

HOUSE No. 4738

The Commonwealth of Massachusetts

PRESENTED BY:

Timothy R. Whelan

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 charter for the town of Brewster.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>	<i>4/6/2022</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>4/6/2022</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>4/6/2022</i>

HOUSE No. 4738

By Mr. Whelan of Brewster, a petition (accompanied by bill, House, No. 4738) of Timothy R. Whelan, Julian Cyr and Sarah K. Peake (by vote of the town) for legislation to establish a charter for the town of Brewster. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act establishing a charter for the town of Brewster.

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. Notwithstanding any general or special law to the contrary, the following
2 shall be the charter for the town of Brewster:

3 Brewster Town Charter

4 Preamble: We, the people of the town of Brewster, Massachusetts, in order to reaffirm
5 the customary and traditional liberties of the people with respect to the conduct of our local
6 government, adopt this charter with the expectation and intent that the charter will continue and
7 enhance the town’s strong traditions of active voter participation; ethical, transparent and
8 responsive leadership; wise use of public resources; respect for all in the community; and an
9 engaged citizenry. We expect and intend that our government will be welcoming and inclusive
10 and will promote equality and respect for all people.

11 CHAPTER 1

12 POWERS OF THE TOWN

13 SECTION 1 Incorporation

14 1-1-1 The present town of Brewster, within its corporate limits as now established,
15 shall continue to be a body politic and corporate under the name, town of Brewster.

16 SECTION 2 Scope of Town Powers

17 1-2-1 The town shall possess and exercise all powers possible under the constitution and
18 laws of the commonwealth as fully and completely as though those powers were expressly
19 enumerated in this chapter.

20 SECTION 3 Form of Government

21 1-3-1 This charter provides for a select board-open town meeting-town manager form of
22 town government.

23 SECTION 4 Construction of Charter

24 1-4-1 The power of the town under this charter shall be construed liberally in favor of
25 the town, and the specific mention of particular powers in the charter shall not be construed as
26 limiting in any measure the general powers of the town as stated in section 1-2-1.

27 SECTION 5 Intergovernmental Relations

28 1-5-1 The town may exercise, consistent with the law, any of its powers or perform any
29 of its functions and may participate in the financing thereof, jointly or in cooperation, by contract
30 or otherwise, with any 1 or more civil divisions, subdivisions or agencies of the commonwealth,
31 other states or of the United States government.

32 CHAPTER 2

33

34 TOWN MEETINGS AND ELECTIONS

35 SECTION 1 Legislative Power

36 2-1-1 The legislative powers of the town shall be exercised by a town meeting open to
37 all registered voters of the town.

38 SECTION 2 Open Town Meeting

39 2-2-1 Business sessions of the annual town meeting shall be held on the first Monday in
40 May and may be continued on such additional days as may be decided by the town meeting upon
41 recommendation of the select board. There shall also be a second business session of the annual
42 town meeting, referred to as the annual fall town meeting, held in the last 3 months of the
43 calendar year on a date to be determined by the select board, which meeting shall be an annual
44 town meeting for purposes of the General Laws; provided, however, that the select board may, at
45 its discretion, cancel the fall annual town meeting no later than September 15 in any year, so
46 long as no more than 5 citizen petitioned articles submitted pursuant to section 2-4 for inclusion
47 on the warrant at the fall annual town meeting and notice of the select board's action with regard
48 to such meeting shall be posted on the town website and principal bulletin board. The select
49 board's decision as to whether to hold an annual fall town meeting shall not prohibit the select
50 board from calling for a special town meeting, from time to time, at its discretion.

51 SECTION 3 Warrant

52 2-3-1 Town Meeting Warrants

53 (A) Except for procedural matters, all subjects to be acted on by town meeting shall be
54 placed on warrants issued by the select board.

55 (B) The date of the closure of the warrant to petitioned articles shall be set by general by-
56 law.

57 2-3-2 Posting

58 (A) In addition to any notice required by the General Laws, the select board shall: (i) post
59 the town meeting warrant at the following locations, town hall and at least 1 location in each
60 precinct and (ii) make available sufficient copies of the warrant at the town meeting for all
61 registered voters in attendance.

62 (B) The select board shall, at least 1 week prior to the meeting, post the warrant for the
63 town meeting on the town website and make the same available at town hall, and as required by
64 general by-law or select board policy, at town facilities and other common locations throughout
65 the town; provided, however, that failure to timely post the warrant on the website or to make
66 such copies available no later than 1 week prior to the date of the town meeting shall not
67 invalidate or otherwise affect the legality or validity of the actions taken at the town meeting.

68 SECTION 4 Citizen Petitions

69 2-4-1 Any 10 registered voters of the town may secure, by written petition to the select
70 board, the inclusion of an article for the warrant of any duly scheduled annual town meeting, and
71 at least 100 registered voters may secure the same for any duly scheduled special town meeting.

72 2-4-2 The select board may provide a pre-petition process whereby petitioners may
73 seek review of proposed petitions prior to submission.

74 SECTION 5 Quorum

75 2-5-1 The town meeting shall establish by general by-law a quorum requirement for the
76 opening of its business, but a smaller number than the established quorum may adjourn
77 immediately any meeting to a stated date, time and place as recommended by the select board;
78 provided, however, that in the event of a state of emergency declared by the governor to protect
79 the public health or safety, the quorum may be reduced in the manner set forth in section 7 of
80 chapter 92 of the acts of 2020.

81 SECTION 6 Presiding Officer

82 2-6-1 Moderator. A moderator, who shall be a registered voter of the town, shall be
83 elected for a 3-year term as provided in section 2-11-1. All sessions of the town meeting shall be
84 presided over by a moderator. The moderator shall regulate the proceedings, decide questions of
85 order and make public declarations of all votes. The moderator shall have all of the powers and
86 duties given to moderators pursuant to the constitution and the General Laws, and such
87 additional powers and duties as may be authorized by the charter, by-law or other town meeting
88 vote.

89 2-6-2 Deputy Moderator. The moderator shall appoint a deputy moderator for a 1-year
90 term who shall, in the event the moderator is absent or has a conflict, serve as moderator.

91 2-6-3 Vacancy. If the office of moderator becomes vacant, the select board shall
92 appoint a registered voter of the town as acting moderator. The acting moderator shall not be an
93 elected town officer and shall serve as acting moderator until the next scheduled election of town
94 officers.

95 SECTION 7 Rules

96 2-7-1 Unless otherwise provided by general by-law, rules of procedure for the town
97 meeting shall be in accord with “Town Meeting Time: A Handbook of Parliamentary Law”
98 published by the Massachusetts Moderators Association.

99 SECTION 8 Clerk of the Meeting

100 2-8-1 The town clerk shall serve as the clerk of the town meeting. In the event that the
101 town clerk is absent, the assistant town clerk shall so serve, regardless of whether such assistant
102 is a resident or registered voter of the town.

103 SECTION 9 Report

104 2-9-1 A journal of the proceedings of the town meeting shall be kept as a permanent
105 record in the town clerk’s office and the journal shall be a public record.

106 SECTION 10 Elections

107 2-10-1 The annual election for the election of officers and such matters as are by law
108 determined by ballot shall be held on the third Tuesday in May. Whenever the annual election
109 for the election of officers and such matters as are by law determined by ballot falls less than 2
110 weeks after the scheduled beginning of the spring annual town meeting, then the annual election
111 shall be held on the fourth Tuesday in May; provided, however, that the select board may delay
112 the date of the annual election to another date in the same fiscal year if the governor has declared
113 a state of emergency to protect the public health or safety. If the governor has declared a state of
114 emergency to protect the public health or safety, then the annual election shall be held on the

115 fourth Tuesday in May, or any other Tuesday in May or June as determined by the select board
116 after consultation with the town clerk.

117 SECTION 11 Elected Officers

118 2-11-1 The registered voters of the town of Brewster shall, in accordance with any
119 applicable laws, general by-laws, votes of the town or intergovernmental agreement, elect the
120 following, with members of multiple-member bodies to be elected for overlapping terms:

121 (a) Moderator for a 3-year term;

122 (b) Select board of 5 members, each for a 3-year term;

123 (c) Brewster school committee of 5 members, each for a 3-year term;

124 (d) Representatives to the Nauset regional school district school committee, as the
125 regional school agreement shall provide;

126

127 (e) Board of health of 5 members, each for a 3-year term;

128 (f) Planning board of 7 members, each for a 4-year term;

129 (g) Recreation commission of 5 members, each for a 3-year term;

130 (h) Historic district committee of 5 members, with 4 elected members and 1 member
131 appointed by the select board, each for a 3-year term;

132 (i) Housing authority of 5 members, of which 3 members shall be elected and 2 members
133 shall be appointed in accordance with state law as it may be amended from time to time

134 ; and

135 (j) Constable for a 3-year term; provided, however, that the authority of the elected
136 constable in the town of Brewster shall be limited to the posting of the warrant for a town
137 meeting or town election; provided, further, that the person holding such position shall conform
138 to any reasonable regulations concerning such responsibilities as may, from time to time, be
139 proposed by the chief of police and approved by the select board.

140 SECTION 12 Recall of Elected Officers

141 2-12-1 Recall of Elected Officers

142 Any holder of an elected office in the town of Brewster may be recalled from that office
143 by the registered voters of the town as hereinafter provided, for reasons including, but not limited
144 to, neglect of duties, malfeasance, misconduct or inability to perform official duties; provided,
145 however, that the question of whether the reasons stated for recall justify recall of a particular
146 officer shall be determined solely by the voters.

147 (A) Initiation of petition; submission; certification

148 Any 25 registered voters of the town of Brewster may initiate a recall petition by filing
149 with the town clerk an affidavit containing the name of the officer sought to be recalled, a
150 statement of the grounds for recall and specifying the lead petitioner. The town clerk shall
151 thereupon make available to the lead petitioner copies of petition blanks demanding such recall,
152 printed copies of which the town clerk shall keep available. The blanks shall be issued by the
153 town clerk under the town seal, and be dated and addressed to the select board. The blanks shall
154 contain the names of all the persons to whom they are issued, the name of the person whose

155 recall is sought, the grounds of recall as stated in the affidavit and shall demand the election of a
156 successor to such office. A copy of the petition shall be entered in a record book to be kept in the
157 office of the town clerk. The recall petition shall be returned and filed with the town clerk within
158 20 days after notification by the town clerk to the lead petitioner that the recall petitions are
159 available, and shall have been signed by at least 12 percent of the registered voters of the town as
160 of the last regular election, who shall add to their signatures the street and number, if any, of
161 their residence. The town clerk shall within 1 working day of receipt submit the petition to the
162 registrars of voters in the town, and the registrars shall within 5 working days certify thereon the
163 number of signatures which are names of registered voters of the town.

164 (B) Delivery to officer; order of recall proceedings

165 If the petition shall be found and certified by the town clerk and board of registrars to be
166 sufficient, the town clerk shall submit the petition with the town clerk's certificate to the select
167 board within 3 working days, and the select board shall forthwith give written notice of the
168 receipt of the certificate to the officer sought to be recalled. If the officer does not resign within 5
169 days thereafter, the select board shall order an election to be held on a date fixed by it not less
170 than 65 and not more than 90 days after the date of the town clerk's certificate that a sufficient
171 petition has been filed; provided, however, that if any other town election is to occur within 100
172 days after the date of certification, the select board shall postpone submission of the question of
173 recall to the date of such other election. No person shall be subject to recall if their term of office
174 expires within 90 days of the certification. If a vacancy occurs in said office after a recall
175 election has been ordered, the election shall nevertheless proceed as provided in this section.

176 (C) Conduct of Recall

177 An officer sought to be removed may be a candidate to succeed themselves and, unless
178 they request otherwise in writing, the town clerk shall place their name on the ballot without
179 nomination. The nomination of other candidates, the publication of the warrant for the recall
180 election and the conduct of the recall election shall all be in accordance with the provisions of
181 law relating to elections.

182 (D) Action upon completion of recall

183 The incumbent shall continue to perform the duties of the office until the question of
184 recall has been acted upon by the voters. If then re-elected, the officer shall continue in office for
185 the remainder of their unexpired term subject to recall as before, except as provided in this
186 charter. If not re-elected, they shall be deemed removed and their successor shall serve the
187 remainder of the unexpired term; provided, however, that if the successor fails to qualify within
188 10 days after receiving notification of their election, the office shall be deemed vacant.

189 (E) Ballots to be used

190 (i) Ballots used for recall shall submit the following propositions in the order
191 indicated:

192 For the recall of (name and title of officer).

193 Against the recall of (name and title of officer).

194 (ii) Under the propositions shall appear the word “Candidates”, the directions to the
195 voters required by section 42 of chapter 54 of the General Laws and, beneath the directions, the
196 names of candidates nominated in accordance with the provisions of law relating to elections. If
197 a majority of the votes cast upon the question of recall is in the affirmative, then the candidate

198 receiving the highest number of votes shall be declared elected. If a majority of the votes on the
199 question of recall is in the negative, then the ballots for candidates shall not be counted.

200 (F) Time limits on filing of petitions

201 No recall petition shall be filed against an officer within 90 days after taking office, nor,
202 in the case of an officer subjected to a recall election and not recalled thereby, until at least 6
203 months after the election at which their recall was submitted to the voters of the town.

204 (G) Limits on appointments after filing of recall petition

205 No person who has been recalled from an office or who has resigned from office
206 following the filing of a recall petition shall be appointed to any town office within 2 years after
207 such recall or such resignation.

208 CHAPTER 3

209 THE SELECT BOARD

210 SECTION 1 Composition, Compensation and Vacancies

211 3-1-1 There shall be a select board consisting of 5 members elected for 3-year
212 overlapping terms. The board collectively shall serve as the executive branch of town
213 government. For purposes of the General Laws, regulations, any special laws applicable to the
214 town of Brewster as well any local law or regulations, the select board referred to hereunder shall
215 have all the powers, duties and responsibilities of a board of selectmen.

216 3-1-2 A chair, vice-chair and clerk shall be elected by the select board at the first
217 meeting following each regular town election.

218 3-1-3 A quorum of the select board shall be 3 members.

219 3-1-4 Each member of the select board may receive an annual stipend as set forth in the
220 general by-laws, subject to appropriation by town meeting.

221 3-1-5 If a member of the select board dies, resigns, is convicted of a felony while
222 serving or ceases to be a registered voter of the town, the resulting vacancy may be filled by
223 special election in accordance with the General Laws.

224 SECTION 2 General Powers and Responsibilities

225 3-2-1 The select board shall exercise the powers and duties prescribed by the General
226 Laws, this charter and the general by-laws. The select board may delegate powers and duties to
227 the town manager or to another town board. The select board shall enforce the laws and orders of
228 the town, including this charter.

229 3-2-2 The select board shall be the primary policy-making, planning and goal-setting
230 agency of the town; provided, however, that no individual member of the board, nor a majority
231 of them, shall at any time, attempt to become involved in the day-to-day administration of the
232 affairs of the town. The select board shall act only through the adoption of policy directives and
233 guidelines which are to be implemented by officers and employees appointed by or under its
234 authority.

235 3-2-3 The select board, following the development of the proposed budget by the town
236 manager, shall review the annual proposed operating and capital budgets submitted by the
237 department heads and shall make the main motion under the budget article at the annual town
238 meeting.

239 3-2-4 The select board shall protect the assets of the town.

240 3-2-5 The select board shall approve all collective bargaining agreements of the town
241 negotiated by the town manager, consistent with chapter 150E of the General Laws.

242 3-2-6 The select board shall, not less than 1 time per year, meet jointly with the finance
243 committee, the Brewster school committee, the Nauset regional school district school committee
244 and the Cape Cod regional technical high school district school committee, or their respective
245 designees, for the purpose of sharing information.

246 3-2-7 The select board shall be the licensing authority of the town and shall have the
247 power to issue licenses, make all necessary rules and regulations regarding the issuance of said
248 licenses, attach conditions and restrictions thereto as it deems to be in the public interest and
249 enforce the law relating to all business for which it issues licenses; provided, however, that the
250 board may, at its discretion, delegate responsibility to the town manager or a board created for
251 such purposes for issuance and enforcement of 1 or more licenses.

252 3-2-8 The select board shall ensure that the general by-laws are kept current.

253 3-2-9 The select board shall be responsible to ensure that the town manager complies
254 with the charter.

255 3-2-10 The select board shall approve all personnel policies proposed by the town
256 manager in accordance with section 4-1-4(K).

257 SECTION 3 Written Records and Communication to the Town

258 3-3-1 Any goal, policy, plan or official act adopted by the select board shall be in
259 writing and included in its entirety in the minutes of the meeting at which it was adopted. The

260 town manager shall ensure that a file containing a complete list of the select board's current
261 policies and goals is posted on the town website for public reference. The select board shall
262 designate to the town manager the publishing of an annual town report for each calendar year.

263 3-3-2 Before August 31 and after the annual town election, the select board shall hold a
264 meeting for the purpose of stating the board's goals for the next fiscal year or years, referred to as
265 the annual goal setting meeting.

266 SECTION 4 Powers of Appointment

267 3-4-1 The select board shall select, and enter into a contract with, a town manager. If the
268 town manager position becomes vacant for any reason, the select board shall designate a
269 qualified person to serve in an acting capacity.

270 3-4-2 The select board shall appoint, following consultation with the town manager, the
271 fire chief, police chief and town counsel.

272 3-4-3 The select board shall appoint members of all multiple-member bodies, except as
273 otherwise provided in this charter.

274 3-4-4 The select board may appoint ad hoc committees as it deems necessary or
275 appropriate.

276 SECTION 5 Investigatory Powers

277 3-5-1 The select board may investigate the alleged misconduct of the town manager, any
278 town board or any member of a town board. The select board may direct the town manager to
279 investigate: (i) the affairs of the town; (ii) the conduct of any town department or town
280 employee; and (iii) any claim against the town.

281 3-5-2 Any potentially criminal matter shall be referred to the appropriate law
282 enforcement agency.

283 SECTION 6 Limitations and Public Ceremonies

284 3-6-1 Unless specifically provided in the General Laws, a member of the select board
285 may not hold any other position in town government, whether appointed or elected, paid or
286 unpaid, that is created by the select board or town meeting; provided, however, that serving in an
287 ex officio capacity shall not be considered a separate position for purposes of this paragraph.
288 Further, service as a representative from the town to a governmental body other than the town
289 shall not be prohibited by this provision.

290 3-6-2 The select board, and individual members thereof, shall deal with employees who
291 are under the direction and supervision of the town manager solely through the town manager,
292 except when the select board is conducting an investigation of the town manager under section 3-
293 5-1, in which case the employees shall contact the select board chair. Neither the select board nor
294 its individual members shall give direct orders to any such employee.

295 3-6-3 Except as otherwise specified in this chapter, the select board shall be subject to
296 the same rules as apply to all other town boards, including that members have no authority in
297 their individual capacities except as delegated by majority vote of the select board.

298 3-6-4 The select board shall represent the town for all ceremonial purposes.

299 SECTION 7 Code of Conduct

300 The select board shall adopt a policy establishing a code of conduct applicable to all
301 appointed and elected officials, which policy shall be amended from time to time at the board's

302 discretion, and, further, that any additional code of conduct adopted by another board shall be no
303 less restrictive. Any code of conduct adopted by a board shall be posted in its office and on the
304 town website.

305 CHAPTER 4

306 TOWN MANAGEMENT

307 SECTION 1 Town manager

308 4-1-1 Appointments and Qualifications

309

310 The select board shall by majority vote of the entire select board appoint a town manager.
311 The method of selection shall be left to the discretion of the select board so long as the method of
312 selection ensures orderly, nonpartisan action toward securing a competent and qualified person
313 to fill the position. The town manager shall be chosen solely upon the basis of the individual's
314 administrative training, education, experience and ability and need not, when appointed, be a
315 resident of the town of Brewster; provided, however, that the town manager shall establish such
316 residence within 12 months following the effective date of appointment; provided, further, that
317 the select board may, by no less than a 2/3 vote of the entire board, extend to a time certain the
318 time for establishing residence or waive this requirement in its entirety.

319 4-1-2 Compensation

320 The town manager shall receive compensation as may be fixed by the select board within
321 the amount appropriated by town meeting and according to the town manager's expertise,

322 education and training. Any contract between the select board and town manager shall be made
323 consistent with section 108N of chapter 41 of the General Laws.

324 4-1-3 Term and Removal

325 The town manager may be appointed for a definite term, but may be removed at the
326 discretion of the select board by majority vote of the entire select board. The action of the select
327 board in suspending or removing the town manager shall be final. It is the intention of this
328 charter to invest all authority and fix all responsibilities of such suspension or removal in the
329 select board.

330 4-1-4 Powers and Duties

331 The town manager shall be responsible to the select board for the proper administration
332 of all the affairs of the town consistent with the General Laws and this charter, and shall:

333 (A) appoint for a term of years or, at the town manager's discretion, for an unlimited
334 period, all town employees, including civil service positions, not otherwise addressed herein, but
335 excluding employees of the Brewster school department; provided, however, that the town
336 manager shall:

337 (i) act upon recommendations from the police chief and the fire chief, respectively, for
338 appointment of employees of the police and fire departments;

339 (ii) consult with the appropriate department head or multiple-member body for
340 appointment of employees of other departments or multiple-member bodies.

341 (B) supervise, discipline, suspend or remove all appointed department heads and
342 employees and organize and structure all town departments accordingly, except as otherwise
343 provided in section 4-3;

344 (C) administer and enforce the General Laws, special acts of the commonwealth, by-
345 laws and all regulations established by the select board;

346 (D) coordinate activities of all town departments;

347 (E) attend all sessions of the town meeting and answer all questions addressed to the
348 town manager which are related to the warrant articles and to matters under the general
349 supervision of the town manager;

350 (F) keep the select board fully informed as to the needs of the town and recommend to
351 the select board for adoption such measures requiring action by the select board or by the town
352 as the town manager deems necessary or expedient;

353 (G) ensure that complete and full records of the financial and administrative activity of
354 the town are maintained and render reports to the select board as may be required;

355 (H) be responsible for the rental, use, maintenance, repair and the development of a
356 comprehensive maintenance program for all town facilities;

357 (I) serve as the chief procurement officer for purposes of chapter 30B of the General
358 Laws and be responsible for the purchase of all supplies, materials and equipment, approve the
359 award and execute all such contracts; provided, however, that any contract over \$1,000,000, or
360 such higher amount as shall be approved by the select board from time to time, shall require
361 approval by the select board;

362 (J) develop and maintain a formal and complete inventory of all town-owned real and
363 personal property and equipment;

364 (K) propose personnel policies for approval by the select board under section 3-2-10 and
365 administer all personnel policies, practices, rules and regulations, any compensation plan and any
366 related matters for all municipal employees and administer all collective bargaining agreements
367 entered into by the town;

368 (L) fix the compensation of all town employees and officers appointed by the town
369 manager within the limits established by appropriation and any applicable compensation plan
370 and collective bargaining agreements;

371 (M) be responsible for the negotiation of all contracts with town employees regarding
372 wages and other terms and conditions of employment, except employees of the Brewster school
373 department. The town manager may, subject to the approval of the select board, employ special
374 counsel to assist in the performance of these duties. Collective bargaining agreements shall be
375 subject to the approval of the select board in accordance with chapter 150E of the General Laws;

376 (N) be responsible for the preparation and development of the financial forecast, annual
377 operating and capital budgets and 5-year capital improvement plan, consistent with policy
378 guidance provided by the select board, and prepare and submit to the select board and finance
379 committee such budget and plan, and be responsible for the administration of such budget and
380 plan after their adoption;

381 (O) keep the select board and the finance committee fully informed as to the financial
382 condition of the town and make recommendations to the select board;

383 (P) investigate or inquire into the affairs of any town department or office;

384 (Q) have full authority to act on behalf of the town during emergencies, including the
385 direction of town personnel, declaring states of emergency, opening the emergency operations
386 center and shelters and the emergency expenditure of funds, and to delegate any and all such
387 responsibility by appointing an emergency management director, who is a town employee duly
388 trained in public safety, and a deputy emergency management director to assist the emergency
389 management director and to assume the duties of the emergency management director in the
390 director's absence;

391

392 (R) delegate, authorize or direct any subordinate or employee in the town, including an
393 assistant town manager, if any, and subject to funding therefor, to exercise any power, duty or
394 responsibility that the office of town manager may exercise; provided, that all acts performed
395 under such delegation shall be deemed the acts of the town manager; and

396 (S) perform such other duties as necessary or as may be assigned by this charter, by-law,
397 town meeting vote or vote of the select board.

398 4-1-5 Acting Town manager

399 The town manager shall appoint as acting town manager a town employee who shall
400 perform the duties of the town manager in the town manager's absence; provided, however, that
401 if there is an assistant town manager serving at the time of any such absence, such person may
402 function as the acting town manager. In the event of long-term disability or absence exceeding
403 14 days, or the resignation, termination or vacancy in the office of town manager, the select

404 board shall forthwith, not later than 14 days thereafter, appoint an acting town manager for the
405 duration of any such disability or absence or until appointment of a permanent town manager. No
406 member of the select board shall serve as acting town manager.

407 SECTION 2 Town Counsel

408 4-2-1 The select board shall appoint a competent and duly qualified and licensed
409 attorney practicing in the commonwealth to be the counsel for the town. Town counsel shall
410 receive such compensation for services as may be fixed by the select board and shall hold office
411 at the pleasure of the select board. The town counsel shall be the legal adviser of all of the offices
412 and departments of the town and shall represent the town in all litigation and legal proceedings;
413 provided however, that the select board may retain special counsel at any time the select board
414 deems appropriate and necessary. The town counsel shall review and concur or dissent upon all
415 documents, contracts and legal instruments in which the town may have an interest. The town
416 counsel shall perform other duties prescribed by this charter, by-law or as directed by the select
417 board. No employee, committee or board, elected or appointed, other than the select board, shall
418 contact or otherwise interact with the town, labor or other special counsel in a manner
419 inconsistent with the policy relative to access to counsel established by the select board. This
420 section shall not limit the school committee from retaining its own legal counsel.

421 SECTION 3 Other Departments

422 4-3-1 Fire Department. Except as otherwise provided in this charter, there shall be a fire
423 department consistent with sections 42, 43 and 44 of chapter 48 of the General Laws. The fire
424 chief shall have responsibility for the day-to-day supervision of firefighters and the fire
425 department. The fire chief shall have additional authority to place a firefighter on administrative

426 leave with pay, or discipline or suspend a firefighter, for a period of no more than 5 days and
427 shall provide the town manager with written notification upon implementation of such
428 suspension. When the town manager intends to take action under section 4-1-4(B) with respect to
429 subordinate members of the fire department, the town manager first shall consult with the fire
430 chief.

431 4-3-2 Police Department. Except as otherwise provided in this charter, there shall be a
432 police department consistent with section 97A of chapter 41 of the General Laws. The police
433 chief shall have responsibility for the day-to-day supervision of subordinate police officers and
434 the police department. The police chief shall have additional authority to place a police officer on
435 administrative leave with pay, or discipline or suspend a police officer, for a period of no more
436 than 5 days and shall provide the town manager with written notification upon implementation of
437 such suspension. When the town manager intends to takes action under section 4-1-4(B) with
438 respect to subordinate members of the police department, the town manager first shall consult
439 with the police chief.

440 4-3-3 Water Department.

441 (A) Department. There shall be a water department under the supervision of a water
442 superintendent. The department shall have all of the powers, rights and duties to be exercised by
443 a water commission under the General Laws and special laws, except as otherwise provided
444 herein. The water superintendent shall be responsible for the efficient exercise, performance and
445 coordination of the department. Any exercise by the department of the authority of water
446 commissioners with respect to acquisition or disposition of land must first be approved by the

447 select board. The superintendent shall report to the town manager as to the doings of the office at
448 such times as the town manager may require.

449 (B) Superintendent. The water superintendent shall supervise and direct the operations
450 and employees of the department in accordance with the town's personnel by-laws and any
451 applicable collective bargaining agreements. The water superintendent shall be especially
452 qualified by education, training and experience to perform the duties of the office and shall have
453 such other qualifications as may be required from time to time. While employed by the town, the
454 water superintendent shall not engage in a business or occupation falling within the jurisdiction
455 of the water department, unless approved in advance by the town manager with the concurrence
456 of the select board. Unless specifically provided in the General Laws, the water superintendent
457 may not hold any other position in town government, whether appointed or elected, paid or
458 unpaid, that is created by the select board or town meeting; provided, however, that serving in an
459 ex officio capacity shall not be considered a separate position for purposes of this paragraph.
460 Further, service as a representative from the town to a governmental body other than the town
461 shall not be prohibited by this provision. The water superintendent need not be a resident of the
462 town during their tenure.

463 (C) Water Commission. There shall be a water commission consisting of 3 members
464 appointed by the select board for alternating, overlapping 3-year terms. The commission shall be
465 responsible for setting water rates, making budget recommendations and providing advice and
466 support to the superintendent with respect to other policy matters on which the commission is
467 consulted and which falls within the jurisdiction of the water department. The water commission
468 shall recommend priorities and policies to govern the provision of water in the town, and, with

469 the concurrence of the water superintendent, shall be authorized to adopt policies and regulations
470 to carry out the same.

471 CHAPTER 5

472 TOWN BOARDS/COMMISSIONS/COMMITTEES

473 SECTION 1 Appointed Boards and Committees

474 5-1-1 General Authority

475 (A) In addition to any boards and committees specified in this charter, boards and
476 committees may be created by adoption of by-laws, votes of town meeting or votes of the select
477 board. A list of any such boards and committees, specifying the number of members, terms of
478 office, if any, and listing their respective charges, shall be maintained in the office of the town
479 clerk and, within 10 business days of the creation of the board or committee, posted on the town
480 website.

481 (B) Notwithstanding any other provision of this charter or General Laws to the contrary,
482 any person appointed to a multiple-member body may be removed by their respective appointing
483 authority following written notice and the opportunity for a public hearing; provided, however,
484 that failure to reappoint following the expiration of an appointed term shall not constitute
485 removal.

486 SECTION 2 Moderator Appointments

487 5-2-1 Power to appoint

488 The moderator shall have the power to appoint members of the boards, committees and
489 commissions established under this section, or as may be authorized by by-law, vote of town
490 meeting or regional school district agreement. Appointments made by the moderator shall in
491 each instance be for a fixed term and such appointments shall not be subject to review or
492 confirmation by any other person or group.

493 5-2-2 Finance Committee

494 (A) Establishment; membership. There shall be a finance committee appointed by the
495 town moderator consisting of 9 residents of the town who shall serve without pay and who shall
496 hold no other town office or employment, each of whom shall serve a 3-year term beginning on
497 July 1 and terminating on June 30 of the third year following appointment. Vacancies on the
498 committee shall be filled by the moderator for the remainder of the original term. A member of
499 the finance committee may not hold any other position in town government, whether appointed
500 or elected, paid or unpaid, that is created by the select board or town meeting; provided,
501 however, that serving in an ex officio capacity shall not be considered a separate position for
502 purposes of this paragraph.

503 (B) Duties. The finance committee shall consider all the articles in any town meeting
504 warrant and report to town meeting its recommendations by posting the same on the town
505 website, and in any other manner it deems appropriate. Following the drawing up of the warrant
506 for a town meeting, the select board shall forthwith forward the warrant to the members of the
507 finance committee. The finance committee shall annually prepare for the annual town meeting a
508 comprehensive summary of the current condition of the town's finances.

509 (C) Investigative Authority. To carry out the finance committee's duties, the finance
510 committee shall have authority to investigate the books and accounts of any department of the
511 town. The finance committee, and individual members thereof, shall deal with employees who
512 are under the direction and supervision of the town manager solely through the town manager.
513 Neither the finance committee nor its individual members shall give direct orders to any such
514 employee.

515 SECTION 3 Alternate Members of Certain Multiple-Member bodies

516 5-3-1 Alternate Members of Certain Elected Boards

517 The select board, following consultation with a committee, commission or board elected
518 under section 2-11-1(C), (E), (F), (G) or (H), may appoint no more than 2 alternate members to
519 serve for terms of 1 or 2 years. The chair of each committee, commission or board to which
520 alternate members have been appointed may designate an alternate member to sit on the
521 committee, commission or board in the case of absence, inability to act or conflict of interest, on
522 the part of any member of the committee, commission or board, or in the event of a vacancy.
523 Any vacancies arising in said alternate position shall be filled in the same manner as the original
524 appointment for the remainder of the unexpired term.

525 5-3-2 Alternate Members of Appointed Boards

526 The appointing authority may appoint no more than 2 alternate members to boards,
527 committees or commissions established pursuant to section 5-1-1(A) for terms of 1 or 2 years.
528 The chair of each board to which alternate members have been appointed may designate an
529 alternate member to sit on the board in the case of absence, inability to act or conflict of interest
530 on the part of any member of the board, or in the event of a vacancy. Any vacancies arising in

531 said position shall be filled in the same manner as the original appointment for the remainder of
532 the unexpired term.

533 SECTION 4 General Provisions Applicable to Multiple-Member Bodies

534 5-4-1 Charge

535 Except as otherwise provided in this charter, each multiple-member body set forth herein
536 or established pursuant to sections 5-1-1(A) shall be organized and charged with, as applicable,
537 the powers and duties specified in the General Laws and special acts of the commonwealth, by-
538 laws, town meeting vote, vote of the select board or otherwise as provided herein.

539 5-4-2 Organization and Report

540 Each multiple-member body shall elect a chair, vice chair and clerk, and shall cause the
541 select board and the town clerk to be notified of its selection. Such organization shall be taken up
542 at the first meeting after the election for all elected boards, at the first meeting after annual
543 appointments are made or the first meeting of a new board or committee. All boards and
544 committees created under chapter 5 of this charter, or pursuant to a by-law, shall make a written
545 annual report of their activities to the select board in accordance with section 3-3-1.

546 5-4-3 Resignation

547 The resignation of any elected town officer under section 2-11-1, or any appointed
548 multiple-member body created by this charter or by by-law under section 5-1-1(A) shall be
549 deemed effective when such resignation is filed with the town clerk or at such later time certain
550 as may be specified in such filed resignation.

551 5-4-4 Excessive Absences; Loss of Appointed Office

552 For the purpose of this charter, 3 consecutive absences from meetings of an appointed
553 multiple-member body shall be considered a reason for removal. Under such circumstances, the
554 chair of the multiple-member body may notify the appointing authority, which may, in
555 accordance with section 5-1-1(B) remove the appointee and notify the town clerk in writing that
556 the position has been vacated.

557 SECTION 5 Cape Cod Regional Technical High School District School Committee and
558 Other Regional Entities

559 5-5-1 Members of the Cape Cod regional technical high school district school
560 committee shall be appointed or elected in accordance with the regional school district
561 agreement as it may be amended from time to time.

562 5-5-2 Election or appointment to other regional entities shall be in accordance with an
563 applicable intermunicipal agreement for such purposes.

564 CHAPTER 6

565 FINANCIAL PROVISIONS

566 SECTION 1 Budget Schedule

567 6-1-1 Annually, before December 1, the town manager shall establish and issue a
568 budget schedule that shall set forth the calendar dates for developing the annual budget for the
569 next fiscal year.

570 6-1-2 On or before December 15, the town manager shall present a financial forecast to
571 the select board. Thereafter, the select board shall set guidelines for the preparation of the annual
572 budget.

573 6-1-3 On or before February 15, the town manager shall submit to the select board a
574 proposed line item budget and accompanying message.

575 SECTION 2 Proposed Budget

576 6-2-1 The budget shall provide a complete financial plan of all town funds and
577 activities, including details on debt and debt service, anticipated income and proposed
578 expenditures.

579 6-2-2 The budget message shall begin with a clear general summary of its content and
580 explain, in both fiscal terms and program objectives, proposed expenditures for each department
581 and the projected tax rate.

582 SECTION 3 Budget Adoption

583 6-3-1 Town meeting shall adopt the annual operating budget, with or without
584 amendments, before the beginning of the fiscal year, except in the event that the governor has
585 declared a state of emergency to protect the public health or safety and the town meeting cannot
586 complete its business as a result thereof.

587 SECTION 4 Capital Planning

588 6-4-1 Capital Improvement Plan

589 The town manager shall prepare a 5-year capital improvement plan, identifying proposed
590 capital outlays or acquisitions in excess of \$10,000, or such other sum as shall be determined by
591 the select board, for any 1 project, whether it be spent in 1 year or over several years. The town
592 manager, in the town manager's sole discretion, may appoint a committee to assist the town
593 manager with preparation of the plan.

594 6-4-2 Contents of Capital Improvement Plan

595 (A) The capital improvement plan shall include all town activities and departments.
596 Proposed capital expenditures for regional entities shall be consistent with the regional or
597 intermunicipal agreement establishing such entities.

598 (B) The capital improvement plan shall include a list, by department, of all proposed
599 capital improvements to be undertaken during the next 5 fiscal years and shall include cost
600 estimates, methods of financing and time schedules. This information shall be revised and
601 extended on an annual basis.

602 6-4-3 Submission to Select Board

603 (A) The capital improvement plan shall be submitted to the select board by February 1 of
604 each year.

605 (B) The select board shall, after providing 7 days' notice in the manner required by
606 section 20 of chapter 30A of the General Laws and applicable regulations, hold a public hearing
607 on the capital improvement plan. The select board shall make the capital improvement plan
608 available for public inspection.

609 6-4-4 Submission to Town Meeting

610 The select board shall prepare and submit to every annual town meeting a summary of
611 the capital improvement plan, identifying all proposed capital expenditures for the next 5 years
612 estimated to cost \$100,000 or more, or such other amount as the select board shall decide from
613 time to time, and including the fiscal year in which it is anticipated to be expended, the amount
614 and its anticipated source of funding.

615 SECTION 5 Annual Audit

616 6-5-1 At the close of each fiscal year, and at such times as it may be deemed necessary,
617 an independent audit shall be undertaken of all accounts of the town by a certified public
618 accountant. The audit committee created by general by-law, if any, or in the absence thereof, the
619 select board, shall solicit a firm or firms for such purposes. The certified public accountant so
620 selected shall have no personal interest, directly or indirectly, in the financial affairs of the town
621 or any of its offices. Upon completion of the audit, the results shall be reviewed by the audit
622 committee, if any, and by the select board and the finance committee. The results, in a summary
623 form, shall be placed on file in the town clerk's office and on the town website as a public record
624 and be available in the Brewster public library for public information.

625 CHAPTER 7

626 BY-LAWS AND CHARTER – ADOPTION, AMENDMENT AND PERIODIC
627 REVIEW

628 SECTION 1 By-laws

629 7-1-1 Town Meeting approval. By-laws may be proposed by warrant article consistent
630 with the General Laws and this charter.

631 7-1-2 Quantum of vote. Adoption and amendment of by-laws shall be approved in
632 accordance with applicable General Laws.

633 7-1-3 Periodic Review. The select board shall ensure that the by-laws are reviewed and
634 prepared for any necessary revision not less than once every 10 years.

635 7-1-4 Codification and Publication. The town clerk shall codify and republish the by-
636 laws from time to time as may be reasonable and such by-laws shall also be posted on the town
637 website.

638 7-1-5 Continuation of Laws. All special acts, by-laws, town meeting resolutions, rules
639 and regulations of the town in force at the time this charter takes effect, not inconsistent with this
640 charter, shall continue in force.

641 SECTION 2 Charter

642 7-2-1 Amendments to the charter may be approved by any means available pursuant to
643 the constitution and the General Laws; provided, however, that if such amendments are to be
644 acted upon by town meeting in accordance with section 10 of chapter 43B of the General Laws,
645 the select board and finance committee shall present their recommendations to town meeting for
646 consideration upon any such proposed amendment.

647 7-2-2 Periodic Review. The select board shall appoint a committee of no fewer than 5
648 nor more than 9 members to review the charter not less than once every 10 years, such that
649 review of the charter begins 5 years after the by-law review provided for under section 7-1-3 to
650 review the town charter and provide recommendations, if any, to a subsequent town meeting
651 with respect to such review.

652 SECTION 2. All town of Brewster by-laws, resolutions, rules, regulations and votes of
653 the town meeting in force at the time the charter established pursuant to section 1 takes effect,
654 and that are not inconsistent with the provisions of the charter, shall continue in full force and
655 effect until amended or repealed. Where provisions of the charter established pursuant to section
656 1 conflict with provisions of town of Brewster by-laws, rules, regulations, orders or special acts

657 or acceptances of laws, the charter provisions shall govern. All town of Brewster by-laws, rules,
658 regulations, orders and special acts not superseded by the charter established pursuant to section
659 1 shall remain in force and effect.

660 SECTION 3. Upon the effective date of this act, all persons appointed or elected to town
661 offices, boards, commissions and agencies shall continue to perform their duties until
662 reappointed or re-elected, or until successors to their respective positions are fully appointed or
663 elected or until their duties have been transferred and assumed by another town office, board,
664 commission or agency.

665 SECTION 4. Upon the effective date of this act, any person holding a town office or a
666 position in the administrative service of the town or any person holding permanent employment
667 under the town shall retain that person's office, position or position of employment and shall
668 continue to perform the duties of that person's office, position or position of employment until
669 provision shall have been made for the performance of those duties by another person or agency;
670 provided, however, that a person in the permanent service of the town shall not forfeit their pay
671 grade or time in the service of the town as a result of the adoption of the Brewster town charter;
672 provided further, that this section shall not provide a person holding an administrative office or
673 position or a person serving in the employment of the town on the effective date of this act with
674 any greater rights or privileges with regard to that person's continued service or employment
675 with the town than that person had before the effective date of this act. Nothing in this section
676 shall impair the rights of any person under an individual employment contract or collective
677 bargaining agreement.

678 SECTION 5. All records, property and equipment of a town office, board, commission,
679 committee or agency or part thereof, the powers and duties of which, upon the effective date of
680 this act, are assigned in whole or in part to another town office, board, commission or agency,
681 shall be transferred forthwith to the office, board, commission or agency.

682 SECTION 6. All official bonds, recognizances, obligations, contracts and other
683 instruments entered into or executed by, on behalf of or to the town of Brewster before the
684 effective date of this act, and all taxes, assessments, fines, penalties, forfeitures, incurred or
685 imposed, due or owing to the town of Brewster, shall be enforced and collected and all writs,
686 prosecutions, actions and causes of action, except as herein otherwise provided, shall continue
687 without abatement and remain unaffected by the charter and no legal act done by or in favor of
688 the town of Brewster shall be rendered invalid by reason of the adoption of this act.

689 SECTION 7. To provide for the transition to reduce the terms of all planning board
690 members from 5-year terms to 4-year terms, at the next regular election following at least 64
691 days after the effective date of this act, 1 planning board member shall be elected for a 1-year
692 term, 1 planning board member shall be elected for a 2-year term and the expiring term shall be
693 placed on the ballot for a 4-year term. The expiring term shall appear on the ballot with
694 instructions to vote for 1 candidate; provided, that if the incumbent is running for the office, they
695 shall have the words "candidate for re-election" next to their name. The 2-year term and the 1-
696 year term shall appear together on the ballot with instructions to voters to vote for 2 candidates,
697 with the longer term going to the candidate with the most votes. Following the effective date of
698 this act, the term of the planning board member most recently elected shall be reduced from 5
699 years to 4 years. Thereafter, all planning board members shall be elected to alternating 4-year
700 terms, with no more than 2 terms expiring each year.

701

SECTION 8. This act shall take effect upon its passage.