

Proposed Charter – Town of Mashpee  
2004  
ARTICLE 1  
INCORPORATION; SHORT TITLE; DEFINITIONS

**SECTION 1-1: INCORPORATION**

The inhabitants of the Town of Mashpee, within the territorial limits established by law, shall continue to be a municipal corporation, a body corporate and politic, under the name "Town of Mashpee."

**SECTION 1-2: SHORT TITLE**

This instrument shall be known and may be cited as the Mashpee Home Rule Charter.

**SECTION 1-3: DIVISION OF POWERS**

The administration of the fiscal, prudential and municipal affairs of Mashpee, with the government thereof, shall be vested in an executive branch consisting of a board of selectmen, elected by and responsible to the voters and a town manager, appointed by and responsible to the board of selectmen; and a legislative branch consisting of a town meeting open to all voters.

**SECTION 1-4: POWERS OF THE TOWN**

Subject only to express limitations on the exercise of any power or function by a municipal government in the constitution or in the general laws of the Commonwealth, it is the intention and the purpose of the voters of Mashpee through the adoption of this charter to secure for themselves and for their government all of the powers it is possible to secure as fully and as completely as though each such power were specifically and individually enumerated herein.

**SECTION 1-5: CONSTRUCTION**

The powers of the Town of Mashpee under this charter are to be construed liberally in favor of the town, and the specific mention of any particular power is not intended to limit the general powers of the town as stated in section 1-4.

**SECTION 1-6: INTERGOVERNMENTAL RELATIONS**

Subject only to express limitations in the constitution or general laws of the Commonwealth, Mashpee may exercise any of its powers or perform any of its functions, and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with the Commonwealth or any agency or political sub-division thereof, or with the United States government or any agency thereof.

**SECTION 1-7: DEFINITIONS**

Unless another meaning is clearly apparent from the manner in which the word or phrase is used, the following words and phrases as used in this charter shall have the following meanings:

(a) **Appointing Authority** - The words "appointing authority" shall mean the officer or multiple member body which appoints the officer, member of a multiple member body or town employee.

(b) **Charter** - The word "charter" shall mean this charter including any amendment to it hereafter adopted.

(c) **Elected Town Officer** – The words "elected town officer" shall mean a person elected to one of the offices described in section 3-1 of this charter and shall not be

# Proposed Charter – Town of Mashpee 2004

construed to include a person elected to serve on the Mashpee Housing Authority, or a person elected to serve on a charter commission for the town of Mashpee

(d) **Emergency** - The word “emergency” shall mean a sudden, unexpected, unforeseen happening, event, occurrence or condition which necessitates immediate action or response.

(e) **Full Multiple Member Body** - The words “full multiple member body” shall mean the entire authorized complement of the board of selectmen, the school committee, or other multiple member body notwithstanding any vacancy that might exist.

(f) **general laws** - The words “general laws” (all lower case letters) shall mean laws enacted by the state legislature which apply alike to all cities and towns, to all cities, or to a class of two or more towns and or cities and towns of which Mashpee is a member.

(g) **General Laws** - The words “General Laws” (initial letter of each word in upper case letters) shall mean the General Laws of the Commonwealth of Massachusetts, a codification and revision of statutes enacted on December 22, 1920, and including all amendments and additions thereto subsequently adopted.

(h) **Local Newspaper** - The words “local newspaper” shall mean a newspaper of general circulation within Mashpee, with either a weekly or daily circulation.

(i) **Majority Vote** - The words “majority vote” when used in connection with a meeting of a multiple member body shall mean a majority of those present and voting, unless another provision is made by by-law, by law, or by its own rules.

(j) **Multiple Member Body** - The words “multiple member body” shall mean any board, commission, committee, sub-committee or other body consisting of two or more persons whether elected, appointed or otherwise constituted.

(k) **Quorum** - The word “quorum” shall mean a majority of all members of a multiple member body unless some other number is required by law or by by-law.

(l) **Board of selectmen** .- The words “board of selectmen” shall mean the board of persons referred to in the General Laws of Massachusetts as the board of selectmen.

(m) **Town.** - The word “town” shall mean the town of Mashpee.

(n) **Town Agency** - The words “town agency” shall mean any multiple member body, any department, division, or office of the town of Mashpee.

(o) **Town Bulletin Boards**- The words “town bulletin boards” shall mean the bulletin board in the town hall on which the town clerk posts official notices of meetings and upon which other official town notices are posted, and the bulletin boards at any other locations as may be designated town bulletin boards by the board of selectmen.

(p) **Town Officer** - The words “town officer” when used without further qualification or description, shall mean a person having charge of an office or department of the town who in the exercise of the powers or duties of such position exercises some portion of the sovereign power of the town.

Proposed Charter – Town of Mashpee  
2004

- (q) **Voters** - The word “voters” shall mean registered voters of the town of Mashpee.

# Proposed Charter – Town of Mashpee 2004

## ARTICLE 2 LEGISLATIVE BRANCH

### **SECTION 2-1: TOWN MEETING**

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

### **SECTION 2-2: PRESIDING OFFICER**

The moderator, elected as provided in section 3-10, shall preside at all sessions of the town meeting. The moderator, at town meetings, shall regulate the proceedings, decide all questions of order, make public declaration of all votes and may exercise such additional powers and duties as may be authorized by general law, by this charter, by by-law or by other vote of the town meeting.

At the first town meeting session held following the election of a moderator, or whenever a vacancy exists, the moderator shall appoint a deputy moderator to serve as acting moderator in the event of the temporary absence or disability of the moderator.

### **SECTION 2-3: COMMITTEES**

Subject to the provisions of this charter and such by-laws or other town meeting votes regarding committees as may be provided, the moderator shall appoint for fixed terms the members of such committees of the town meeting, special or standing, as may from time to time be established. In addition to such specific powers, duties and responsibilities as may be provided to a town meeting committee by the by-law or vote establishing it, each such committee when acting within the scope of its authority shall have a right to examine the pertinent records of any town agency and to consult with, at reasonable times, any town officer, employee or agent.

### **SECTION 2-4: TIME OF MEETING**

The town meeting shall meet in regular session twice in each calendar year. The first such meeting, to be held during March, April or May, on a date fixed by by-law, shall be primarily concerned with the determination of matters involving the expenditure of town funds, including, but not limited to the adoption of an annual operating budget for all town agencies, and for the purpose of electing officers and for the determination of all other matters to be decided by ballot of the voters and which shall be deemed to be the annual town meeting. The second such meeting, the powers of which shall also be deemed to be those of an annual town meeting, except that it shall not include the election of officers or the determination of other matters to be decided by ballots of voters, and which shall primarily be concerned with non-financial matters, shall be held during the last four calendar months, on a date fixed by by-law.

### **SECTION 2-5: SPECIAL MEETINGS**

Special town meetings may be held at the call of the board of selectmen at such times as they deem necessary, or desirable, in order to transact the legislative business of the town in an orderly manner. Special town meetings may also be held on the petition of two hundred or more voters, in the manner provided by general law.

### **SECTION 2-6: WARRANTS**

Every town meeting shall be called by a warrant issued by the board of selectmen which shall state the time and place at which the meeting is to convene and, by separate

# Proposed Charter – Town of Mashpee 2004

articles, the subject matter to be acted upon. The publication of the warrant for every town meeting shall be in accordance with a town by-law governing such matters.

## **SECTION 2-7: INITIATION OF WARRANT ARTICLES**

**(a) Initiation** - All subjects to be acted on by a town meeting shall be placed on warrants issued by the board of selectmen. The board of selectmen shall receive all petitions addressed to it which request the submission of particular subject matter to the town meeting and which conform to the requirements of section ten of chapter thirty-nine of the General Laws. All requests for the inclusion of subject matter shall be in writing, but shall not otherwise be required to conform to any particular style or form, except that each request for a particular subject shall be submitted as a separate petition.

Whenever the board of selectmen determine a special town meeting is to be called, it shall give notice by publication in a local newspaper and by a written notice distributed to all town agencies of its intention to do so. The board of selectmen shall include in the warrant for such special town meeting the subject matter of all petitions which are received at its office on or before five o'clock in the afternoon of the fifth business day following such publication which are in conformity with the provisions of general laws concerning petitions of voters and which specifically request that the subject matter be included on the warrant for said special town meeting.

The proponents of each proposed warrant article shall file with each subject proposed to be included as an article in a town meeting warrant a brief statement of explanation of the proposal.

Forthwith following the filing of a proposed warrant article and in no event later than the publication of the warrant for the town meeting including such warrant article, or such other deadline as may be established by the board of selectmen, the proponents shall file with the board of selectmen all available plans, specifications, cost estimates and other supporting data necessary for fair consideration of the proposal by the town meeting. The town may, by by-law, provide a process for the disposition of warrant articles for which adequate and sufficient explanatory material has not been provided.

**(b) Referral** - Forthwith following receipt of any proposed warrant article the board of selectmen shall cause a copy of the proposal to be mailed to the residence of the chairperson of the finance committee, a copy to be posted on the town bulletin board and shall cause such other distribution to be made of each such proposal as may be required by law or by by-law.

**(c) Inclusion on Warrant** - The board of selectmen shall close the warrant for a regular town meeting on the date established by by-law for such closing preceding the date on which the town meeting is scheduled, by by-law, to convene. The board of selectmen shall not include in any such warrant the subject matter of any petition which has been received by it after said day nor shall any matter originating with it be included after said date.

## **SECTION 2-8: AVAILABILITY OF TOWN OFFICIALS AT TOWN MEETINGS**

Every town officer, the chairperson of each multiple member body, the head of each department and the head of each division within the said departments shall attend all

# Proposed Charter – Town of Mashpee 2004

sessions of the town meeting at which warrant articles pertinent to their agency are or may be acted upon for the purpose of providing the town meeting with information pertinent to all such matters as appear in the warrant for the town meeting. In the event any town officer, chairperson of a multiple member body, department head or division head is to be absent due to illness or other reasonable cause, such person shall designate a deputy to attend to represent the office, multiple member body, department or division. If any person designated to attend the town meeting under this section is not a voter, such person shall, notwithstanding, have a right to address the meeting for the purpose of compliance with this section.

## **SECTION 2-9: CLERK OF THE MEETING**

The town clerk shall serve as clerk of the town meeting, give public notice of all adjourned sessions thereof, record its proceedings, and perform such additional duties in connection therewith as may be provided by general law, by this charter, by by-law or by other town meeting vote.

## **SECTION 2-10: RULES OF PROCEDURE**

Any voter or taxpayer of the town shall have a right to speak at sessions of the town meeting, subject to such rules as may from time to time be adopted. The town may, by by-law, adopt and from time to time amend, revise or repeal rules to govern the conduct of town meetings.

## **SECTION 2-11: REPORT TO THE VOTERS**

There shall be published for every town meeting a copy of the warrant and a report to the voters which shall contain the explanation and relevant data submitted in accordance with section 2-7, together with the articles; provided, however, that, in the alternative and at the discretion of the finance committee and (with respect to zoning articles) the planning board, voluminous supporting material necessary for consideration of the particular articles in lieu of inclusion in the report to the voters, may be made reasonably available for inspection at public locations prior to town meeting.

In addition to the written report of the planning board setting out its findings and recommendations as to all zoning articles, the finance committee shall prepare a written report, setting out its findings, conclusions and recommendations, including the reasons therefore, regarding all of the articles in the warrant. The report of the finance committee shall not be limited to the fiscal impact on town taxpayers of articles contained in the warrant, but shall extend to all articles in the warrant of whatever nature. The report for the spring session of the annual town meeting shall also include, as an appendix, the annual report of the capital outlay and planning committee, setting forth a five-year capital outlay program for the information and guidance of town meeting. In addition, the board of selectmen shall have the opportunity to include in the report its conclusions and recommendations, including the reasons therefore, regarding articles in the warrant that relate to its general superintendence over the administration of town affairs.

One copy of the warrant and report shall be delivered or mailed not later than the seventh (7<sup>th</sup>) day prior to the date on which the opening session of the annual town meeting is to be held to each residence that contains one or more registered voters.

The town may, by by-law, provide additional details concerning the publication and distribution of the Report to the Voters.

Proposed Charter – Town of Mashpee  
2004  
ARTICLE 3  
EXECUTIVE BRANCH: ELECTED OFFICERS

**SECTION 3-1 IN GENERAL**

**(a) Elected Town Offices** - The town offices to be filled by the voters shall be a board of selectmen, a school committee, a town clerk, a board of library trustees, a town moderator and a planning board.

**(b) Other Offices Filled at Town Elections** - In addition to the town offices enumerated above, members of a housing authority and such other officers or representatives to regional authorities or districts as may be established by law or by interlocal agreement may also be filled by ballot at town elections.

**(c) Eligibility** - Any voter shall be eligible to hold any elective town office, provided however, no person shall simultaneously hold more than one elected town office or hold any appointed town office except as an ex officio member of a multiple member body.

**(d) Town Election** - The annual election of town officers and for the determination of all questions to be referred to the voters, shall be held on such date as may from time to time be provided by by-law.

**(e) Ballot Position** - The names of candidates for each elective town office, and including candidates for re-election to the same office, shall be arranged according to the results of a drawing, by lot, conducted by the town clerk to which the candidates or their representatives shall be invited to attend.

**(f) Compensation** - Elected town officers shall receive such compensation for their services as may be appropriated, annually, for such purpose, but, no elected officer regularly employed for fewer than twenty hours during the regular work week otherwise established for town employees shall be considered an employee for purposes of receiving group insurance benefits.

**(g) Coordination and Cooperation** - Notwithstanding their election by the voters, the town officers named in this section shall be subject to the call of the board of selectmen or of the town manager, at all reasonable times, for consultation, conference and discussion on any matter relating to their respective offices.

**(h) Filling of Vacancies in Elected Offices**

**(1) Multiple Member Body** - If there is a vacancy in a board consisting of two or more members, other than the board of selectmen and unless under the terms of a will or other trust some other provision is made, the remaining members shall forthwith give written notice of the existence of any such vacancy to the board of selectmen. After one week's notice of the date on which the vote shall be taken, the board of selectmen with the remaining members or member of such board shall fill such vacancy by a joint vote. If such notice is not given within thirty days following the date on which said vacancy occurs the board of selectmen shall, after one week's notice, fill such vacancy without participation by the remaining members of the multiple member body. The person chosen to fill any such vacancy shall serve in such office until the next regular town election at which the balance of the unexpired term, if any, shall be filled by the voters.

**(2) Board of Selectmen** - If there is a failure to elect or if a vacancy occurs in the office of selectman and more than one hundred and eighty days remain before the next

## Proposed Charter – Town of Mashpee 2004

regular town election will occur, the remaining selectmen shall call a special election to fill the vacancy. The

board of selectmen shall also call a special election to fill a vacancy in the office of selectman if less than one hundred and eighty days remain before the next regular town election will occur upon the request in writing of two hundred voters, provided, however, that no such special election shall be held within one hundred and twenty days of a regular town election.

(3) *Town Officer* - If there is a failure to elect, or if a vacancy shall occur in the office of town clerk, the board of selectmen shall, in writing, appoint some suitable person to serve in such office until the next town election.

(i) ***Recall of Elected Officials*** - Any person who holds an elected town office, with more than six months remaining of the term of office, may be recalled from the office by the voters, in the manner provided in this section.

(1) *Recall Petitions* - Twenty-five or more voters may file with the town clerk an affidavit and a statement of the grounds for recall. If the said petition is found to be valid, the town clerk shall thereupon deliver to the ten persons first named on such petition blank forms demanding said recall. These blanks, available from the town clerk, may be completed by printing or typewriting; they shall contain the names of the ten persons to whom they are issued and the grounds for recall as stated in the affidavit; they shall demand the election of a successor to the office; they shall be dated and signed by the town clerk. The recall petitions shall be returned to the office of the town clerk within twenty days following the date they are issued, signed by at least twenty percent of the total number of persons registered to vote as of the date of the most recent town election.

The town clerk shall, within twenty-four hours following such filing, submit the petitions to the board of registrars of voters which shall within five days thereafter, certify thereon the number of signatures which are the names of voters.

(2) *Recall Elections* - If the petitions shall be certified by the board of registrars of voters to be sufficient, the town clerk shall forthwith give notice, in writing, of said petition to the officer whose recall is sought. If said officer does not resign his office within five days following delivery of said notice, the board of selectmen shall order a special election to be held not less than sixty-five nor more than ninety days after the date of the certification of the town clerk that the petition is sufficient; provided, however, if a regular town election is to be held within one hundred and twenty days, the recall election shall be held at such time in conjunction with such regular election. If a vacancy occurs in the office after a recall election has been ordered, the election shall nevertheless proceed as provided in this section, but only the ballots for candidates need be counted.

(3) *Nomination of Candidates* - An officer whose recall is sought may not be a candidate to succeed to the office in event the question of recall is in the affirmative. The number of signatures of voters required to place the name of a candidate on the official ballot for use at a recall election shall not be less than twenty-five. The publication of the warrant for the recall election and the conduct of the recall election shall be in accordance with the Massachusetts General Laws regulating elections.

(4) *Propositions on the Ballot* - The ballot used at a recall election shall state the proposition in the order indicated:



# Proposed Charter – Town of Mashpee 2004

For the recall of (Name of officer) [       ]  
Against the recall of (Name of officer) [       ]

Adjacent to each proposition shall be a place to vote for either of said propositions. After the said propositions shall appear the word "candidates" and the names of the candidates arranged as determined in a drawing by lot conducted by the town clerk in the manner provided in section 3-1 (e). If a majority of the votes cast is against the recall, the votes for the candidates need not be counted. If a majority of the votes cast is in favor of the recall, and provided that at least twenty percent of the total number of voters as of the date of the most recent Town election have participated at such recall election, the officer shall be deemed to be recalled and the ballots for candidates shall then be counted, and the candidate receiving the higher number of votes shall be declared elected. If the officer is recalled, the office shall be deemed vacant upon certification of the election results. The candidate receiving the highest vote shall serve for the balance of the unexpired term.

(5) *Repeat of Recall Election* - No recall shall be filed against an officer subjected to a recall election and not recalled thereby, until at least six months after the election at which the recall was submitted to the voters.

(6) *Appointment of Person Recalled* - No person who has been recalled from an office, or who has resigned from office while recall proceedings are pending against them, shall be appointed to any Town office within two years after such recall or resignation.

## **SECTION 3-2: BOARD OF SELECTMEN**

(a) **Composition, Term of Office** - There shall be a board of selectmen consisting of five members elected for terms of three years each, so arranged that the term of office of as nearly an equal number of members as is possible shall expire each year.

(b) **Powers and Duties in General** - The executive powers of the town shall be vested in the board of selectmen which shall be deemed to be the chief executive office of the town. The board of selectmen shall have all of the executive powers it is possible for a board of selectmen to have and to exercise. The board of selectmen shall serve as the chief policy making agency of the town. The board of selectmen shall be responsible for the formulation and promulgation of policy directives and guidelines to be followed by all town agencies serving under it and, in conjunction with other elected town officers and multiple member bodies to develop and promulgate policy guidelines designed to bring the operation of all town agencies into harmony. Provided however, nothing in this section shall be construed to authorize any member of the board of selectmen, nor a majority of such members, to become involved in the day-to-day administration of any town agency. It is the intention of this provision that the board of selectmen shall act only through the adoption of broad policy guidelines which are to be implemented by officers and employees serving under it.

(c) **Licensing Authority** - The board of selectmen shall be a licensing board for the town and shall have the power to issue licenses as otherwise authorized by law, to make all necessary rules and regulations regarding the issuance of such licenses, to attach conditions and to impose restrictions on any such license as it may issue as it deems to be in the public interest, and to enforce all laws relating to all businesses for which it issues any license.

# Proposed Charter – Town of Mashpee 2004

**(d) Appointments** - The board of selectmen shall appoint a town manager, constables, a board of registrars of voters and other election officers (but not including the town clerk), a board of assessors, a board of appeals, a sewer commission, a board of health and a conservation commission and such other members of multiple member bodies the functions of which do not involve direct operating responsibilities but are primarily policy making or advisory in nature. The board of selectmen shall appoint all persons who are to serve as representatives of the town to the governing or advisory bodies of area, county, regional or district authorities and where no other provision is made for appointments in the law or agreement establishing any such entity.

**(e) Investigations** - The board of selectmen may investigate the affairs of the town and the conduct of any town agency including any doubtful claims against the town. Copies of the full text of the report of the results of any such investigation shall be placed on file in the office of the board of selectmen, the office of the town clerk and in the town library and a report summarizing the results of such investigation shall be printed in the next annual town report.

## **SECTION 3-3: SCHOOL COMMITTEE**

**(a) Composition, Term of Office** - There shall be a school committee consisting of five members elected for terms of three years each so arranged that the terms of as nearly an equal number of members as is possible shall expire each year.

**(b) Powers and Duties** - The school committee shall have the general charge and superintendence of the public schools of the town. The powers of the school committee shall include, but are not limited to: (1) to appoint a superintendent of the schools; (2) to make all reasonable rules and regulations as maybe necessary or desirable for the administration and management of the public schools of the town; (3) to adopt and to oversee the administration of an annual operating budget for the school department, subject to appropriation by the town meeting.

## **SECTION 3-4: TOWN CLERK**

**(a) Term of Office** - There shall be a town clerk elected for a term of three years.

**(b) Powers and Duties** - The town clerk shall be the keeper of vital statistics for the town; the custodian of the town seal; shall administer the oath of office to all persons, elected or appointed, to any town office; shall issue such licenses and permits as are required by law to be issued by town clerks; supervise and manage the conduct of all elections and all other matters relating to elections; be the clerk of the town meeting, keep its records and in the absence of the town moderator or deputy town moderator to preside at town meetings pending the election of a temporary town moderator. The moderator, or a designee of the moderator, shall be responsible to review the minutes of all multiple[le member bodies appointed by the moderator.

## **SECTION 3-5 BOARD OF LIBRARY TRUSTEES**

**(a) Composition, Term of Office** - There shall be a board of trustees of the public library consisting of seven members, elected for terms of three years each, so arranged that as nearly an equal a number of terms as is possible shall expire each year.

**(b) Powers and Duties** - The board of trustees of the public library shall have the custody and management of the library and reading rooms and of all property of the town devoted to library purposes. All funds raised or appropriated by the town for the support and maintenance of the library shall be expended under the direction of said

## Proposed Charter – Town of Mashpee 2004

board. All funds which the town may receive by gift, by bequest, or otherwise for library purposes, shall be administered under the direction of said board in accordance with the terms of such gift, bequest or otherwise.

### **SECTION 3 -6: TOWN MODERATOR**

**(a) Mode of Election, Term of Office** - A town moderator shall be elected for a term of three years and shall serve as moderator of all town meetings until a successor is elected and qualified. Any vacancy may be filled by the town meeting members at a meeting held for that purpose.

**(b) Powers and Duties** - The town moderator shall appoint the members of finance committee, as provided by by-law and the members of all other committees established by the town meeting to serve a legislative purpose. The town moderator shall preside and regulate the proceedings at town meetings, decide all questions of order, and make public declaration of all votes, and may administer in open meeting the oath of office to any town officer chosen at that meeting.

### **SECTION 3-7: PLANNING BOARD**

**(a) Composition, Mode of Election, Term of Office** - There shall be a planning board which shall consist of five members and one associate member, elected for terms of three years each, so arranged that as nearly an equal number of such terms as is possible shall expire each year. In every three year cycle the terms of two members shall expire in the first year, the terms of two members shall expire in the second year, and the term of one member and the term of the associate member shall expire in the third year.

Whenever a member of the planning board is absent, or because of a conflict of interest or other disability is unable to participate on a particular matter, the chair shall seat the associate member to act during any such absence or disability.

**(b) Powers and Duties** - It shall be the duty of the planning board to make careful studies of the resources, possibilities and needs of the town and to make plans for the development of the town. The planning board shall make an annual report giving information regarding the condition of the town and any plans or proposals for its development and estimates of their cost. The planning board shall make recommendations to the town with regard to any changes in the zoning by-law of the town and shall be responsible for the regulation of subdivisions within the town.

### **SECTION 3 8: MASHPEE HOUSING AUTHORITY**

**(a) Composition, Mode of Appointment and Election, Term of Office** - There shall be a housing authority which shall consist of five members. Four members shall be elected at the annual town election, for terms of five years each; the terms to be so arranged that each term will expire in a different year. One member shall be appointed by the Commonwealth of Massachusetts to serve for a term of five years not expiring in the same year as any elected member.

**(b) Powers and Duties** - The housing authority shall make studies of the housing needs of the community and shall provide such programs to make available housing for families of low income or elderly persons of low income as it deems necessary and desirable.

Proposed Charter – Town of Mashpee  
2004  
ARTICLE 4  
TOWN MANAGER

**SECTION 4-1: APPOINTMENT; QUALIFICATION; TERM**

The board of selectmen shall appoint a town manager to serve for an indefinite term. The town manager shall be appointed solely on the basis of education and experience in the accepted competencies and practices of local government management. A town manager need not be a resident of the town or of the commonwealth at the time of appointment but shall establish a residence within the commonwealth within one year following appointment. The town manager shall be appointed from a list prepared by a screening committee established by by-law.

The board of selectmen shall, annually, fix the compensation for such person within the amount appropriated for such purpose.

The town manager shall not have served in an elective office in the town government for at least twelve months prior to appointment. The town may, by by-law, establish such additional qualifications as seem necessary and appropriate.

The town manager shall devote full time to the office and shall not hold any other public office, elective or appointive, nor actively engage in any other business, occupation or profession during such service, unless such action is approved in advance and in writing by the board of selectmen.

The board of selectmen shall provide for an annual review of the job performance of the town manager which shall, at least in summary form, be a public record.

**SECTION 4-2: POWERS AND DUTIES**

The town manager shall be the chief administrative officer of the town, directly responsible to the board of selectmen. The powers and duties of the town manager shall include, but are not intended to be limited to the following:

(a) To supervise, direct and be responsible for the efficient administration of all functions and activities in the executive/administrative branch of the town government for which the office of town manager is hereby given the authority, responsibility and control by this charter.

(b) To appoint, and in appropriate circumstances to remove, subject to the provisions of the civil service law and of any collective bargaining agreements as may be applicable, all department heads, town officers, and members of multiple member bodies for whom no other method of selection is provided by this charter. Appointments made by the town manager shall be subject to confirmation by the board of selectmen. Copies of the notices of all such appointments shall be posted on the town bulletin board when submitted to the board of selectmen.

Except as otherwise specifically provided in this charter, the town manager shall appoint all other town employees, except those serving under town officers or multiple member bodies elected directly by the voters. The town manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;

## Proposed Charter – Town of Mashpee 2004

(c) To be responsible for the administration of a town personnel system, including, but not limited to personnel policies and practices, rules and regulations, including provisions for an annual employee performance review, personnel by-law and collective bargaining agreements entered into by the town. The town manager shall also prepare and keep current a plan establishing the personnel staffing requirements for each town agency, except the school department.

(d) To attend all regular and special meetings of the board of selectmen, unless unavailable for reasonable cause, and shall have a voice, but no vote, in all of its proceedings.

(e) To assure that full and complete records of the financial and administrative activities of the town are kept and to render as often as may be required by the board of selectmen, but not less than once in each year, a full report of all town administrative operations during the period reported on, which report shall be made available to the public.

(f) To keep the board of selectmen fully advised as to the needs of the town and shall recommend to the board of selectmen and to other town officers and agencies for adoption such measures requiring action by them as the town manager may deem necessary or expedient.

(g) To have full jurisdiction over the rental and use of all town facilities and property except property under the control of the school committee, the board of library trustees, or the conservation commission. The town manager shall be responsible for the maintenance and repair of all town buildings and facilities placed under the town manager's control by this charter, or otherwise.

(h) To prepare and present, in the manner provided in article 6 a proposed annual operating budget for the town and a proposed capital outlay program for the five fiscal years next ensuing.

(i) To assure that a full and complete inventory of all property of the town, both real and personal, is kept, including all property under the jurisdiction of the school committee.

(j) To negotiate all contracts involving any subject within the jurisdiction of the office of town manager, including contracts with town employees, except employees under the school committee involving wages, hours and other terms and conditions of employment; all such proposed contracts shall be subject to approval or ratification by the board of selectmen.

(k) To be the chief procurement officer of the town responsible for purchasing all supplies, material and equipment for all departments and activities of the town as provided in chapter thirty B of the General Laws. The town manager shall examine, or cause to be examined, the quantity, quality and condition of all supplies, material and equipment delivered to or received by any town agency. The town manager shall be responsible for the disposal of all supplies, material and equipment which have been declared surplus by any town agency.

(l) To see that all of the provisions of the general laws, of this charter, town by-laws and other votes of the board of selectmen which require enforcement by the town

## Proposed Charter – Town of Mashpee 2004

manager or officers subject to the direction and supervision of the town manager are faithfully executed, performed or otherwise carried out.

(m) To inquire, at any time, into the conduct of office or performance of duties of any officer or employee, department, board, commission or other town agency.

(n) To reorganize, consolidate or abolish, in the manner provided in Article 5, town agencies serving under the supervision of the town manager, in whole or in part, provide for new town agencies and provide for a reassignment of powers, duties and responsibilities among such agencies so established or existing.

(o) To attend all sessions of all town meetings and answer all questions raised by voters which relate to warrant articles and to matters over which the town manager exercises any supervision.

(p) To perform any other duties as are required to be performed by the town manager by by-laws, administrative code or votes of the board of selectmen,

### **SECTION 4-3: DELEGATION OF AUTHORITY**

The town manager may authorize any subordinate officer or employee to exercise any power or perform any function or duty which is assigned to the office of town manager, provided, however, that all acts performed under any such delegation shall at all times be deemed to be the acts of the town manager.

### **SECTION 4-4 ACTING TOWN MANAGER**

**(a) Temporary Absence** - By letter filed with the town clerk, the town manager shall designate a qualified town administrative officer or employee to exercise the powers and perform the duties of town manager during a temporary absence. During a temporary absence the board of selectmen may not revoke such designation until at least ten working days have elapsed, whereupon it may appoint another qualified town administrative officer or employee to serve until the town manager shall return.

**(b) Vacancy** - Any vacancy in the office of town manager shall be filled as soon as possible by the screening committee established pursuant to section 4-1 and the board of selectmen, but, pending such regular appointment the board of selectmen shall appoint a qualified town administrative officer or employee to perform the duties of the office on an acting basis. Such temporary appointment may not exceed six months but one renewal may be voted by the board of selectmen not to exceed three months. Compensation for such person shall be set by the board of selectmen.

**(c) Powers and Duties** - The powers of a temporary or an acting town manager, under (a) and (b) above, shall be limited to matters not admitting of delay and shall include authority to make temporary, emergency appointments or designations to town office or employment but not to make permanent appointments or designations.

### **SECTION 4-5 REMOVAL AND SUSPENSION**

The board of selectmen may, by a majority vote of the full board, terminate and remove, or suspend, the town manager from office in accordance with the following procedure.

(a) The board of selectmen shall adopt a preliminary resolution of removal by the affirmative vote of a majority of all its members which must state the reason or reasons for removal. This preliminary resolution may suspend the town manager for a period not to

## Proposed Charter – Town of Mashpee 2004

exceed forty-five days. A copy of the resolution shall be delivered to the town manager forthwith.

(b) Within five days following delivery of the preliminary resolution the town manager may request a public hearing by filing a written request for such hearing with the board of selectmen. This hearing shall be held at a meeting of the board of selectmen not later than thirty days after the request is filed or earlier than twenty days. The town manager may file with the board of selectmen a written statement responding to the reasons stated in the resolution of removal provided the same is received at its office more than forty-eight hours in advance of the public hearing.

(c) The board of selectmen may adopt a final resolution of removal, which may be made effective immediately, by the affirmative vote of a majority of all of its members not less than ten nor more than twenty-one days following the date of delivery of a copy of the preliminary resolution to the town manager, if the town manager has not requested a public hearing; or, within ten days following the close of the public hearing if the town manager has requested one. Failure to adopt a final resolution of removal within the time periods as provided in this section shall nullify the preliminary resolution of removal and the town manager shall, at the expiration of said time, forthwith resume the duties of the office. The town manager shall continue to receive a salary until the effective date of a final resolution of removal. The action of the board of selectmen in suspending or removing the town manager shall be final, it being the intention of this provision to vest all authority and fix all responsibility for such suspension or removal solely in the board of selectmen.

(d) In the event of a removal or suspension of a town manager pursuant to this section the authority of the town manager to appoint a temporary or acting town manager as provided in section 4-5 shall be suspended and the assistant town manager, if any, shall forthwith be the acting town manager subject to a majority vote of the board of selectmen to substitute another person to serve as acting town manager.

Proposed Charter – Town of Mashpee  
2004  
ARTICLE 5  
ADMINISTRATIVE ORGANIZATION

**SECTION 5-1: ORGANIZATION OF TOWN AGENCIES**

The organization of the town into operating agencies for the provision of services and the administration of the government may be accomplished through either of the methods provided in this article.

**(a) By-Laws** - Subject only to express prohibitions in a general law or the provisions of this charter, the town meeting may, by by-law, reorganize, consolidate, create, merge, divide or abolish any town agency, in whole or in part; establish such new town agencies as it deems necessary or advisable, determine the manner of selection, the term of office and prescribe the functions of all such entities; provided, however, that no function assigned by this charter to a particular town agency may be discontinued, or assigned to any other town agency, unless this charter specifically so provides.

**(b) Administrative Code** - The town manager, after consultation with the board of selectmen, may from time to time prepare and submit to the town meeting plans of organization or reorganization which establish operating divisions for the orderly, efficient or convenient conduct of the business of the town.

Whenever the town manager prepares such a plan the board of selectmen shall hold one or more public hearings on the proposal giving notice by publication in a local newspaper, which notice shall describe the scope of the proposal and the time, not later than fourteen days following said publication, and the place at which the public hearing will be held. Following such public hearing, the proposal, which may have been amended subsequent to the public hearing, shall be submitted to the town meeting by an appropriate warrant article.

The administrative code, subject only to express prohibitions in a general law, or this charter, may reorganize, consolidate, create, merge, divide or abolish any town agency, in whole or in part; establish such new town agencies as it deems necessary or advisable, determine the manner of selection, the term of office and prescribe the functions of all such entities; provided, however, that no function assigned by this charter to a particular town agency may be discontinued, or assigned to any other town agency, unless this charter specifically so provides.

Every organization or reorganization plan submitted by the board of selectmen pursuant to this provision shall contain a proposed by-law which sets out, in detail, such amendments, insertions, revisions, repeals or otherwise of existing by-laws as may be necessary to accomplish the desired reorganization. Such reorganization plan and proposed bylaw shall be accompanied by a message of the board of selectmen which explains the benefits expected to ensue to the town if the plan is adopted.

An organization or reorganization plan shall become effective at the expiration of thirty days following the date of final adjournment of the town meeting at which any such proposal has been approved by a majority vote of the town meeting, or the date the town meeting has finally adjourned without taking final action on the plan. The town meeting may vote only to approve or to disapprove an organization or reorganization plan submitted under this paragraph and may not vote to amend or to alter it.



# Proposed Charter – Town of Mashpee 2004

## **SECTION 5-2: MERIT PRINCIPLE**

All appointments and promotions of town officers and employees shall be made solely on the basis of merit and fitness demonstrated by examination, past performance, or by other evidence of competence and suitability.

## **SECTION 5-3: AUTHORITY OF DEPARTMENT HEADS AND OTHER OFFICERS TO APPOINT SUBORDINATES**

The fire chief and the police chief shall each be responsible for the appointment, promotion and discipline of all officers and subordinates in their respective departments.

The town manager may delegate to any other department head or other town officer a similar authority to appoint, promote and discipline subordinates and other employees serving under them.

## **SECTION 5-4: REVIEW OF APPOINTMENTS BY BOARD OF SELECTMEN**

Before any person shall begin to work as an employee of the town as a result of being appointed to an office or position by any town agency (other than by or under the school committee) the board of selectmen shall file a certificate that it is satisfied all town policies and procedures relating to hiring have been properly followed and that the salary to be paid is appropriate for the position.

## **SECTION 5-5: DEPARTMENT OF MUNICIPAL FINANCE**

The town may, in accordance with the provisions of section 5-1, provide for the establishment of a department of municipal finance responsible for the performance of all the fiscal and financial activities of the town. The department of municipal finance may assume any of the powers, duties and responsibilities related to municipal finance activities which prior to the adoption of the home rule charter were performed by or under the authority of the town accountant, the town collector, the town treasurer and the board of assessors and for the coordination of those activities with the activities of all other town agencies. The department of municipal finance shall have such additional powers, duties and responsibilities with respect to municipal finance related functions and activities as the town may from time to time provide, by by-law.

## **SECTION 5-6: DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT**

The town may, in accordance with the provisions of section 5-1, provide for the establishment of a department of planning and community development responsible for coordinating the performance of all the planning and community development related activities of the town. The department of planning and community development may be made responsible for the coordination of all of the duties and responsibilities related to planning and community development activities which prior to the adoption of the home rule charter were performed by or under the authority of the planning board, board of appeals, building official, historical commission, industrial development financing authority and the conservation commission and it may have such additional powers, duties and responsibilities with respect to the coordination of planning and community development related functions and activities as the town may from time to time provide, by by-law and which may include the coordination of all land acquisition and land management proposals, economic development planning and maintenance of a centralized source of records, reports, statistical data and other planning and development related materials.

# Proposed Charter – Town of Mashpee 2004

## **SECTION 5-7: PLANNING AND CONSTRUCTION OF BUILDINGS AND OTHER FACILITIES**

**(a) Composition, Mode of Appointment and Term of Office** - There shall be a permanent building and other facilities planning and construction committee (which may be referred to as the planning and construction committee) consisting of seven members. Six of the committee members shall be appointed by the board of selectmen for terms of three years each so arranged that the term of two members shall expire each year. In making appointments to the committee, the board of selectmen shall seek persons having experience in the fields of architecture, engineering, construction, real estate or law. The seventh member of the committee shall be designated, annually, by the school committee and may, but need not, be a member of the school committee.

**(b) Powers and Duties** - The buildings and other facilities planning and construction committee shall be responsible for monitoring the physical condition of all municipal buildings and other facilities. The committee shall meet from time to time with representatives of municipal agencies to evaluate the need for additions, renovations or remodeling of any existing building or facility or for the construction of new buildings or other facilities. The committee shall file written reports, at least annually, with the board of selectmen in which it shall make recommendations as to the need for any project or projects a copy of which shall be printed in the Annual Town Report.

Whenever any construction work on any municipal building or other facility is authorized, the buildings and other facilities planning and construction committee shall be responsible for all work in connection with the project including site planning, surveying, engineering studies, architectural plans and specifications and the supervision of construction.

For the purpose of this section the term 'facilities' shall not be construed to include items commonly understood to be within the jurisdiction of a public works department, including but not limited to streets and roads, sidewalks, bridges, sewers, drains and related items.

## **Section 5-8 Public Building Maintenance**

The responsibility for the maintenance and repair of all town owned buildings and grounds shall be consolidated in the department of public works under the supervision of the town manager. The town manager, after consultation with the school superintendent, shall determine the manner in which such responsibility shall be assumed and the services delivered. The town manager and the school superintendent shall from time to time meet or otherwise communicate to assure the proper maintenance of all school buildings.

Nothing in this section shall be construed so as to interfere in any way with the appointment by the school committee, or by other school department personnel serving under it, of the maintenance personnel in school buildings who perform, so-called, ordinary custodial maintenance. It is the intention of this provision however, that standards for the work to be performed will be established jointly by the school department and the town manager.

Proposed Charter – Town of Mashpee  
2004  
ARTICLE 6  
FINANCE AND FISCAL PROCEDURES

**SECTION 6-1: FISCAL YEAR**

The fiscal year of the town shall begin on the first day of July and shall end on the last day of June, unless another period is required by general law.

**SECTION 6-2: SCHOOL COMMITTEE BUDGET**

**(a) Public Hearing** - At least twenty-one days before the meeting at which the school committee is scheduled to vote on its final budget request, the school committee shall cause to be published in a local newspaper a general summary of its proposed budget which shall include a consolidated report of proposed expenditures by educational level and program. The summary shall specifically indicate any major variations from the current budget and the reasons for such changes. The notice shall further indicate the times and places at which complete copies of the proposed budget are available for examination by the public, and it shall indicate the date, time and place, (not less than seven nor more than fourteen days following such publication), when a public hearing will be held by the school committee on the proposed budget. The school committee shall not take its final vote on its proposed budget until all persons who desire to be heard concerning the budget proposal have had a reasonable opportunity to be heard.

**(b) Submission to Town Manager** - The proposed budget adopted by the school committee shall be submitted to the town manager at least twenty-one days before the date the town manager is required to submit a proposed town budget to the finance committee, to allow the town manager sufficient time within which to consider the effect the school department's requested appropriation will have upon the total town operating budget the town manager is required to submit to the finance committee under this article. The action of the school committee in adopting the proposed budget, following the public hearing, shall be summarized and the results of a roll call vote taken on each amendment to the proposed budget as may be offered shall be recorded.

**SECTION 6-3: SUBMISSION OF BUDGET AND BUDGET MESSAGE**

On a date fixed by by-law at least sixty days before the annual town meeting is scheduled to begin, the town manager shall submit to the finance committee a proposed operating budget for the ensuing fiscal year with an accompanying budget message and supporting documents. The town manager shall simultaneously provide for the publication in a local newspaper of a notice and a general summary of the proposed budget. The summary shall specifically indicate any major variations from the current operating budget and the reason for such changes. The notice shall further indicate the times and places at which complete copies of the proposed operating budget for the town are available for examination by the public.

**SECTION 6-4: BUDGET MESSAGE**

The town manager's message shall explain the proposed budget both in fiscal terms and in terms of the work programs linking those programs to organizational goals and community priorities. It shall outline the proposed financial policies of the town for the ensuing fiscal year and the impact of those policies on future years. It shall describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the town's debt position, including factors affecting the ability to raise resources through debt issues, report on the accomplishment of performance standards and goals

# Proposed Charter – Town of Mashpee 2004

established in prior budgets and include such other material as the town manager deems desirable.

## **SECTION 6-5: THE BUDGET**

The budget shall provide a complete financial plan of all town funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the town manager deems desirable or the finance committee may require for effective management and an understanding of the relationship between the budget and the town's strategic goals. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures for the current fiscal year and actual income and expenditures for the preceding fiscal year. It shall indicate in separate sections:

(1) The proposed goals, performance standards and expenditures for current operations during the ensuing fiscal year, detailed for each fund by organization unit, and program, purpose or activity, and the method of financing such expenditures, and methods to measure outcomes and performance related goals;

(2) Proposed longer term goals and capital expenditures during the ensuing fiscal year, detailed for each fund by department or by other high level organization unit when practicable, the proposed method of financing each such capital expenditure and methods to measure outcomes and performance related to the goals; and

(3) The proposed goals, anticipated income and expense, profit and loss for the ensuing year for each utility or other enterprise fund or internal service fund operated by the town and methods to measure outcomes and performance related to the goals. For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus fund balance carried forward, exclusive of reserves.

## **SECTION 6-6: ACTION ON THE BUDGET**

**(a) Public Hearing** - Forthwith upon its receipt of the proposed operating budget, the finance committee shall provide for the publication of a notice in a local newspaper stating the time and place, not less than seven nor more than fourteen days following such publication, at which it will hold a public hearing on the proposed operating budget as submitted by the town manager.

**(b) Finance Committee Review** - The finance committee shall consider, in open public meetings, the detailed expenditures proposed for each town agency and may confer with representatives of each such agency in connection with its review and consideration.

The finance committee shall provide a consolidated report describing estimated total town revenues and expenditures, by category, for the ensuing fiscal year, including the projected or estimated property tax rate used in calculating the estimated revenue to be raised from the property tax, and with comparable figures for estimated and actual revenues and expenditures for the current fiscal year as well as actual revenues and expenditures for the preceding fiscal year. This report shall be included in the finance committee report required by section 2-11 of this charter.

# Proposed Charter – Town of Mashpee 2004

The finance committee may require the town manager, or any other town agency, to furnish it with such additional information as it may deem necessary to assist it in its review and consideration of the proposed operating budget.

**(c) Action by Town Meeting** - The finance committee shall file a written report containing its recommendations for the action to be taken on each line item in the proposed operating budget as submitted by the town manager. When the proposed operating budget for the ensuing fiscal year is before the town meeting for action the prevailing motion shall be: "*Shall the operating budget be adopted in the amounts as recommended by the town manager?*" The finance committee shall have a right to propose amendments for general town government budget items before any other amendments may be offered and the school committee shall have a right to offer amendments to the school portion of the operating budget before any other amendments may be offered.

## **SECTION 6-7: PERSONAL LIABILITY FOR EXPENDITURES IN EXCESS OF APPROPRIATION**

No official of the town, except in the case of an emergency involving the health and safety of the people or their property, shall intentionally expend in any fiscal year any sum in excess of the appropriations duly made in accordance with law, nor involve the town in any contract for the future payment of money in excess of such appropriations. It is the intention of this section that the provisions of section thirty-one of chapter forty-four of the General Laws shall be strictly enforced. Any official who violates the provisions of this section shall be personally liable to the town for any amounts so expended to the extent the town does not recover such amounts from the person to whom such sums were paid.

## **SECTION 6-8: CAPITAL IMPROVEMENT PROGRAM**

The town manager shall submit a capital improvement program to the finance committee and to the town within the time frame provided in a capital improvement by-law. The capital improvement program shall be based on material prepared by the capital improvement program committee established by by-law (if any). It shall include:

1. a clear and concise general summary of its contents;
2. a list of all capital improvements proposed to be undertaken during the next ensuing five years, with supporting information as to the need for each capital improvement; cost estimates, methods of financing and recommended time schedules for each improvement; and,
3. the estimated annual cost of operating and maintaining each facility and piece of major equipment involved.

This information is to be annually revised by the town manager with regard to the capital improvements still pending or in the process of being acquired, improved or constructed.

## **SECTION 6-9: INDEPENDENT AUDIT**

The finance committee shall annually provide for an outside audit of the books and accounts of the town to be made by a certified public accountant, or a firm of certified public accountants, who have no personal interest, direct or indirect, in the fiscal affairs of the town or any of its officers. The town manager shall annually provide a sufficient sum of money to conduct the audit. The award of a contract to audit shall be made by

## Proposed Charter – Town of Mashpee 2004

the finance committee on or before September fifteenth of each year. The report of the audit shall be filed in final form with the finance committee not later than March first in the year following its award and copies shall be placed on file in the office of the town clerk.

Proposed Charter – Town of Mashpee  
2004  
ARTICLE 7  
GENERAL PROVISIONS

**SECTION 7-1: ELECTIONS**

The articles in the warrant for any town meeting insofar as they relate to the election of town officers, or to the determination by the voters of any question to be submitted for such decision by written ballots, shall be acted upon and determined by the voters in their respective precincts. The regular town election shall be taken on official ballots without party or political designation of any kind on the date fixed by by-law. Each candidate for re- election shall have printed on the official ballot, in addition to such candidates name and address, the words "candidate for re-election".

**SECTION 7-2: CHARTER CHANGES**

This charter may be replaced, revised or amended in accordance with any procedures made available under the state constitution and any statutes enacted to implement the said constitutional provisions.

**SECTION 7-3: SEVERABILITY**

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

**SECTION 7-4: RULES OF CONSTRUCTION**

**(a) Number and Gender** - Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; and words importing the masculine gender shall include the feminine gender.

**(b) Computation of Time** - In computing time under the charter, if less than seven days 'days' shall not include Saturdays, Sundays or legal holidays. If seven days, or more, every day shall be counted.

**(c) References to General Laws** - All references to General Laws contained in the charter refer to the General Laws of the Commonwealth of Massachusetts and are intended to refer to and to include any amendments or revisions to such chapters or sections, or to the corresponding chapters and sections of any rearrangement, recodification, or revision of such statutes enacted or adopted subsequent to the adoption of this charter.

**(d) Specific Provision to Prevail** - To the extent that any specific provision of this charter shall conflict with any provision expressed in general terms, the specific provisions shall prevail.

**SECTION 7-5: RULES AND REGULATIONS**

A copy of all rules and regulations adopted by any town agency shall be filed in the office of the town clerk before any such rule or regulation shall become effective, and copies shall be made available for review by any person who requests such information. No rule or regulation adopted by any town agency shall become effective until ten days following the date it has been so filed in the office of the town clerk. Attested copies shall also be kept available in the Public Library.

# Proposed Charter – Town of Mashpee 2004

## **SECTION 7-6 CERTIFICATE OF ELECTION OR APPOINTMENT**

Every person who is elected, including any elected by town meeting vote, or appointed to an office of the town shall receive a certificate of such election or appointment from the town clerk.

Except as otherwise provided by law, before performing any act under an appointment or election all such persons shall take and subscribe to an oath of office and be sworn to the faithful performance of their duties.

## **SECTION 7-7: PERIODIC REVIEW, CHARTER AND BY-LAWS**

**(a) Charter Review** - At least once in every ten years, beginning in 2013, and thereafter in each year ending in a three, a special committee to consist of nine members shall be established for the purpose of reviewing this charter and to make a report, with recommendations, to the town meeting concerning any proposed amendments which said committee may determine to be necessary or desirable. The committee shall consist of nine members who shall be chosen as follows: the board of selectmen, the finance committee and the school committee shall each designate two persons, the planning board shall designate one person, and two persons shall be appointed by the town moderator. Persons appointed by the said agencies may, but need not, be members of the agency by which they are designated. The committee shall meet to organize forthwith following the final adjournment of the annual town meeting. The committee shall hold a public hearing within thirty days following the date on which it meets to organize and at least one additional public hearing before filing its final report.

**(b) By-Law Review** - The board of selectmen shall at five year intervals, in each year ending in five, or in zero, cause to be prepared by a special committee appointed for that purpose, a proposed revision or recodification of all by-laws of the town which shall be presented to the town meeting for reenactment at the annual town meeting in the year following the year in which the said committee is appointed. The by-law review committee shall consist of the town clerk who shall serve by virtue of office, two voters appointed by the town moderator and two persons appointed by the board of selectmen. The said committee in its final, or in an interim report, shall include recommendations for such substantive change in town by-laws as it deems necessary or advisable. The review of town by-laws shall be in conjunction with the town counsel, or, by special counsel retained for that purpose. The committee shall hold a public hearing within thirty days following the date on which it meets to organize and at least one additional public hearing before filing its final report. Subsequent to enactment by the town meeting, copies of the revised by-laws shall be forwarded to the attorney general of the commonwealth for approval, and they shall be otherwise published, all as required by general laws. Copies of the revised by-laws shall be made available for distribution to the public at a charge not to exceed the actual cost, per copy, of reproduction.

## **SECTION 7-8: PROCEDURES GOVERNING MULTIPLE MEMBER BODIES**

**(a) Meetings** - All multiple member bodies shall meet regularly at such times and places within the town as they may by their own rules prescribe. Except in cases of emergency, special meetings of any multiple member body shall be held on the call of the respective chairperson or by one-third of the members thereof by suitable notice delivered to the residence or place of business of each member at least forty-eight hours in advance of the time set. A copy of the said notice shall also be posted on the town bulletin board in the manner provided by law. Except as authorized by law, all meetings



# Proposed Charter – Town of Mashpee 2004

of all multiple member bodies shall be open and public. All meetings shall be held in places to which members of the public have a convenient right of access.

**(b) Rules and Journal** - Each multiple member body shall determine its own rules and order of business unless otherwise provided by this charter or by law and shall provide for keeping a journal of its proceedings. These rules and journals shall be public records, and certified copies shall be kept available in the office of the town clerk. For the convenience of the public copies of these rules and journals shall be kept available in the public library but only the originals in the possession of the multiple member body shall be deemed to be the 'official' record.

**(c) Voting** - Except on procedural matters the vote of each member of all multiple member bodies shall be recorded in the journal, provided, however, that if the vote is unanimous only that fact need be recorded.

**(e) Quorum** - A majority of the members of the multiple member body then in office shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the multiple member body. No other action of the multiple member body shall be valid or binding unless ratified by the affirmative vote of the majority of the full multiple member body.

**(f) Filling of Vacancies** - Whenever a vacancy shall occur in the membership of an appointed multiple member body the remaining members shall forthwith give written notice of such vacancy to its appointing authority. If, at the expiration of sixty days following the delivery of such notice to the appointing authority said authority has not appointed some person to fill the vacancy the remaining members of the multiple member body shall fill such vacancy for the remainder of any unexpired term by majority vote of the remaining members.

**(g) Composition of Multiple Member Bodies** - All multiple member bodies when established shall be composed of an odd number of members. Whenever the terms of office of a multiple member body are for more than one year such terms of office shall be so arranged that as nearly an equal number of terms as is possible will expire each year.

## **SECTION 7-9: REMOVALS AND SUSPENSIONS**

Any appointed town officer, member of a multiple member body or employee of the town, not subject to the provisions of the state civil service law, or covered by the terms of a collective bargaining agreement which provides a different method, and whether appointed for a fixed or an indefinite term, may, for good cause, be suspended or removed from office, without compensation, by the officer or multiple member body which appoints such officers, members of multiple member bodies, or employees. The term cause shall include, but not be limited to the following: incapacity other than temporary illness, inefficiency, insubordination and conduct unbecoming the office. Any appointed officer, member of a multiple member body or employee of the town may be suspended from office by the officer or multiple member body which appoints such officers, members of multiple member bodies, or employees, if such action is deemed by said appointing authority to be necessary to protect the interests of the town. However, no suspension shall be for more than fifteen days. Suspension may be concurrent with removal and shall not interfere with the rights of the officer or employee under the removal procedure given below. The appointing authority when removing any such

## Proposed Charter – Town of Mashpee 2004

officer, member of a multiple member body or employee of the town shall act in accordance with the following procedure:

(a) A written notice of the intent to remove and a statement of the cause or causes therefore shall be delivered in hand, or by certified mail, return receipt requested, to the last known address of the person sought to be removed.

(b) Within five days following delivery of such notice the officer, member of a multiple member body or employee of the town may request a public hearing at which such person may be represented by counsel, shall be entitled to present evidence, call witnesses and to question any witness appearing at the hearing.

(c) Between one and ten days after the public hearing is adjourned, or if the officer, member of a multiple member body or employee of the town fails to request a public hearing between six and fifteen days after delivery of the notice of intent to remove, the appointing authority shall take final action, either removing the officer, member of a multiple member body or employee of the town or notifying such person that the notice is rescinded. Failure of the appointing authority to take any action within the time periods as stated in this section shall be deemed to be a rescission of the original notice and the officer, member of a multiple member body or employee shall, forthwith, be reinstated and any compensation of such officer, member of a multiple member body or employee which was withheld during such suspension shall be promptly paid. Nothing in this section shall be construed as granting a right to such a hearing when a person who has been appointed for a fixed term is not reappointed when a fixed term expires.

### **SECTION 7-10: NOTICE OF VACANCIES**

Whenever a vacancy occurs in any town office, position or employment, or whenever by reason of a pending retirement or expiration of a fixed term a vacancy can be anticipated, the appointing authority shall forthwith cause public notice of such vacancy to be posted on the town bulletin board for not less than ten days. Such notice shall contain a description of the duties of the office, position or employment and a listing of the necessary or desirable qualifications to fill the office, position or employment. No permanent appointment to fill such office, position or employment shall be effective until fourteen days following the date such notice was posted to permit reasonable consideration of all applicants. This section shall not apply to positions covered by the civil service law and rules or if in conflict with the provisions of any collective bargaining agreement. Nothing in this section shall be construed to require that every vacancy which shall occur must be filled.

Proposed Charter – Town of Mashpee  
2004  
ARTICLE 8  
TRANSITIONAL PROVISIONS

**SECTION 8-1: CONTINUATION OF EXISTING LAWS**

All general laws, special laws, town by-laws, votes, rules and regulations of or pertaining to the town which are in force when the charter takes effect and which are not specifically or by implication repealed directly or indirectly hereby, shall continue in full force and effect until amended or rescinded by due course of law or until they expire by their own limitation.

**SECTION 8-2: CONTINUATION OF GOVERNMENT**

All town agencies shall continue to perform their duties until reappointed, reelected, or until successors to their respective positions are duly appointed or elected, or their duties have been transferred and assumed by another town agency in accordance with the provisions of this charter.

**SECTION 8-3: CONTINUATION OF ADMINISTRATIVE PERSONNEL**

Any person holding a town office, or a position in the administrative service of the town, or any person holding full time employment under the town, shall retain such office, or position, or employment, and shall continue to perform the duties of such office, position or employment until provision shall have been made for the performance of those duties by another person or agency; provided, however, no person in the permanent full time service of the town shall forfeit their pay grade, or time in the service of the town as a result of the adoption of this charter.

**SECTION 8-4: TRANSFER OF RECORDS AND PROPERTY**

All records, property and equipment whatsoever of any office, department, or agency or part thereof, the powers and duties of which are assigned in whole or in part to another office or agency shall be transferred forthwith to the office, department or agency to which such powers and duties are assigned.

**SECTION 8-5: TIME OF TAKING EFFECT**

This charter shall take effect upon its adoption by the voters of Mashpee, except as is hereinafter provided:

(a) Not later than ninety days following the election at which this charter is adopted the board of selectmen shall appoint seven persons to be a committee to begin a review of the town by-laws for the purpose of preparing such revisions and amendments as may be needed or necessary to bring them into conformity with the provisions of this charter and to fully implement the provisions of this charter. If possible, at least two of the persons appointed to the committee shall have been members of the Mashpee Charter Commission. The committee shall submit a report, with recommendations, to the annual town meeting in the year following the year in which this charter is adopted. The review shall be conducted under the supervision of the town counsel, or, by special counsel appointed for that express purpose.

(b) The board of selectmen shall have authority to adopt measures which have the force of transitional provisions of this charter in order to clarify, confirm or extend any provision of the charter in order that the transition may be made in the most expeditious and the least contentious manner possible.

## Proposed Charter – Town of Mashpee 2004

(c) The provisions of section 3-1 (f) shall not apply to any person currently holding elective office, such persons may continue to receive the same group insurance benefits they have been receiving. It is the intention of section 3-1 (f) that the limitation and restriction shall apply to all persons hereafter elected to office in the town of Mashpee.

(d) Until such time as a different form of organization is provided, in accordance with the provisions of section 4-1 of this charter, the administrative structure of the town, as it is presently constituted, shall continue to be operative.

(e) It is the intention of this charter that the provisions of article 4 providing for a town manager shall take effect on the first day of July in the year in which this charter is adopted and that the person then serving as town administrator shall have all of the powers, duties, rights and privileges of the office contained in the said article 4. Nothing in this charter shall be deemed to require that the provisions of article 4 be deferred to any date beyond the said start of the next fiscal year.

(f) Within twenty-four months following the adoption of this charter the town manager shall prepare a comprehensive plan of organization of the town government administrative structure in the form of a proposed administrative code provision in accordance with section 5-1 (b) of this charter.

The town manager when preparing such comprehensive plan shall consider, but shall not be bound in the preparation of such plan to the following departments:

- (1) a department of administration and finance;
- (2) a department of community development;
- (3) a department of coastal resources;
- (4) a department of health and environment;
- (5) a department of parks and recreation;
- (6) a department of public works;
- (7) a fire department; and
- (8) a police department.

The town manager may organize such departments incorporating functions, services and agencies into such departments as deemed appropriate. The town manager may appoint department heads or act as the department head.

(g) The Charter Commission believes that every citizen and taxpayer in the town of Mashpee would benefit from an expanded report of its Finance Committee. In particular the commission members believe this document should provide information about the financial status of the town as a whole rather than all of the departments that constitute town government. Toward this end, the report should include a concise and readable financial report describing revenues and consolidated expenses required for the proposed budget and comparable information for the current and preceding years so that voters can easily determine where major changes occur.

Members of the commission have seen and been impressed by reports of finance and advisory committees from a number of other communities in the state, both within and outside of Cape Cod.

The specification of the precise structure of such a report cannot and should not be attempted in a charter. We believe one picture is worth a thousand words and, as a

## Proposed Charter – Town of Mashpee 2004

result we recommend that a committee be established to prepare a format for the Report of the Finance Committee following the adoption of this charter. We hope that once such a format is in place the Finance Committee will be able to include a current implementation of the format in their report for future years or find ways to improve upon it.

To this end within six months following the adoption of this charter the chairman of the finance committee shall convene a committee to consist of one member of the board of selectmen, one member of the planning board, two members of the finance committee, and two persons who were members of the charter commission, each of whom is to be selected by the members of their corresponding organizations. The committee shall be responsible for the preparation of the report of the finance committee for fiscal 2005 and fiscal 2006. The town shall provide the sum of \$10,000 to the committee for the purpose of preparing the report, including printing the necessary copies for distribution to voters.

(h) Until such time as the town shall act, by by-law, to amend, to repeal, or to revise it, the following shall have the force and effect of a town by-law.

### Screening Committee

Whenever a vacancy shall occur in the office of town manager a screening committee shall be established for the purpose of soliciting, receiving and evaluating applications for the position of town manager. The screening committee shall consist of five persons who shall be chosen as follows: the board of selectmen shall designate two members, the town moderator, the finance committee and the personnel board shall each designate one member. Persons chosen by the said agencies may, but need not, be members of the agency by which they are designated.

Not more than twenty-one days following the notice of the vacancy or pending vacancy the town clerk shall call and convene a meeting of the several persons chosen as aforesaid who shall meet to organize and to plan a process to advertise the vacancy and to solicit by other means candidates for the office. The committee shall proceed notwithstanding the failure of any town agency to designate its representatives.

The sum of \$1500 shall forthwith be credited to an account established for the committee for the purpose of meeting its anticipated expenses, which may include in-state and out of state travel and transportation, housing allowances, meals, secretarial services printing and mailing, consultant services and other related costs. Additional sums as needed shall be provided.

The screening committee shall review all applications that are received by it, screen all such applicants by checking and verifying work records and other credentials, and provide for interviews to be conducted with such number of candidates as it deems to be necessary, desirable or expedient.

Not more than ninety days following the date on which the committee meets to organize, the committee shall submit to the board of selectmen the names of not less than three nor more than five persons whom it believes to be best suited to perform the duties of the office of town manager. The board of selectmen shall, within twenty days following the date of receipt of the list of nominees choose one candidate from the list to fill the position of town manager

## Proposed Charter – Town of Mashpee 2004

Upon the appointment of a town manager the committee established hereunder shall be considered discharged.

(i) All members of boards, commissions and committees which have until this charter been elected and which will hereafter under the provisions of this charter be appointed, shall serve for the balance of the term for which they were elected (subject to retirement or resignation), but their successors shall be appointed.