

SENATE No. 2067

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

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 adoption of the accompanying bill:

An Act establishing a town manager in the town of West Newbury.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|----------------------|----------------------------------|
| <i>Bruce E. Tarr</i> | <i>First Essex and Middlesex</i> |
| <i>Leonard Mirra</i> | <i>2nd Essex</i> |

SENATE No. 2067

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 2067) of Bruce E. Tarr and Leonard Mirra (by vote of the town) for legislation to establish a town manager in the town of West Newbury. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act establishing a town manager in the town of West Newbury.

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. PREAMBLE AND AMENDMENT TO EXISTING SPECIAL
2 LEGISLATION

3 There shall be a town manager in the Town of West Newbury. Notwithstanding any
4 general or special law or rule, regulation or by-law to the contrary, the town manager, reporting
5 to and accountable to the Board of Selectmen, shall be the chief administrative and operating
6 officer of the Town of West Newbury and shall have the powers, duties and limitations described
7 in this act.

8 Chapter 270 of the Acts of 1990 is hereby repealed and Chapter 38 of the Acts of 1936
9 and Chapter 184 of the Acts of 2005 shall be subject to the provisions of this act.

10 SECTION 2. ELECTED OFFICIALS OF THE TOWN OF WEST NEWBURY

(a) Upon the effective date of this act, the registered voters of the Town of West Newbury shall, in accordance with any applicable laws, by-laws, votes of the Town or inter-local agreements elect the following

(i) Members of the Board of Selectmen;

(ii) Town Moderator;

(iii) Members of the Pentucket School Committee from West Newbury;

(iv) Trustees of the GAR Memorial Library;

(v) Members of the Board of Assessors;

(vi) Members of the Board of Health;

(vii) Members of West Newbury Housing Authority;

(viii) Members of the Planning Board;

(ix) Members of the Park and Recreation Commission;

(x) Members of the Water Commission, and;

(xi) Constables

(b) The powers, duties and responsibilities of elected and appointed officials shall be as provided by applicable General Laws, special acts, bylaws and votes of the Town, except as otherwise expressly provided herein.

(c) Notwithstanding the election by voters of the Town of the officers named in this section 2(ii) thru (xi), such officers shall be available to the town manager and Board of

30 Selectmen for consultation, conference and discussion on matters relating to the officers'
31 respective offices. The town manager and/or the Board of Selectmen may require all such
32 officials to prepare reports necessary for the administration of town government.

33 SECTION 3. POWERS AND DUTIES OF THE BOARD OF SELECTMEN

34 (a) The executive powers of the Town shall be vested in the Board of Selectmen, who
35 shall have all the powers given to boards of selectmen in the General Laws.

36 (b) The Board of Selectmen shall consist of three (3) persons elected by the voters of the
37 Town. The term of each member of the Board of Selectmen shall not exceed three (3) years or
38 until a successor takes office. The Board of Selectmen shall annually elect a Chairperson and
39 Clerk from among its members.

40 (c) The Board of Selectmen shall serve as the chief goal-setting and policy making body
41 of the Town and shall not normally administer the day to day affairs of the Town. The Board of
42 Selectmen shall set guidelines and policy directives that are to be implemented by the town
43 manager and by other officers and employees appointed by or under its authority. The Board of
44 Selectmen shall have the power and authority to enact rules and regulations to implement
45 policies, to issue directives and to issue interpretations of the rules and regulations.

46 (d) The Board of Selectmen shall exercise, through the town manager, general
47 supervision over all matters affecting the interests or welfare of the Town.

48 (e) The Board of Selectmen shall appoint by a majority vote with the full board present,
49 the town manager, town counsel, the chief of police, the independent auditor, the town
50 accountant, assistant or special counsel and the executive administrator to the board of

selectmen. The board shall also appoint all members of committees, boards and commissions, except for those positions which are elected, that the town bylaws provide are to be appointed differently or as otherwise provided by federal or state statute, law or regulation.

(f) The Board of Selectmen shall have oversight of such boards, committees, positions or commissions appointed by the Board of Selectmen and such general powers as set forth in MGL c. 41 §23B.

(g) The Board of Selectmen shall be the licensing authority for the Town, make necessary rules and regulations regarding the issuance of licenses, attach conditions and restrictions to licenses as it deems to be in the public interest, to enforce the laws relating to such licenses and the regulations for which it issues licenses and have all other non-personnel matters as provided by the bylaws of the Town or as provided in the General Laws of the Commonwealth of Massachusetts.

(h) The Board of Selectmen shall be responsible for and shall approve the form and content of all town meeting warrants before such warrants are submitted to the town meeting for deliberation.

(i) The Board of Selectmen shall be responsible for establishing and maintaining a written process for the preparation of the budget. The Selectmen shall annually issue one or more written budget messages, including fiscal guidelines and the timeline of budget makers, at the beginning of each budget cycle or at a time established by the town bylaws.

(j) The Board of Selectmen shall review the annual proposed budget prepared by the town manager and make changes as the Board of Selectmen deem advisable. The town manager

shall present the budget which incorporates the changes of the Board of Selectmen to the Finance Committee and the town meeting.

SECTION 4. APPOINTMENT OF THE TOWN MANAGER

(a) The Board of Selectmen shall create a search committee of West Newbury residents to assist in the selection of candidates for the position of town manager. The candidates shall be persons of demonstrated ability with administrative experience in public management or business administration and who are qualified by reason of education and experience for the position of town manager. The search committee shall recommend to the Board of Selectmen a minimum of three (3) qualified candidates. After receiving the recommendations of the search committee, the Board shall appoint a town manager from the recommended candidates; provided, however, that the Board shall not be required to appoint any of the recommended candidates and may request that the search committee continue the screening process or shall appoint a new search committee to continue or re-start the search.

(b) No member or former member of the Board of Selectmen shall be eligible to be appointed to the position of town manager within 15 months of serving on the Board of Selectmen.

(c) The Board of Selectmen may enter into a formal written contract with the town manager and may set contract terms that shall have precedence over any personnel bylaws.

(d) The town manager may be appointed for successive terms of office. No term of office shall be more than three years or until a successor is appointed. There is no obligation on the part of the Board of Selectmen to renew an expired contract. Before entering upon the duties of the

office, the town manager shall be sworn to the faithful and impartial performance thereof by the town clerk or a notary public.

(e) The town manager shall execute a bond in favor of the town for the faithful performance of the town manager's duties in such sums and with such sureties as may be fixed and approved by the Board of Selectmen. The cost for such bond shall be borne by the Town.

(f) The Board of Selectmen shall set the compensation for the town manager, not to exceed an amount appropriated by the town meeting.

SECTION 5. REMOVAL OF TOWN MANAGER

(a) The Board of Selectmen may remove the town manager, by a majority vote with the full board present. At least thirty days before such removal shall be effective, the Board of Selectmen shall file a preliminary written resolution with the town clerk setting forth reason, if any, for the proposed removal, a copy of which shall be delivered to the town manager.

(b) The town manager may reply in writing to the resolution and may request, in writing, a public hearing provided, however, that the request for a hearing shall be received the town clerk not later than ten days after the town manager's receipt of the resolution, If the town manager so requests, the Board of Selectmen, shall hold a public hearing not earlier than ten days nor later than twenty days after the filing of such request.

(c) Following the public hearing or, if none, at the expiration of thirty days, the Board of Selectmen may adopt a final resolution of removal.

(d) As part of the preliminary resolution, the Board of Selectmen may suspend the town manager from duty.

(e) Nothing contained herein shall limit the authority of the Board of Selectmen to suspend or remove the town manager as provided by the laws of the Commonwealth.

(f) Any suspension may be with or without pay.

SECTION 6. APPOINTMENT OF TEMPORARY TOWN MANAGER

(a) During a temporary absence, not to exceed thirty days, the town manager shall designate by a letter filed with the town clerk and the Board of Selectmen, a temporary administrator to perform the duties of the office. Such delegation shall be limited to those matters not allowing for delay during the town manager's absence.

(b) The Board of Selectmen reserves the right to select a different temporary town administrator, in place of the town manager's designee or in the case of the failure of the town manager to select a temporary town administrator, to perform the functions of the town manager during the absence of the town manager, provided however, that the delegation shall be limited to those matters not allowing for delay during the town manager's absence.

(c) During the absence of the town manager for more than thirty or more days, due to disability, illness or other circumstance, the Board of Selectmen shall appoint an acting town manager for the duration of the extended absence. Such designation will cease upon the return of the town manager.

(d) If the individual serving as acting town manager is a town officer or employee, the individual shall return to the position held prior to being appointed the acting town manager.

(e) No member of the Board of Selectmen shall serve as acting town manager.

(f) If the Board of Selectmen determines that the town manager will be unable to resume the duties of the office for any reason, including, but not limited to, resignation, termination or illness; the office of town manager shall be filled as soon as practical by the Board of Selectmen, provided, however that the Board of Selectmen may appoint an acting town manager to serve until town manager is appointed.

(g) Notwithstanding the duration of the absence of the town manager, the Board of Selectmen shall determine the powers and responsibilities of the temporary town administrator or the acting town manager.

SECTION 7. ADMINISTRATIVE RESPONSIBILITIES OF THE TOWN MANAGER

(a) The town manager shall be the chief operating and administrative officer of the town and shall be responsible to the Board of Selectmen for the effective management of all town affairs placed in the town manager's charge by this act, by the Board of Selectmen, by by-laws or by vote of the town meeting, and for the implementation of town policies placed in the town manager's charge by the Board of Selectmen.

(b) The town manager shall supervise all town departments and direct day to day affairs of the town.

(c) The town manager shall be responsible for seeing that the budget is administered as adopted by town meeting and in accordance with the General Laws, this act and the town by-laws.

(d) The town manager shall advise the Board of Selectmen of all matters requiring action by the Board of Selectmen or the Town.

155 (e) The town manager shall oversee the town's personnel system and staff in accordance
156 with the town's by-laws and shall oversee personnel evaluation policies and practices, employee
157 benefit programs, enforcement of labor contracts, labor relations, collective bargaining, state and
158 federal equal opportunities law compliance in the town, and such other human resource
159 obligations as designated by the Board of Selectmen.

160 (f) The town manager shall attend all meetings of the Board of Selectmen, except when
161 excused, and all annual and special town meetings.

162 (g) The town manager shall have access to all information necessary for the proper
163 performance of the duties of town manager in accordance with the town by-laws, except for
164 attorney-client privileged information that is provided to or by the Board of Selectmen, unless
165 the Board of Selectmen specifically authorizes such access.

166 (h) The town manager shall keep the Board of Selectmen fully informed regarding all
167 departmental operations, fiscal affairs, general problems and administrative actions and shall
168 submit periodic reports to the Board of Selectmen.

169 (i) The town manager shall coordinate the activities among boards, commissions and
170 committees, concerned with current development and the long range municipal planning.

171 (j) The town manager shall develop, keep and annually update a full and complete
172 inventory of all property of the town, both real and personal. The town manager shall have
173 jurisdiction over the rental of all town facilities and real property. Such usages shall not conflict
174 with policies, rental fees and other practices established by the Board of Selectmen.

(k) With the approval of the Board of Selectmen, the town manager shall prosecute, defend or compromise all litigation to which the town is a party.

(l) The town manager shall devote full working time to the duties of the office and shall not engage in any business activity during the term of office, except with the written consent of the Board of Selectmen.

(m) The town manager shall keep full and complete records of town manager's office and annually submit to the Board of Selectmen, unless requested to do so more frequently, a full written report of the operations of the town manager's office.

SECTION 8. FINANCIAL RESPONSIBILITIES OF THE TOWN MANAGER

(a) The town manager shall be the chief financial officer of the Town.

(b) The town manager may approve any warrants for payment of town funds prepared by the town accountant; provided, however, that the approval of any such warrant by the town manager shall be in compliance with the policies for payment as promulgated by the Board of Selectmen and this shall be sufficient to authorize payment by the treasurer. If there is a vacancy of the town manager, in the town manager's absence or at any other time the Board of Selectmen or a designee of one of the members of the Board of Selectmen may approve such warrants.

(c) Annually, the town manager shall be responsible for the preparation of the proposed budget to be included in the annual town meeting warrant. The proposed budget shall be prepared in accordance with the most current budget process established by the Board of Selectmen. The proposed budget shall detail all estimated revenue from all sources and all proposed expenditures.

(d) The town manager shall annually submit a town departmental and organizational structure, which such town departmental and organization structure shall be subject to the approval of the Board of Selectmen. The town manager shall recommend all salaries and pay rates for town employees, excepting those covered by collective bargaining agreements, which salaries and pay rates shall be subject to the approval and/or modification by the Board of Selectmen.

(e) The town manager shall be responsible for filing grant applications and for informing the Board of Selectmen as to the status of such applications.

(f) The town manager shall notify and inform the Board of Selectmen of any matter impacting the expenditures or revenues of the Town.

SECTION 9. APPOINTMENT POWERS OF THE TOWN MANAGER

(a) The town manager shall appoint and may remove all department heads as the term may be defined in the town departmental and organizational structure and all such other employees for which no method of selection is provided in this Act or otherwise provided by law.

(b) Appointments or removals made by the town manager pursuant to subsection (a) hereof shall be effective 15 calendar days following the date of written notice of the appointment or removal is filed with the Board of Selectmen, unless the Board of Selectmen vote to reject such appointment or removal. The Board of Selectmen may waive the 15-day period whereupon the action of the town manager shall take effect immediately.

SECTION 10. COLLECTIVE BARGAINING

217 (a)The town manager or a negotiating committee authorized by the Board of Selectmen
218 shall negotiate collective bargaining contracts on behalf of the Board of Selectmen; provided,
219 however that such contracts shall be subject to the approval, ratification and execution by the
220 Board of Selectmen.

221 (b)The Board of Selectmen may authorize use of additional counsel or persons to assist
222 the town manager or the negotiating committee in the negotiations for any collective bargaining
223 contract.

224 SECTION 11. EFFECTIVE DATE

225 This act shall take effect upon its passage.