation commission;

121 (iii) recreation commission;

122 (iv) country club operating committee;

123 (v) capital expenditure planning committee;

124 (vi) council on aging;

125 (vii) local emergency planning committee;

126 (viii) historical commission;

127 (ix) housing partnership committee;

128 (x) open space preservation committee;

129 (xi) water resources management committee;

- 130 (xii) trustees of soldiers' memorials;
- 131 (xiii) veterans' advisory board;
- 132 (xiv) youth commission, known as Westborough youth and family service; and
- 133 (xv) Westborough cultural council.

134 The board of selectmen shall also appoint the wardens for Sandra pond and the
135 representatives of the town to: Westborough TV, Inc.; the wastewater treatment plant board; the
136 central Massachusetts regional planning commission; the Massachusetts Bay Transportation
137 Authority advisory board; and the Walkup-Robinson fund committee. Such members and other
138 appointees shall be appointed for fixed, overlapping terms.

139 The board of selectmen shall appoint the town appointed members of the insurance
140 advisory committee, in accordance with section 3 of chapter 32B of the General Laws.

141 The board of selectmen shall appoint the town manager, as defined in section 4-1, the
142 town counsel, the chief of police, the fire chief and the director of the department of public
143 works. The town manager, town counsel, chief of police and director of the department of public
144 works shall be appointed for terms not to exceed 3 years. The fire chief shall be appointed for an
145 indefinite term.

146 As used in this charter, the term "key personnel" shall refer to the town manager, the
147 town counsel, the chief of police, the fire chief and the director of the department of public
148 works and for the purposes of this section, the term "key personnel" shall be used to determine
149 the appointing authority and the appointment process and shall not affect compensation, benefits,

150 privileges, terms, renewals of terms, job descriptions, responsibilities, authority, duties or
151 performance.

152 The board of selectmen shall also appoint, upon nomination by the town clerk: (i)
153 election officials, for fixed terms; and (ii) registrars of voters, for fixed overlapping terms.

154 (e) Investigations - The board of selectmen may investigate or may authorize the town
155 manager to investigate the affairs of the town and the conduct of a town department, office or
156 agency, including a doubtful claim against the town.

157 (f) Eligibility - Notwithstanding any general or special law to the contrary, a person
158 employed by the town shall not be eligible to hold the office of a member of the board of
159 selectman in the town while so employed.

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

161 (a) Term of Office - At each town election at which the term of office expires, a
162 moderator shall be chosen by the voters for a term of 3 years.

163 (b) Compensation - The moderator shall receive for the moderator's services the
164 compensation that may annually be provided for by appropriation.

165 (c) Powers and Duties - The moderator shall have the powers and duties provided for that
166 office by law, charter, by-law and vote of town meeting.

167 (d) Appointments - The moderator shall appoint for fixed, overlapping terms: the
168 members of the advisory finance committee, 2 members of the capital expenditure planning
169 committee and members of other committees, special or standing, that may from time to time be
170 established by town meeting that designate the moderator as the appointing authority. These

171 appointments shall be made so that the terms of office of as nearly an equal number of members
172 as is possible shall expire each year.

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

174 (a) Composition, Term of Office - There shall be a school committee consisting of 5
175 members elected by the voters for 3-year terms so arranged that the terms of office of as nearly
176 an equal number of members as is possible shall expire each year.

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

178 (c) Powers and Duties - The school committee shall have all of the powers and duties a
179 school committee has under the law and it shall have additional powers and duties that may be
180 authorized by the charter or by-laws.

181 Section 3-5 Planning Board: Composition, Term of Office, Powers and Duties

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

185 (b) Powers and Duties - The planning board shall have all of the powers and duties a
186 planning board has under the law. The board may also exercise additional powers and duties that
187 may from time to time be assigned to the board by the charter, by-law or vote of the town
188 meeting.

189 (c) Appointments - In accordance with its planning function, the planning board shall be
190 the appointing authority for the design review board. The planning board shall appoint its
191 department head who shall be the town planner. The planning board may, in writing, appoint

192 other employees of the planning department or, with express written consent, delegate such an
193 appointment to the town planner.

194 Section 3-6 Town Clerk: Term of Office, Powers and Duties

195 (a) Term of Office - There shall be a town clerk elected by the voters for a term of 3
196 years.

197 (b) Powers and Duties - The town clerk shall have all of the powers and duties a town
198 clerk has under the law. The clerk may also exercise additional powers and duties that may from
199 time to time be assigned to the clerk by the charter, by-law or vote of the town meeting.

200 (c) Town Clerk – The town clerk shall act as a department head and shall appoint the
201 employees in the town clerk’s department. The town clerk shall nominate candidates for election
202 officials and registrars of voters to the board of selectmen.

203 Section 3-7 Board of Library Trustees: Composition, Term of Office, Powers and Duties

204 (a) Composition, Term of Office - There shall be a board of library trustees to consist of 9
205 members elected by the voters for 3-year terms so arranged that the terms of 3 members shall
206 expire each year.

207 (b) Powers and Duties - The board of library trustees shall have custody and management
208 of the public library and the property of the town relating to the public library.

209 (c) Appointments - The board of library trustees shall appoint its department head who
210 shall be the library director. The board of library trustees may appoint other employees of the
211 town’s library department or may, in writing, delegate such an appointment to the library
212 director.

213 ARTICLE 4

214 Town Manager

215 Section 4-1 Appointment, Qualifications, Term

216 The board of selectmen shall appoint a town manager for a term of not more than 3 years
217 and shall fix the town manager's compensation within the amount appropriated by the town. The
218 town manager shall be appointed solely on the basis of executive and administrative
219 qualifications and shall be especially fitted by education, training and experience to perform the
220 duties of the office.

221 The town manager need not be a resident of the town or the commonwealth at the time of
222 appointment but shall establish residence in the town or in a town contiguous to the town within
223 1 year following the date of appointment. Failure to establish such residence shall be deemed to
224 be a resignation from the office of the town manager.

225 The town manager shall not have served as a member of the board of selectmen for the
226 18 months before being appointed to the position of town manager. The town manager shall be
227 bonded by a surety company and the cost of the bond shall be borne by the town. The town
228 manager shall devote full-time to the office and shall not hold another public office, elective or
229 appointive, or engage in any other business or occupation during the town manager's term,
230 unless the action is approved, in advance and in writing, by the board of selectmen. The town
231 may from time to time establish additional qualifications that it deems necessary and appropriate
232 by by-law.

233 Section 4-2 Powers and Duties

234 (a) The town manager shall be the chief administrative officer of the town and shall be
235 responsible to the board of selectmen for the administration of the town affairs placed in the
236 town manager's charge pursuant to the charter.

237 (b) The town manager shall appoint the following positions with the concurrence of the
238 board of selectmen for fixed terms: (i) assistant town managers; (ii) chief assessor; (iii)
239 town accountant; (iv) treasurer/collector; (v) commissioners of trust funds; (vi) veterans' agent,
240 director of veterans' services, burial agent and graves officer; and (vii) animal control officer.

241 The town manager shall appoint the following positions for fixed terms: (i) building
242 commissioner; (ii) zoning enforcement officer; (iii) building inspectors; (iv) MIS/GIS director;
243 (v) wiring inspectors; (vi) plumbing and gas inspectors; (vii) affirmative action officer; (viii)
244 sexual harassment officer; (ix) constables; (x) fence viewer; (xi) insect and pest control officer;
245 (xii) measurer of wood; (xiii) municipal hearings officer; (xiv) sealer of weights and measures;
246 and (xv) weight masters at Tate & Lyle.

247 As the chief administrative officer of the town, the town manager shall appoint, for fixed
248 overlapping terms, the members of the board of assessors, the board of health and the municipal
249 building committee.

250 The board of selectmen shall determine whether a board, commission or committee not
251 specifically listed in this subsection is primarily related to the administration of the town.

252 The town manager shall appoint the members of other town boards, commissions or
253 committees and other personnel for which the board of selectmen, town by-law or town meeting
254 action has directed the town manager to act as appointing authority; provided, however, that the
255 appointing authority shall not contradict an appointing authority designated in this charter.

256 The town manager shall appoint the members of an advisory committee formed by the
257 town manager as allowed in the town's organization plan under section 5-3(e).

258 Appointments under this subsection shall take effect 15 days after the day that notice of
259 the appointment was filed with the board of selectmen unless the board of selectmen shall, within
260 that period and by a majority of all of its members, vote to reject the appointment.

261 (c) The town manager shall:

262 (i) participate fully in the duties and obligations of the town manager described in the
263 town's organization plan under section 5-1(b);

264 (ii) direct and supervise the administration of all functions under the town manager's
265 control;

266 (iii) administer the compensation and benefits of town officers and employees appointed
267 by the town manager within the limits established by appropriation and by-law and as set by the
268 salary administration plan;

269 (iv) attend all regular and special meetings of the board of selectmen, unless excused at
270 the town manager's own request, and shall have a voice, but not a vote, in its discussions;

271 (v) attend all sessions of the open town meeting and answer the questions that are
272 directed to the town manager and relate to the office of town manager by the voters of the town;

273 (vi) ensure that the laws, the charter, vote of the town meeting and vote of the board of
274 selectmen that require enforcement by the town manager or officers subject to the town
275 manager's direction and supervision are faithfully carried out;

276 (vii) prepare and submit the annual budget and the capital improvement program under
277 article 6;

278 (viii) be responsible for the keeping complete records of the finances and administrative
279 activities of the town and shall render a full report to the board of selectmen at the end of each
280 fiscal year and otherwise as the board may require;

281 (ix) keep the board of selectmen informed as to the financial condition and needs of the
282 town and make recommendations to the board of selectmen as the town manager deems
283 necessary or expedient;

284 (x) have full jurisdiction over the rental and use of town facilities except for schools,
285 libraries and lands held for conservation purposes and shall be responsible for the maintenance
286 and repair of town property, excluding school and library buildings, placed under the town
287 manager's control by the charter, by-law or law;

288 (xi) be responsible for the appointment, subject to the approval of the board of selectmen,
289 of necessary building and facilities committees relative to the preparation of plans and
290 supervision of work on construction, reconstruction, alterations, improvements and other
291 undertakings authorized by the town, except for schools and libraries;

292 (xii) keep a complete inventory of the property of the town, both real and personal, within
293 the town manager's jurisdiction;

294 (xiii) negotiate contracts involving a subject within the town manager's jurisdiction;
295 provided, however, that the proposed contracts shall be subject to final approval and execution
296 by the board of selectmen;

297 (xiv) purchase or acquire the equipment, supplies and services required by town agencies
298 under the town manager's control and may make such a purchase for an agency not under the
299 town manager's control upon receipt of a proper requisition;

300 (xv) perform any other duty required by by-law, vote of the town meeting or vote
301 of the board of selectmen; and

302 (xvi) have the authority to sign payroll and accounts payable warrants concerning the
303 everyday operation of the town in accordance with section 56 of chapter 41 of the General Laws.

304 The town manager may inquire at any time into the conduct of an officer, employee,
305 department, board or commission under the town manager's control.

306 Section 4-3 Temporary Absence of the Town Manager, Acting Town Manager

307 By letter filed with the town clerk, the town manager shall designate a qualified town
308 administrative officer or employee to perform the town manager's routine duties during the town
309 manager's temporary absence. The designated officer or employee shall not have appointive
310 powers. During the town manager's absence, the board of selectmen shall not revoke the
311 designation until not less than 15 days have elapsed, whereupon the board may appoint another
312 qualified town administrative officer or employee to serve until the town manager's return. If a
313 letter has not been filed with the town clerk, the board of selectmen may, by a majority vote,
314 appoint an acting town manager to serve in the absence of the town manager for a period of 60
315 days and shall not grant more than 1 extension.

316 Section 4-4 Removal

317 The board of selectmen may remove the town manager from office in accordance with
318 this section.

319 The board of selectmen shall adopt a preliminary resolution of removal by the affirmative
320 vote of a majority of all of its members that shall state the reason for removal. This preliminary
321 resolution may suspend the town manager for a period of not more than 45 days. A copy of the
322 resolution shall be delivered to the town manager immediately.

323 Within 5 days following delivery of the preliminary resolution, the town manager may
324 request a public hearing by filing a written request for it with the board of selectmen. The
325 hearing shall be held at a meeting of the board of selectmen not more than 30 days after the
326 request is filed and not less than 20 days after the request is filed. The town manager may file a
327 written statement in justification of the town manager's time in office with the board of
328 selectmen; provided, however, that the statement shall be received in the board of selectmen's
329 office not less than 48 hours in advance of the public hearing.

330 The board of selectmen may adopt a final resolution of removal, which may be made
331 effective immediately, by the affirmative vote of a majority of all of its members at any time
332 after 10 days following the date of delivery of a copy of the preliminary resolution to the town
333 manager if the town manager has not requested a public hearing or any time after the public
334 hearing if the town manager has requested such a hearing. Within 10 days following the board's
335 vote to make its resolution final, but not more than 45 days after the date of adoption of the first
336 resolution, the board shall, by vote of a majority of all of its members, affirm or dismiss the final
337 resolution of removal. Failure to affirm a final resolution of removal shall nullify the vote to
338 dismiss the town manager. The town manager shall continue to receive the town manager's

339 salary until the effective date of a final resolution of removal. The action of the board of
340 selectmen in suspending or removing the town manager shall be final.

341 ARTICLE 5

342 Administration Organization

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

344 (a) The organization or reorganization of the town into operating departments, divisions,
345 offices and agencies shall be accomplished in accordance with this Article, subject to the express
346 prohibitions of the law and this charter.

347 (b) By-laws - The town meeting may, by by-law, reorganize, consolidate or abolish a
348 town agency, in whole or in part, establish a new town agency as it deems necessary or advisable
349 and prescribe the functions of all such agencies.

350 (c) Organization Plan - The board of selectmen, after consultation with the town
351 manager, may from time to time prepare and submit to the town meeting a plan of organization
352 that establishes operating divisions for the orderly, efficient or convenient conduct of the
353 business of the town.

354 Whenever the board of selectmen prepares an organization plan, it shall hold 1 or more
355 public hearing on the proposal, giving notice by publication in a newspaper of general circulation
356 in the town not less than 7 days before the hearing. The notice shall describe the scope of the
357 proposal and the time and place at which the hearing will be held. Following such a public
358 hearing, the board of selectmen shall submit the proposal to the town meeting by a warrant
359 article; provided, however, that the proposal may have been amended subsequent to the public

360 hearing. To the extent that such a plan conflicts with this charter, the warrant article shall include
361 proposed charter amendments to accurately reflect and allow the proposed change.

362 An organization or reorganization plan shall take effect 30 days after the action of the
363 town meeting.

364 Section 5-2 Elected Officials' Policy Setting Authority

365 Elected officials shall be responsible for determining and evaluating the policies,
366 priorities and programs of their respective departments and for the effective administration,
367 management and operation of their respective departments; provided, however, that such elected
368 officials may rely on the work of another commission, committee, group or employee to carry
369 out the officials' responsibilities.

370 Section 5-2(a) Elected Officials: Appointing Boards, Commissions and Committees

371 An elected official or board, as designated in article 3, may appoint a committee to
372 gather, provide or otherwise report on information of interest to the official or board unless a
373 different appointing authority is specified in this charter or in the town by-laws.

374 Section 5-2(b) Boards, Commissions or Committees Appointed by the Board of 375 Selectmen: Appointing Town Employees

376 If a board, commission or committee appointed by the board of selectmen or town
377 manager has a department head, the department head shall be appointed by the town manager;
378 provided, however, that the department head of the recreation commission shall be appointed by
379 the town manager with the concurrence of the commission, the department head of the council
380 on aging shall be appointed by the town manager with the concurrence of the council and the

381 department head of the youth commission shall be appointed by the town manager with the
382 concurrence of the commission; and provided further, that the board of health shall appoint the
383 health director.

384 Other employees of such departments shall be appointed by the department head of the
385 respective department.

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

387 The town's key personnel shall be responsible for the management and operation of their
388 respective departments and shall appoint the employees in their respective departments in a
389 manner consistent with this section.

390 The chief of police shall appoint all employees of the police department.

391 The fire chief shall appoint all employees of the fire department.

392 The director of the department of public works shall appoint all employees of the
393 department of public works.

394 The town counsel shall appoint the employees of the town's legal department.

395 Section 5-3(a) Determination of Key Personnel

396 The addition or deletion of a position from the list of key personnel under subsection (d)
397 of section 3-2 may be enacted by the adoption of a warrant article that modifies said subsection
398 (d) of said section 3-2 by the town meeting.

399 Section 5-3(b) Use of Search Committees

400 The appointment process for key personnel shall incorporate the use of a search
401 committee, except in the case of a reappointment.

402 The town manager shall be a member of a search committee established to fill the
403 position of town counsel, chief of police, fire chief or director of the department of public works.

404 An appointing authority may specify the use of a search committee for another town
405 employee in the appointing authority's department. Where a specific search committee process is
406 not prescribed by the law, this charter, the town's by-laws or action of the town meeting, the
407 search committee process shall be determined by the appointing authority.

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

409 The town manager shall be responsible for leading and directing the town-wide
410 management team. The team shall consist of the town's key personnel and the heads of town
411 departments. The team shall specifically consist of the chief of police, the fire chief, the director
412 of the department of public works the town counsel, and other department heads or officials that
413 may be designated by the town manager from time to time.

414 Notwithstanding the manner of their appointment or who their respective appointing
415 authority may be, the chief of police, the fire chief, the director of the department of public
416 works, the town counsel and the other department heads, except for the library director and the
417 town planner, shall report directly to the town manager, who shall be responsible for the day-to-
418 day oversight, coordination and supervision of the administration and operation of each town
419 department other than the public library or the planning board.

420 Each department head shall be responsible for the delivery of service and the manner and
421 method of delivery within the department head's respective department to the residents of the
422 town.

423 The town manager shall conduct the performance reviews of the town's key personnel
424 and of each department head; provided, however, that the town manager shall provide evaluative
425 reports to the chair of the board of selectmen for those department heads appointed by the board
426 of selectmen and to the appointing authority of a department head not appointed by the board of
427 selectmen for use in the performance review process.

428 Section 5-3(d) Filling Key Personnel and Department Head Vacancies

429 A vacancy in a key personnel or department head position shall be filled in the manner
430 prescribed for initial appointment of the position, but the appointing authority may appoint acting
431 key personnel and department heads for not more than 4 3-month periods for not more than 1
432 year. If the appointment of the permanent position requires the concurrence of another body or
433 officer, that body or officer shall concur with the appointment of acting key personnel or
434 department heads. Such a temporary appointment by the appointing authority shall cease upon
435 the filling of the vacancy by the prescribed method.

436 Section 5-3(e) Appointing Authority for new Boards, Commissions and Committees and 437 Administrative Advisory Boards

438 If a board, commission or committee created by the board of selectmen is primarily of a
439 policymaking nature, the members of the board, commission or committee shall be appointed by
440 the board of selectmen. If such a board, commission or committee created by the board of

441 selectmen is primarily of an administrative nature, the members of the board, commission or
442 committee shall be appointed by the town manager.

443 Unless town meeting action indicates a specific appointing authority, the board of
444 selectmen shall determine the appointing authority of a board, commission or committee newly
445 created by the board of selectmen.

446 The town manager may create and appoint ad hoc committees that are solely advisory to
447 the town manager.

448 A vacancy on a board, commission or committee shall be filled in the same manner as the
449 initial appointment.

450 Section 5-4 Staffing Plan

451 The town manager shall cause to be prepared a plan establishing staffing requirements
452 within the town agencies created by administrative reorganization or by by-law and the plan shall
453 become effective within 30 days after the date of town meeting action. If such a plan conflicts
454 with the charter, the warrant article shall include a proposed charter amendment so that plan will
455 conform to the charter as so amended.

456 Section 5-5 Publication of Administrative Organization and Staffing Plan

457 For the convenience of the public, the administrative organization and any amendment to
458 it shall be printed as an appendix to, but not an integral part of, the salary administration plan of
459 the town.

460 Section 5-6 Merit Principle

461 The appointments and promotions of town officers and employees shall be made solely
462 on the basis of merit and fitness demonstrated by examination or other evidence of competence
463 and suitability including, but not limited to, past performance or seniority.

464 ARTICLE 6

465 Finance and Fiscal Procedures

466 Section 6-1 Fiscal Year

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

468 Section 6-2 Submission of Budget and Budget Message

469 Not less than 10 days before the end of the calendar year or not less than 90 days before
470 the date of the start of the annual town meeting, whichever is later, the town manager shall
471 submit to the board of selectmen and file with the advisory finance committee and capital
472 expenditures planning committee a proposed budget for the ensuing fiscal year, with an
473 accompanying budget message and supporting documents. The proposed budget shall be
474 available on the town clerk's web site, the town web site and any other location chosen by the
475 town clerk within 7 days of submission. Additional copies of the proposed budget shall be
476 available in the office of the town clerk.

477 Section 6-3 Budget Message

478 The budget message of the town manager shall explain the budget for the town agencies
479 in fiscal terms and in terms of work programs. It shall outline proposed financial policies of the
480 town for the ensuing fiscal year, describe important features of the budget, indicate major
481 variations from the current year in financial policies, expenditures and revenues together with the

482 reason for such changes, summarize the town's debt position and include other material that the
483 town manager deems desirable or the board of selectmen may require.

484 Section 6-4 The Budget

485 The budget shall provide a complete financial plan of town funds and activities, including
486 the budget adopted by the school committee for the ensuing year. Except for the school budget or
487 as may be required by statute or by the charter, the budget shall be in the form that the town
488 manager deems desirable or the board of selectmen may require.

489 In the town manager's budget presentation, the town manager shall utilize modern
490 concepts of fiscal presentation so as to furnish maximum information and the best financial
491 control. The budget shall show in detail the estimated revenues from the proposed property tax
492 levy and other sources and the proposed expenditures, including debt service for the following
493 year. The budget shall be arranged to show the actual and estimated revenues and expenditures
494 for the previous, current and ensuing fiscal years and shall indicate in separate sections:

495 (i) proposed expenditures for current operations during the ensuing fiscal year, detailed
496 by agency and position in terms of work programs, and the method of financing such
497 expenditures;

498 (ii) proposed capital expenditures during the ensuing fiscal year, detailed by town agency,
499 and the proposed method of financing each such capital expenditure; and

500 (iii) estimated surplus revenues and free cash at the end of the current fiscal year,
501 including estimated balances in any special account established for a specific purpose.

502 Section 6-5 Action on the Budget

503 The board of selectmen, the advisory finance committee and the capital expenditures
504 planning committee shall hold a joint meeting to include a public hearing on the proposed budget
505 not later than the first scheduled board of selectmen’s meeting in February of the year that the
506 budget is to be considered at town meeting. Copies of the proposed budget, the current capital
507 improvement program under section 6-6 and the recommendations of the advisory finance
508 committee, if any, shall be made available for distribution to the public at or prior to the public
509 hearing.

510 Section 6-6 Capital Improvement Program

511 The town manager shall submit a capital improvement program to the board of
512 selectmen, the advisory finance committee and the capital expenditures planning committee not
513 less than 60 days before the annual town meeting. The program shall be based on material
514 prepared by the capital expenditures planning committee, including:

- 515 (i) a clear, concise general summary of its contents;
- 516 (ii) a list of the capital improvements proposed to be undertaken during the next ensuing
517 5 years with supporting information as to the need for each such capital improvement; and
- 518 (iii) the cost estimates, methods of financing and recommended time schedules for each
519 improvement.

520 The capital expenditures planning committee shall be composed of the
521 treasurer/collector; 1 member of the advisory finance committee appointed by the advisory
522 finance committee; 1 member of the planning board appointed by the planning board; 1 member
523 of the board of selectmen appointed by the board of selectmen; 1 member of the school

524 committee appointed by the school committee; and 2 additional members appointed by the town
525 moderator for staggered 3-year terms. A vacancy shall be filled for the remainder of the
526 unexpired term in the manner of the original appointment.

527 Section 6-7 Financial Public Records

528 Statements summarizing the budget and the capital improvements program and related
529 warrant articles as adopted by town meeting shall be made available at the office of the town
530 manager for examination by the public not more than 10 days following their adoption.

531 ARTICLE 7

532 General Provision

533 Section 7-1 Elections

534 The articles in the warrant for every town meeting, as far as such articles relate to the
535 election of the board of selectmen, school committee, moderator or other town officers, referenda
536 and other matters to be acted upon and determined by ballot, shall be acted upon and determined
537 by the voters in their respective precincts.

538 The regular town elections shall be taken on official ballots without party or political
539 designation on the date fixed in the by-laws of the town.

540 Section 7-2 Charter Changes

541 The charter may be replaced, revised or amended in accordance with the procedures in
542 Article LXXXIX of the amendments to the Constitution of the Commonwealth and any
543 legislation enacted to implement said Article LXXXIX.

544 Section 7-3 Severability

545 The provisions of the charter are severable. If a provision of the charter is held invalid,
546 the other provisions of the charter shall not be affected. If the application of the charter or any of
547 its provisions to any person or circumstance is held invalid, the application of the charter and its
548 provisions to other persons and circumstances shall not be affected.

549 Section 7-4 Specific Provisions Shall Prevail

550 To the extent that a specific provision of the charter shall conflict with any provision
551 expressed in general terms, the specific provision shall prevail.

552 Section 7-5 Rules and Regulations

553 Rules and regulations shall become effective upon adoption by a town agency, board or
554 committee having jurisdiction, shall be filed within 5 days in the office of the town clerk and
555 shall be made available for review by any person who requests such information.

556 Section 7-6 Publication of By-laws

557 Copies of the by-laws shall be made available for distribution; provided, however, that a
558 charge not exceeding the actual cost per copy of reproduction may be charged.

559 Section 7-7 Procedures

560 (a) Meetings - The multiple-member bodies of the town, whether elected, appointed or
561 otherwise constituted, shall meet regularly at the times and places within the town that such
562 multiple-member bodies may prescribe. A special meeting of a multiple-member body shall be
563 held on the call of the chair or by $\frac{1}{3}$ of the members of the body by suitable written notice

564 delivered to the residence or place of business of each member not less than 48 hours in advance
565 of the time set. A copy of the notice shall also be posted on the town bulletin board. A special
566 meeting of a multiple-member body shall also be called within 1 week after the date of the filing
567 with the town clerk of a petition signed by not less than 50 voters that states the purpose for
568 which the meeting is to be called.

569 The meetings of a multiple-member body shall be open and public; provided, however,
570 that the multiple-member body may recess for the purpose of discussing, in a closed or executive
571 session limited to its own membership and the town manager or the superintendent of schools, as
572 appropriate, a matter that would tend to defame or prejudice the character or reputation of a
573 person that would affect the public security or that might have direct fiscal effect on the town;
574 provided, however, that the general subject matter for consideration is expressed in the motion
575 calling for such a session and that final action on the matter is not taken until the multiple-
576 member body has come back into formal session; provided further, that if the taking of such a
577 vote would defeat the lawful purpose of such an executive session, the vote may be taken in the
578 executive session and may remain secret so long as the vote's publication would defeat the
579 lawful purpose of the executive session, but not longer.

580 (b) Agenda - Except in the case of a special emergency, not less than 48 hours before a
581 meeting of a multiple-member body is to be held, a rough agenda shall be posted on the town
582 hall bulletin board. The multiple-member body may change the agenda at free will by majority
583 vote.

584 Any person may request an audience with any board. The board is required to hold an
585 audience with this person before adjournment.

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

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

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

597 Section 7-8 Removals and Suspensions

598 A permanent town employee, except for the town manager and department heads, may be
599 suspended or removed from office by the appointing authority after the probationary period for
600 good cause. During the probationary period, an employee may be suspended or removed for any
601 reason or no reason, with or without good cause. The term “good cause” shall include, but not be
602 limited to, the following: inefficiency; insubordination; and conduct unbecoming of the office.

603 An appointed officer or employee of the town may be suspended from office by the
604 appointing authority if such action is deemed by the appointing authority necessary to protect the
605 interests of the town.

606 The appointing authority, when removing such an officer or employee, shall act in
607 accordance with policies established by the town. The official or employee shall be provided
608 with written notice of the intent to remove, including a statement of the reason for the removal,
609 and may contest the removal at a public hearing This section shall not apply to a member of a
610 collective bargaining unit.

611 Nothing in this section shall be construed as granting a right to such a hearing when a
612 person who has been appointed for a fixed term is not reappointed when the person's original
613 term expires.

614 Section 7-9 References to General Laws

615 The references to the General Laws contained in the charter refer to the General Laws of
616 the commonwealth and are intended to include amendments or revisions to such chapters and
617 sections or to the corresponding chapters and sections of a rearrangement of the General Laws
618 enacted subsequent to the adoption of the charter.

619 Section 7-10 Computation of Time

620 In computing time under the charter of not more than 7 "days" shall refer to secular days
621 and shall not include Sunday or a state or federal legal holiday. In computing time of more than 7
622 days, every day shall be counted.

623 Section 7-11 Independent Audit

624 If the commonwealth fails in a fiscal year to provide for the independent audit of the
625 records and accounts of the town, the board of selectmen may provide for such an audit. The
626 audit may be made by a certified public accountant or a firm of such accountants who do not

627 have a personal interest, direct or indirect, in the fiscal affairs of the town government or an
628 officer of the town.

629 ARTICLE 8

630 Department of Public Works

631 There shall be a department of public works that shall have all of the powers and duties
632 now or from time to time vested by law in the following boards, departments and offices:
633 highway superintendent, water commissioners, sewer commissioners and tree warden. The
634 department of public works shall in all respects be the lawful successor of the aforementioned
635 boards, departments and offices.

636 The department shall furnish engineering services, provide for the maintenance and repair
637 of the town buildings and property and perform the duties of another board, department or office
638 of the town as may be reasonably related to the duties and responsibilities of the department of
639 public works and as the town may from time to time under this charter require, notwithstanding
640 any other law to the contrary.

641 The department shall be headed by a director who shall be appointed in accordance with
642 subsection (d) of section 3-2. The director shall be responsible for the efficient exercise and
643 performance of the powers, rights and duties of the department. The director shall be especially
644 fitted by education, training and experience to perform the duties of the office and shall not be
645 required to be a resident of the town at the time of appointment. During the director's tenure, the
646 director shall not hold elective office or engage in any other business or occupation unless the
647 other business or occupation is approved in advance by the board of selectmen. The director shall
648 keep full and complete records of the director's office, render to the town as often as it may

649 require a full report of the operations under the director's control during the period reported upon
650 and, from time to time as required by the board of selectmen, make a synopsis of such reports for
651 publication. The director shall keep the board of selectmen fully advised as to the needs of the
652 town within the scope of the director's duties. The director shall be bonded by a surety company
653 and the cost of the bond shall be borne by the town.

654 The board of selectmen shall be responsible for the overall supervision of the department
655 of public works and for the establishment of policies to guide the director of the department of
656 public works.

657 SECTION 2. Said charter is hereby further amended by striking out article 10 and
658 inserting in place thereof the following article:-

659 ARTICLE 10

660 Recall of Elected Officials

661 Section 10-1 Any holder of an elected office in the town of Westborough may be recalled
662 and removed from the office by the qualified voters of the town as provided in this article.

663 Section 10-2 Any 200 registered voters of the town of Westborough, of which 25 shall be
664 from each precinct, may initiate a recall petition by filing with the town clerk an affidavit
665 containing the name of the officer sought to be recalled and a statement of the grounds of recall.

666 Upon certification by the town clerk, the town clerk shall thereupon, within 2 business
667 days, deliver to the voter first named on the affidavit a sufficient number of copies of petition
668 blanks demanding the recall. The petition blanks shall be issued by the town clerk with the town
669 clerk's signature and official seal attached to them. The petition blanks shall also be dated and

670 addressed to the board of selectmen of the town, contain the name of the person to whom the
671 petition blanks were issued, the name of the person sought to be recalled, the office from which
672 the recall is sought and the grounds of recall as stated in the affidavit and shall demand the
673 election of a successor to the office. A copy of the petition shall be entered in a record book to be
674 kept in the office of the town clerk.

675 The recall petition shall be returned and filed with the town clerk not later than 5 o'clock
676 p.m. on the thirtieth day after the filing of the affidavit. If the thirtieth day is a Saturday, Sunday
677 or holiday, the petition may be filed on the next business day.

678 The petition, before being returned and filed, shall be signed by 20 per cent of the
679 registered voters and that 20 per cent shall consist of not less than 10 per cent of the registered
680 voters from each precinct. The place of residence of the signer, giving the street and number,
681 shall be added to every signature.

682 The town clerk shall, within 1 business day following the date of the filing with the town
683 clerk, submit the recall petition to the board of registrars of voters in the town, which shall,
684 within 5 business days after the day of receipt, certify in writing on the petition the number of
685 signatures that are those of registered voters in the town as of the date the affidavit was filed with
686 the town clerk. The board of registrars of voters shall, upon completion of its certification, return
687 the petition to the town clerk.

688 Section 10-3 If the petition is found and certified by the town clerk to be sufficient, the
689 town clerk shall submit the petition, with the town clerk's certificate on it, to the board of
690 selectmen without delay. The board of selectmen shall immediately give to the elected officer
691 whose recall is sought written notice of the receipt of the certificate. If the officer sought to be

692 removed does not resign within 5 days after receiving the notice, the board of selectmen shall
693 order a special election to be held not less than 60 nor more than 70 days after the date of the
694 town clerk's certificate that a sufficient petition has been filed; provided, however, that if another
695 town election is to occur within 90 days after the date of the certificate, the board of selectmen
696 may, in their discretion, postpone the holding of the removal election to the date of the other
697 election. If a vacancy occurs in the office after a recall election has been ordered, the election
698 shall nevertheless proceed as provided in this section.

699 Section 10-4 An officer sought to be recalled may be a candidate to succeed the officer.
700 Unless the officer requests otherwise in writing, the town clerk shall place the officer's name on
701 the official ballot without nomination. The nomination of other candidates, the publication of the
702 warrant for the recall election and the conduct of the recall election shall be in accordance with
703 the law relating to elections, unless otherwise provided by this article.

704 Section 10-5 The incumbent shall continue to perform the duties of the incumbent's
705 office until the recall election. If the recall fails or if the incumbent is re-elected, the incumbent
706 shall continue in the office for the remainder of the incumbent's unexpired term, subject to recall
707 as before, except as provided in this article. If not re-elected in the recall election, the incumbent
708 shall be deemed removed upon the qualification of the incumbent's successor, who shall hold
709 office during the unexpired term. If the successor fails to qualify within 5 days after receiving
710 notification of the successor's election, the incumbent shall thereupon be deemed removed and
711 the office vacant.

712 Section 10-6 Ballots used in a recall election in the town shall submit the following
713 proposition in the order indicated:

714 For the recall of (name of officer) Against the recall of (name of officer)

715 Immediately at the right of each proposition there shall be a square in which the voter, by
716 making a cross mark, may vote for either of the propositions. Just above the squares there shall
717 appear the direction "vote for 1". Under the proposition shall appear the word "Candidates" and
718 the direction "vote for 1" and beneath this shall appear the names of candidates nominated as
719 provided in this article. In case of machine voting, punch card balloting or another form of
720 balloting, appropriate provision shall be made to allow the same intent of the voter.

721 If a majority of the votes cast on the recall question is in the affirmative, then the
722 candidate who received the highest number of votes in the special election to fill the vacancy
723 shall be elected. If a majority of the votes cast on the recall question is in the negative, the ballots
724 for candidates to fill the potential vacancy need not be counted.

725 Section 10-7 A recall petition shall not be filed against an officer within 6 months after
726 the officer takes office nor, in the case of an officer subjected to a recall election and not recalled
727 by it, until not less than 6 months after the election at which the officer's recall was submitted to
728 the voters.

729 Section 10-8 A person who has been removed from an office or who has resigned from
730 office while recall proceedings were pending against that person shall not be appointed to a town
731 office within 2 years after the removal or resignation.