

Final Report and Draft Charter Amherst Charter Commission



Town of



AMHERST Massachusetts

TOWN HALL
4 BOLTWOOD AVENUE
AMHERST, MA. 01002-2351

SELECT BOARD
Phone (413) 256-4001
FAX (413) 256-4006

September 19, 1995

To the Citizens of Amherst:

In accordance with state law, the Amherst Charter Commission has filed its report with the Select Board proposing changes to the current form of government in the Town. The changes proposed by the Charter Commission are detailed in the Commission's report. They are herewith presented to the community for debate and discussion, and the Select Board will place the proposed changes on the ballot at the annual Town elections in the spring of 1996. The date of that election has not yet been set, but it will be widely publicized when the information is available. At that time the voters will choose between the existing form of government and the changes proposed by the Charter Commission. The results of that vote will be binding.

This is clearly an important decision, and we urge all citizens to familiarize themselves with the Commission's proposal, and to participate in the discussion that will take place over the next six months.

Sincerely,


Bryan C. Harvey
Chair

MAJORITY REPORT OF THE AMHERST CHARTER COMMISSION

The Charter Commission elected in April 1994 has now completed its task and presented to the Select Board the attached draft charter document. The Select Board, in turn, will place the following question on the ballot next spring:

Shall the town approve the new charter recommended by the charter commission summarized below?

Summary: If adopted, the proposed charter would: (1) retain the representative town meeting, although reduced in size; (2) provide for the election of a seven member town council, including a directly elected mayor to serve as its presiding officer; (3) provide for the election of a moderator, a school committee, a housing authority, a redevelopment authority, library trustees, county commissioners and an elector of the Oliver Smith will; (4) increase the size of the school committee, including the mayor *ex officio* (5) retain the position of town manager with responsibility to oversee and coordinate the daily management of the towns business, including budget preparation and personnel administration; (6) outline the powers and duties of the superintendent of schools; (7) provide for strengthened and better coordinated budget procedures with an enhanced system of checks and balances; (8) provide for citizen initiative and referendum and for the recall of elected officials; and (9) automatically establish home rule.

The Commission deliberated over the course of more than seventy meetings and four public hearings in an effort to put before the public a form of local government and procedural details that would meet the needs of the town of Amherst into the future. From the beginning, members agreed that some changes in our current governmental operations were needed.

We struggled repeatedly in our discussions to define a balance between democracy and efficiency. On the one hand, broadly based citizen participation, informed debate, the examination of issues from many different--often sharply different--points of view was seen as the best protection of our liberties and the welfare of our people. That is the primary function and virtue of our town meeting. That is the essence of a government "of" and "by" the people. On the other hand, in an ever more complex world, there is an increasing need to act, to get something done, for someone to point the way. That should be the primary function and virtue of a more effective executive branch.

A majority of five commission members supports the attached charter as a careful and effective balancing of these two ideas, democracy and efficiency. The three remaining members express the reasons for their opposition in the minority report which follows.

The proposed charter retains a *representative town meeting* as the legislature of the town. Its size is reduced from 240 elected and 16 *ex officio* members to 150 elected and five *ex officio* members. We believe that this smaller size will help to ensure a more committed representation from all ten precincts. The body will still be large enough to preserve the diverse and worthwhile viewpoints of a nonprofessional membership while retaining checks and balances between the legislative and executive functions.

In accordance with existing state law, write-in candidates in precincts with fewer candidates on the ballot than open seats, will have to garner at least ten votes to be elected, a number equal to the number of signatures required to place a name on the ballot.

The term of the moderator is extended to three years. The moderator continues to appoint the town meetings financial advisory committee and a new rules and procedures committee. The latter is charged with improving the operation of meetings as well as with encouraging more consistent attendance, a more representative group of candidates for membership and a more active campaign in the precincts with fewer registered voters. All substantive decisions of town meeting are recorded and reported to the constituency. We believe equipment will soon be available to record all votes quickly and accurately.

The executive powers of the town are exercised by a *town council* of seven members, elected at large for three-year staggered terms. This executive body is essentially a renamed select board, although with enhanced powers and duties. For example, it plays an enlarged role in the budget process as described below, and it appoints all members of multiple-member bodies.

The presiding officer of the town council is a *mayor*, directly elected by the citizens of the town. This change stems from the commissions wish to strengthen the town's political leadership and to provide a political focus for the town council and the citizens of Amherst. As a means of emphasizing the community of our interests, the mayor sits as an *ex officio* voting member of the school committee. The committee's size, as a result, is enlarged to seven, including the mayor, to meet the states stipulation that such bodies have an uneven number of members.

In addition to the school committee, *other elected offices* include a housing authority, a redevelopment authority, library trustees, county commissioners, and an elector of the Oliver Smith will.

Commission members, almost from the outset of our discussions, agreed on the need for professional management of our town in view of the current complexity of municipal administration. The charter thus outlines the powers and duties of a *town manager* with only modest change over current practice. In order to be all inclusive with respect to the management of town services, the document also outlines the powers and duties of the *superintendent of schools*.

One of the most significant parts of the proposed charter is the chapter that outlines the budget process and which, again, represents the commissions effort to promote community. The process begins in October with a meeting of all relevant groups to review the towns overall financial condition, the revenues and expenses expected over the next five years and tentative allocations of revenue among town agencies and among operating budgets, capital budgets and reserves. It continues with a fall town meeting to hear the mayor present a "State of the Town" report to town meeting members and the general public. And it includes, following extensive consultation, the setting of guidelines by the town council on which the schools, the library, and the municipal authorities are to build their budgets.

In due course, the school, library and municipal parts of the budget are consolidated into a comprehensive budget document--but not altered--by the town manager for presentation to the town council and to the financial advisory committee of town meeting. At the conclusion of the council's review and adoption of the budget, the mayor presents the budget to town meeting which--guided by its financial advisory committee--may then a) approve it by majority vote, or b) recommend alterations by majority vote and return it to the council. If alterations are recommended and the council agrees to them, the appropriation process is complete. If the council disagrees, town meeting reconvenes and may override the council by a two-thirds majority.

The charter includes procedures for a two-year operating budget cycle and a five-year capital improvement plan to encourage a more forward looking approach to financial management than has been the case in the past.

Several other provisions are especially worthy of note. First, the charter provides for elections to be held in the fall so that elected officials and town meeting members will be in place to see the budget process through from start to finish. Secondly, it provides for an automatic ballot question ten years after its ratification through which citizens may choose to support the formation of a new charter commission to consider the results of the changes put in place. Thirdly, it includes provisions for citizen initiative and referendum and for the recall of public officials.

Ratification of this charter would, for the first time, consolidate Amherst's governing special acts into a single written document. Because it would establish for the town the principle of home rule, it would also simplify the amendment process, obviating the need to approach the state legislature should we wish to alter any of its provisions.

We urge your careful study of this document. Members of the commission will be available to discuss in greater detail the reasons for our recommendations and the likely implications for the towns governance.

John P. Eysenbach, Gerald J. Grady, Irving Howards, Joan Joshi, Allen Torrey

MINORITY REPORT OF THE AMHERST CHARTER COMMISSION

The members of the Charter Commission who comprise the minority are pleased to submit this report. By action of the voters, this Charter Commission was elected to consider our present form of government and, if found needed, make recommendations for change. The turnout for the election was the largest in years, and the Commission was approved with over 60% of the vote. The large majority can be interpreted in many ways but, in our opinion, represented a deep-seated dissatisfaction with our present form of government.

Early in the deliberations, the Commission heard from a variety of Amherst citizens, many of whom idealized the Town Meeting, but all of whom pointed out serious problems with the structure and process. After weeks of testimony and consideration from experts, town administrators, public officials from other towns, elected leaders, and citizens, the Commission unanimously defined areas of concern. They recognized a lack of leadership, responsibility, accountability, long range planning, communication and deep division within the three major branches of government as well as the community. After extensive discussion of alternative forms of government, the Commission voted on a straw ballot by a vote of 5 - 3 to support a Council/Manager form of government. The majority believed that this more streamlined structure would provide for greater efficiency in the process and best respond to the serious flaws in our present structure.

What changed the majority position? The open meeting of May 1995. At this meeting a small number of Town Meeting advocates expressed their support for the status quo. Advocates for a Council were given limited opportunities to address the Commission. After that meeting the majority chose to ignore the basis for an overwhelming vote in favor of creating the Charter Commission, the chorus of speakers at the subsequent meetings in support of a Council, the over 700 signatures to a petition seeking the end of Town Meeting and the silence that supported a modified Town Meeting.

In their zealous focus to present a palatable charter to the voters, they have created a charter that preserves the status quo, under different rubrics. In our opinion, it will increase the deep divisions within the community and will not address or resolve the structural weaknesses within our present form of government. At no time in our discussions have they ever clarified how their revisions will provide for leadership, accountability and responsibility. Their basic argument continues to be that the tradition of Amherst supports broad representation. Can Town Meeting be the only medium that creates broad representation?

We, the minority, have difficulty accepting that argument. They support a reduction in the size of Town Meeting to 150. A reduction of this magnitude puts greater power in the hands of a few special interests, decreases the opportunity for diversity of representation and increases the opportunity for the abuse of power without any accountability or responsibility. If they really believed in their argument, they should recommend an open Town Meeting.

They use evidence that active participation in Town Meeting has decreased dramatically over the last decade as a rationale for this reduction. They choose to ignore the realities of excessive time demands for a Town Meeting member, the complexity of issues that turn people away, the lack of respect for a minority position, the increasing complexities of individual lives that demand other commitments, the lack of diversity because minorities cannot afford the time, and the increasing dominance of special-interest members who often go home when their pet project has been decided and funded.

All of the above realities were the underlying cause for the overwhelming vote to establish the Charter Commission. Our charge was very simple: offer the voters an opportunity to decide to keep Town Meeting or not. A majority recognized that in our early straw ballot (5-3). **The present majority has chosen to ignore that simple issue, an issue that voters on both sides of the aisle support.**

As evidence of support for the right to choose, we quote from a letter received by one of our fellow commissioners: "Let me urge you and your fellow commission members to vote to put only one proposal before the electorate and make that one the Town Council/Mayor form of government. My sense is that the overriding issue confronting our municipality is whether to keep some form of Town meeting or replace it entirely. We need some structured and very public means of deciding, in a way that the majority of Amherst citizens agree is both democratic and legitimate.....Unless we deal with this contention in a direct and unambiguous way now, it will continue to haunt us in years to come, increasing the estrangement many of our citizens feel from the established political process... I write all these things as a supporter of the continuance of Town Meeting. If we purchase the continuance of Town meeting at a cost of embittering and alienating an important segment of our community- people whose talents and energies we could use, people whose points of view we ought to take into account - the expense will have rendered the victory an empty one."

The revised Town Meeting Charter supported by the majority does not offer a choice. Despite different terms such as mayor, council, veto etc. it is more of the same. Power of appropriation and policy remains in the hands of Town Meeting. The now watered-down simple majority will dilute the veto power of the newly created Town Council. This offers absolutely no checks or balance to Town Meeting. The problems of leadership, focus, accountability and responsibility remain unanswered. The new Town Council, which should act as a major policy board, amounts to no more than a new committee. The Town Manager, retaining much of the same powers in effect, creates a weak mayor whose leadership would be subject to implementation by a stronger administrator. Add to the above the embitterment and alienation of a majority of voters and you have a community torn apart by the unwillingness of a few to face reality and do their job. 'Better the devil ye know than the devil ye don't'. This charter does not deserve support.

We submit that the charter as proposed by the majority is insufficient to respond to the lack of leadership, planning, responsibility and accountability identified by the Charter Commission deliberations and discussions of what currently exists under the current Town Meeting/Select Board form of government.

It is our expectation that the defeat of the charter as proposed will in due course lead to the election of a commission that, building on the current efforts and after due consideration, will submit a charter proposal worthy of support.

Leo Bouchard, Tracy Mehr, David Keenan

PROPOSED CHARTER FOR

Table of Contents

- Part I - Introduction
- Part II - Legislative Branch, Representative Town Meeting
- Part III - Executive Branch, Town Council
- Part IV - Other Elected Town Offices
- Part V - Recall of Elected Office Holders
- Part VI - Town Manager
- Part VII - Superintendent of Schools
- Part VIII - Administrative Organization
- Part IX - Financial Procedures
- Part X - General Provisions
- Part XI - Transitional Provisions
- Part I - Introduction

Section 1-1 Incorporation

The inhabitants of the town of Amherst, Massachusetts, within its territorial limits as now or may hereafter be established by law, shall continue to be a body politic and corporate, known as the Town of Amherst.

Section 1-2 Short Title

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

Section 1-3 Division of Powers

The legislative powers of the town shall be exercised by a representative town meeting. The administration of all town fiscal, business, educational and municipal affairs shall be vested in the executive branch headed by the mayor and the town council supported by various appointed and elected boards. The principal administrative officials shall be a town manager and a superintendent of schools.

Section 1-4 Powers of the Town

The intent and purpose of this charter is to secure for the voters of the Town of Amherst, through the adoption of this charter, all the powers possible to secure for their government under the constitution and laws of the commonwealth, as fully and as though each such power were specifically and individually enumerated herein. The Town of Amherst shall constitutionally have a town form of government.

Section 1-5 Interpretation of Powers

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

Section 1-6 Intergovernmental Relations

The town may enter into agreements with any other unit of government to perform jointly or in cooperation, by contract or otherwise, any of its powers or functions.

Section 1-7 Town Seal

The town seal in existence at the time this charter is adopted, unless the town council shall adopt another, shall continue to be the town seal and shall be kept in the custody of the town clerk. Papers or documents issued from any office or board of the town may be attested by use of said seal.

Section 1-8 Annual Town Election

The annual town election shall take place at a date fixed by the town council preceding the first town meeting after October 15, but in any event no later than November 15.

Part II - Legislative Branch

Section 2-1 Town Meeting

The legislative powers of the town shall be vested in a representative town meeting consisting of one hundred and fifty members who shall be elected by precinct to meet, deliberate, act and vote in the exercise of the corporate powers of the town. There shall be fifteen members elected from each of the ten precincts. There shall be, in addition, five voting members ex officio, including the mayor, the moderator and the chairs of the school committee, the library trustees and the financial advisory committee.

Section 2-2 Realignment of Precincts

When required by law or every ten years, in consonance with the realignment of precincts by the commonwealth, the town council shall review and, if necessary, redivide the territory of the town into plainly designated precincts. The precincts shall be divided into as nearly an equal number of inhabitants as may be. The territory of each precinct shall be continuous and as compact as possible and shall be defined as nearly as possible by the center line of known streets or other well defined limits. Within ten days of any precinct revision, the council shall file a report on the revisions with the town clerk, the registrars of voters and the assessors. The report shall include a map and a list of the inhabitants' names and addresses. The council shall also post the map and list in the town hall and at least one public place in each precinct. The revision shall be effective on the date it is filed with the town clerk. Should the number of precincts increase beyond ten, the number of town meeting members shall be adjusted to the number closest to one hundred and fifty that is divisible by the number of precincts and that produces an equal number of members from each precinct whose terms expire in each election year.

Section 2-3 Town Meeting Membership

(a) Eligibility

Any registered voter of the town of Amherst shall be eligible to be a candidate, to be elected and to serve as a town meeting member. However, a member of the town meeting who shall cease to be a resident of the precinct from which said member was elected shall cease to be a member of the town meeting.

Any elected town meeting member who becomes, by appointment or election, one of the officers designated as town meeting members ex officio shall, such appointment or election notwithstanding, continue to be a town meeting member representing the precinct from which the member was elected. In such cases, said officers shall be entitled to only one vote.

(b) Election and Term of Office

Representative town meeting members shall be elected by voters in their respective precincts. No person who is a candidate for election to the office of town meeting member, if no candidate's name is printed on the ballot therefore, shall be deemed to be elected unless receiving the number of votes at least equal to the number of signatures that would be required by law to place such person's name on the ballot at such election as a candidate.

The term of office of all members of the town meeting shall be three years, beginning on the first Monday following election and continuing until their successors are qualified. Terms of office shall be so arranged that the terms of as nearly one-third of the members in each precinct as may be shall expire at each annual town election.

(c) Filling of Vacancies

In the event the number of open seats in any precinct election exceeds the number of candidates whose names appear on the ballot and who receive votes or who are elected in accordance with section 2-3 (b), the unfilled seat(s) shall remain open until the next annual election. At that time, candidates may run for election to

ARTICLE II THE TOWN OF AMHERST

said seat(s) for the remainder of the unexpired term(s).

In the event a seat in the town meeting becomes vacant, whether due to death, resignation or change of residence of a member from the town or from the precinct in which the member was elected, said seat shall remain open until the next annual election. At that election, candidates may run for election to said seat for the remainder of the unexpired term.

Section 2-4 Powers and Duties

The legislative powers of the town shall be vested in the representative town meeting. The town meeting shall continue to have and to exercise all the powers and duties vested in town meetings by the laws of the commonwealth and such additional powers and duties as are authorized by this charter, by bylaw or by other vote of the town meeting or of the voters of the town, except those which by the terms of this charter or the laws of the commonwealth are assigned to the town council, the town manager or the superintendent of schools.

The powers and duties of the town meeting shall include, but need not be limited to:

- (a) to enact and amend town bylaws, including zoning bylaws;
- (b) to exercise appropriation authority as prescribed in part IX;
- (c) to approve borrowing authority;
- (d) to authorize by a two-thirds majority the transfer of funds from the stabilization fund;
- (e) with respect to municipal land:
 - to authorize the acquisition of land for municipal purposes;
 - to authorize the conveyance or abandonment of municipal land;
 - to authorize the transfer of land from the control of one town agency to another.

Section 2-5 Conflict of Interest

Town meeting members shall take into consideration the principles embodied in the conflict of interest law of the commonwealth (chapter 268A, as amended, of the general laws) when deciding whether to vote on any motion.

Section 2-6 Town Meeting Sessions

The annual town meeting shall be held on such date or dates as may from time to time be fixed by the town council. Special town meetings shall be held at the call of the town council at such times as the council may deem appropriate and whenever a special meeting is requested by the voters in accordance with procedures made available by the laws of the commonwealth. The council shall call a minimum of two town meetings each year.

Section 2-7 Presiding Officer

All sessions of the town meeting shall be presided over by a town moderator, elected as provided in section 4-3. The town moderator shall regulate the proceedings, decide questions of order and make public declarations of all votes. The town moderator shall have all of the powers and duties vested in that office by the laws of the commonwealth.

the commonwealth.

Section 2-8 Clerk of the Meeting

The town clerk shall serve as the clerk to the town meeting. In the event of unavoidable absence, the town clerk shall designate a substitute; otherwise, the town moderator shall appoint a clerk pro tempore. The town clerk shall give notice of all meetings to the public, keep a journal of its proceedings and perform such other functions as may be provided by the laws of the commonwealth.

Section 2-9 Committees of Town Meeting

The town moderator shall appoint two standing committees: a financial advisory committee and a rules and procedures committee. Each committee shall consist of seven members, who may or may not be members of the town meeting. In making appointments to the financial advisory committee, the moderator shall seek representation from a broad range of fiscal perspectives. The term of office of committee members shall be three years and shall be so arranged that the terms of as nearly an equal number of members as may be shall expire on June 30 of each year. Committee members shall elect their own chairs at the first meeting after July 1 of each year. The chair of the financial advisory committee shall be a member of the town meeting ex officio.

The financial advisory committee shall review the unified town budget and shall advise the town meeting as to its recommendations for action. The committee shall also advise town meeting on the long-term implications of new spending programs or sources of revenue. The rules and procedures committee shall periodically review the rules and procedures of town meeting and propose any necessary amendments; in addition, the committee shall consider and recommend appropriate action with respect to issues of attendance, candidacy and information provided to town meeting members as well as other issues which may be appropriately assigned by the moderator.

Section 2-10 Quorum, Rules of Procedure

(a) Quorum

One-half of the total membership of the town meeting at any given time plus one shall constitute a quorum. Except as otherwise provided by the laws of the commonwealth or this charter, any motion or measure may be adopted by a majority vote of those present, provided a quorum is present.

(b) Rules of Procedure

The town meeting shall from time to time establish written rules for its proceedings. Among other procedures, the rules shall stipulate that votes on questions deemed procedural by the town moderator may be taken by voice, raised hands or standing vote, but the votes of individual members on all other matters shall be recorded and reported in a newspaper in general circulation in the town. The attendance record of all town meeting members shall also be recorded and reported periodically.

Section 2-11 Warrant Articles

Except for procedural matters, all subjects to be acted upon by the town meeting shall be placed on warrants issued by the town council. The town council shall place on such warrants all subjects requested by (a) a majority of the councillors; (b) any elected or appointed town board; and (c) any other person or agency as may be authorized by the laws of the commonwealth, by bylaw or otherwise. In addition, any ten or more registered voters may petition the council to place an article on the warrant. In such case, the council shall review the article to determine if it is appropriate for town meeting consideration. In the event the council fails to accept the article as presented, any one hundred or more registered voters may petition to override the council's determination and, thereby, ensure the article's inclusion in the warrant. All subjects submitted to the town council under this section shall be placed on a warrant for the next town meeting, annual or special, unless by law such subjects must be voted only at the annual town meeting.

Section 2-12 Referendum Procedures

No final affirmative vote of a town meeting on any warrant article shall be operative until after the expiration of ten days following the dissolution of the town meeting, except the following: (a) a vote to adjourn or dissolve; (b) votes appropriating

money for the payment of notes or bonds of the town and interest becoming due within the then current fiscal year;) votes for the temporary borrowing of money in anticipation of revenue; (d) appropriation of funds to implement a collective bargaining agreement; (e) procedural rules of the town meeting; or (f) a vote declared by preamble by a two-thirds majority of town meeting to be an emergency measure necessary for the immediate preservation of the peace, health, safety or convenience of the town. If a referendum petition is not filed within the said ten days, the votes of the town meeting on all other town meeting actions shall then become operative.

If, within the said ten days, a petition containing the names and addresses of not less than five percent of the registered voters, signed by the same and certified by the registrars of voters, is filed with the town council requesting that any affirmative vote of a town meeting on any warrant article be submitted to the voters, then the operation of such town meeting vote shall be further suspended pending its determination as provided below. The town council shall, within ten days after the filing of such petition, call a special election that shall be held within thirty-five days or such longer period as may be required by law after issuing the call, for the purpose of presenting to the voters any such question. If, however, an annual or special town election is scheduled to be held not more than ninety days following the date the petition is filed, the town council may provide that any such question be presented to the voters at that election.

Any question so submitted shall be determined by a majority of the voters voting in said election, but no action of the town meeting shall be reversed unless at least twenty percent of the registered voters vote in such election.

Any question so submitted shall be in the form of the following question, which shall be placed on the official ballot:

"Shall the town vote to approve the action of the representative town meeting whereby it was voted (the motion in the same language and form in which it was stated when presented by the town moderator to the town meeting, as it appears in the records of the clerk of the meeting)?"

Part III - Executive Branch

Section 3-1 Town Council

The executive powers of the town shall be vested in a town council which shall serve as the chief policy making agency of the town. The town council shall be composed of seven members, including the mayor, elected at large by the voters of the town.

Section 3-2 Eligibility

Any registered voter of the town of Amherst shall be eligible to hold the office of councillor, provided that no person shall, while a member of the town council, (a) hold a second elective town office, or (b) hold any other compensated town or regional school district office or position. In addition, no former councillor shall hold any compensated appointive town office or position until one year after the expiration of the member's service on the town council. This provision shall not prevent such an officer or employee who has taken an unpaid leave of absence from such duties in order to serve as a member of the town council from returning to such office or position following service as a member of the town council.

Section 3-3 Term of Office

The term of office of town council members shall be three years, beginning on the first Monday following election and continuing until their successors are qualified. Three members shall be elected in each of two years; in the third year, an election will be held only to fill the office of mayor.

Section 3-4 Filling of Vacancies

If a vacancy occurs in the office of councillor or mayor during the first thirty months of a term, it shall be filled for the balance of the unexpired term by town-wide election. If an annual or special town election is scheduled to be held within one hundred and twenty days, but more than sixty-five days, after the date the vacancy occurs, it shall be filled by election within that scheduled election; otherwise, the town council shall schedule a special election to be held as soon as practical.

Section 3-5 Presiding Officers

As chief officer of the town council, there shall be a mayor directly elected by the voters of the town for a term of three years, beginning on the first Monday following election and continuing until a successor is qualified. The mayor shall preside at council meetings and shall present to town meeting a "State of the Town" report and the budget approved by the town council as prescribed in part IX. The mayor shall also represent the town both for ceremonial and official purposes and shall serve as an ex officio voting member of the school committee and of the town meeting.

In the event a sitting member of the town council becomes a candidate for mayor and fails to be elected, that member shall retain a seat on the town council for the remainder of the term for which the member was elected. In the event a member of the town council becomes a candidate for and is elected to the office of mayor, the seat vacated shall be filled for the balance of the unexpired term by a town-wide election in accordance with section 3-4.

At the first meeting following the annual election, the mayor shall conduct an election among members of the town council for the office of chair pro tempore. The chair pro tempore shall preside at meetings of the town council during the absence or disability of the mayor. In the event of a vacancy in the office of mayor, the chair pro tempore shall assume the powers and duties of the mayor pending the filling of the office in accordance with section 3-4.

Section 3-6 Powers and Duties

The executive powers of the town shall be vested in the town council which shall serve as the chief policy making agency of the town. The town council shall continue to have and to exercise all the powers and duties vested in boards of selectmen by the laws of the commonwealth and such additional powers and duties authorized by this charter, by bylaw or by other vote of the town meeting or of the voters of the town, except those which by the terms of this charter or the laws of the commonwealth are assigned to the town meeting, the town manager or the superintendent of schools. The town council shall cause the laws and orders of the government of the town to be enforced and shall cause a record of all its official acts to be kept.

The powers and duties of the town council shall include, but need not be limited to:

- (a) to exercise a broad concern and responsibility for the needs of the town, the community and the region;
- (b) to call town meetings and set the warrant;
- (c) to make recommendations to town meeting with respect to all the decisions reserved to town meeting;
- (d) to approve placement of items on the town ballot for referendum votes, including overrides of the levy limit;
- (e) after consultation, to set final budget guidelines for municipal, school and library budgets as prescribed in part IX;
- (f) through the mayor, to present the budget as recommended by the town council to town meeting;
- (g) to reconsider requests by town meeting to shift funds within the operating or capital budgets, or to decrease or increase the operating or capital budgets as originally presented by the town council;
- (h) to approve the transfer of spending authority from one appropriation of the

municipal budget to another, within the total appropriated annual municipal budget, in an amount not to exceed five percent of the appropriation being reduced;

(i) to approve transfers from the reserve fund to meet extraordinary and unforeseen needs of the town;

(j) to establish, reorganize, combine or dissolve any town committee, except those mandated and defined by the laws of the commonwealth, this charter or the town bylaws, or those specifically established by vote of town meeting;

(k) to encourage the development of joint financial management, purchasing and capital maintenance programming among the municipal, school and library-related agencies of the town.

Section 3-7 Powers of Appointment

The town council shall appoint a town manager, an independent auditor, the registrars of voters, persons to single member non-compensated town positions and members of all multiple member boards, commissions and committees except those directly elected by the voters of the town or appointed by the town moderator. The council may, at its discretion, appoint the chairs of said bodies.

The said officers and multiple member boards, commissions and committees shall be responsible for assisting the town council in fulfilling its powers and duties and shall be expected to report to the council on activities they undertake and decisions they render.

Members of said multiple member boards, commissions and committees shall serve on individual boards for a maximum of three consecutive full terms. A member shall be removed from office by the council if such official fails to attend regularly scheduled meetings for a period of three consecutive months without express leave from the chair of the multiple member body, unless the town council shall determine otherwise. Any such appointed official shall be automatically removed from office if convicted of a felony or if absent from the duties of the multiple member body for a period of one year, notwithstanding the permission from the chair to be absent.

Section 3-8 Inquiries and Investigations

After consultation with the town manager or the superintendent of schools, as appropriate, the town council may require any town officer or member of a board, commission or committee to appear before it and give such information as it may require in relation to an office held by such person, its function and performance. The town council shall give at least forty-eight hours written notice of the general scope of the inquiry which is to be made to any such person it shall require to appear before it under this section. The town council may make investigation into the affairs of the town and into the conduct of any town agency and for this purpose may summon witnesses, administer oaths and require the production of evidence.

Section 3-9 Delegation of Powers Relative to Licenses and Permits

The town council may delegate to one or more town agencies or to the town manager, to the extent permitted by state law, the powers vested in the town council by the laws of the commonwealth to grant and issue licenses and permits, and may regulate the granting and issuing of licenses and permits by any such town agency or the town manager, and, further, may at its discretion rescind any such delegation without prejudice to any prior action which has been taken.

Section 3-10 Compensation

Section 3-10 Compensation, Expenses

The town council shall determine an annual salary for councillors, but no vote establishing or increasing such salary shall become effective until the date of commencement of the terms of councillors elected at the election held at least six months following the adoption of such measure. Councillors shall, in addition, be reimbursed for expenses incurred in exercising the powers and duties of the town council.

Section 3-11 Quorum, Rules of Procedure

(a) Quorum

Four members of the town council shall constitute a quorum. The affirmative vote of four members of the town council shall be necessary in the case of any motion or measure relative to town appropriations. Except as otherwise provided by the laws of the commonwealth or this charter, any other motion or measure may be adopted by a majority vote of those present, provided a quorum is present.

(b) Rules of Procedure

The town council shall from time to time establish written rules for its proceedings. Regular meetings of the town council shall be held at a time and place fixed by the council but which shall be not less frequent than once monthly. Special meetings of the town council may be held on the call of the mayor or on the call of any four or more councillors, by written notice delivered to the councillors or to their residences at least forty-eight hours in advance of the time set. Except as otherwise authorized by the laws of the commonwealth, all sessions of the town council shall be open to the public and press, and the agenda of any regular or special council meeting shall be available to the public in the office of the town clerk and posted on the town bulletin board at least forty-eight hours prior to any such meeting, except that twenty-four hours notice is required in the event of an emergency. Such posting shall not preclude the town council from the introduction of additional agenda items as allowed by the council's rules of procedure. Every matter coming before the town council for action shall be put to a vote, the result of which shall be duly recorded. All votes on proposed by-laws, appropriation orders or loan authorizations shall be taken by roll call vote and shall be duly recorded by the clerk. A full, accurate and up-to-date record of the proceedings of the town council shall be kept and shall be open to inspection by the public. Regular meetings of the town council shall provide for a period of public comment, provided, however, the council may regulate such period of public comment as deemed appropriate.

Part IV - Other Elected Town Offices

Section 4-1 Elective Offices in General

In addition to the town council and the town meeting, the offices to be filled by the voters of the town shall be a town moderator, a school committee, a housing authority, a redevelopment authority, a board of trustees of the town library, an elector for the Oliver Smith will and members of such other regional authorities, districts or committees as may be established by law or intergovernmental agreement.

Section 4-2 Eligibility

Any registered voter of the town of Amherst shall be eligible to hold any elective town office described in sections 4-3 through 4-9, provided that no person shall, while holding such elective office, hold any other compensated town or regional school district office or position. In addition, no former holder of an elective office shall hold any compensated appointive town office or position until one year after the expiration of the term of office. This provision shall not prevent such an officer or employee who has taken an unpaid leave of absence from such duties in order to serve in an elective office from returning to such office or employment following service in an elective office.

Section 4-3 Town Moderator

(a) Election

There shall be a town moderator elected at large by the voters of the town. The moderator shall not simultaneously hold a second elective town office, although the moderator shall be a member of the town meeting ex officio.

(b) Term of Office

The term of office of the town moderator shall be three years, beginning on the

first Monday following election and continuing until a successor is qualified.

(c) Powers and Duties

The town moderator shall have all the powers and duties vested in that office by the laws of the commonwealth.

Section 4-4 School Committee

(a) Composition, Election

There shall be a school committee composed of seven members, including the mayor serving ex officio and six members elected at large by the voters of the town. Members of the school committee shall not simultaneously hold additional elective town offices. From among its members, the school committee shall elect a chair, who shall be a member of the town meeting ex officio.

(b) Term of Office

The term of office of school committee members shall be three years, beginning on the first Monday following election and continuing until their successors are qualified. Terms of office shall be so arranged that the terms of as nearly an equal number of members as may be shall expire at each annual town election.

(c) Powers and Duties

The school committee shall have all the powers and duties vested in school committees by the laws of the commonwealth. The committee shall have general charge of the elementary schools of the town and shall establish educational goals and policies for the elementary schools consistent with the laws of the commonwealth and the standards established by the commonwealth. Members of the committee, in a number determined by the Agreement Establishing a Regional School District Comprising the Towns of Amherst, Pelham, Leverett and Shutesbury of June 1953, as amended, shall represent the town on the regional school district committee in the exercise of the above mentioned powers and duties as they relate to the regional secondary schools.

Section 4-5 Housing Authority

(a) Composition, Election

There shall be a housing authority composed of five members. Four members shall be elected at large by the voters of the town, and one member shall be appointed by the governor of the commonwealth. Members of the housing authority shall not simultaneously hold additional elective town offices, except membership in the town meeting. The housing authority shall elect a chair from among its members.

(b) Term of Office

The term of office of housing authority members shall be five years, beginning on the first Monday following election and continuing until their successors are qualified. Terms of office shall be so arranged that the terms of as nearly an equal number of members as may be shall expire at each annual town election.

(c) Powers and Duties

The housing authority shall make studies of the housing needs of the town and shall provide programs for housing. The authority shall have all the powers and duties vested in housing authorities by the laws of the commonwealth.

Section 4-6 Redevelopment Authority

(a) Composition, Election

There shall be a redevelopment authority composed of five members. Four members of the redevelopment authority shall be elected at large by the voters of the town, and one member shall be appointed by the governor of the commonwealth. Members of the redevelopment authority shall not simultaneously hold additional elective town offices, except membership in the town meeting. The redevelopment authority shall elect a chair from among its members.

authority shall elect a chair from among its members.

(b) Term of Office

The term of office of redevelopment authority members shall be five years, beginning on the first Monday following election and continuing until their successors are qualified. Terms of office shall be so arranged that the terms of as nearly an equal number of members as may be shall expire at each annual election.

(c) Powers and Duties

The redevelopment authority shall implement the Boltwood Walk urban renewal plan and, with respect to that area, shall have all the powers and duties vested in redevelopment authorities by the laws of the commonwealth.

Section 4-7 Board of Trustees of the Town Library

The composition and election of the trustees of the town library, and of the trustees of The Jones Library, Incorporated, their terms, powers and duties shall be governed by the provisions of chapter 512 of the Acts of 1972, as amended, and by the Memorandum of Understanding between the Board of Selectmen and the Board of Trustees of The Jones Library, Incorporated, and the Town Library of 1984. Trustees of the library shall not simultaneously hold additional elective town offices. The chair of the library trustees shall be a member of the town meeting ex officio.

Section 4-8 County Commissioners

The composition and election of the town's three county commissioners, their terms, powers and duties shall be governed by the provisions of the Hampshire County Charter, as amended, and by the laws of the commonwealth.

Section 4-9 Elector of the Oliver Smith Will

(a) Election

The elector of the Oliver Smith will shall be elected at large by the voters of the town.

(b) Term of Office

The term of office of the elector shall be one year, beginning on the first Monday following election and continuing until a successor is qualified.

(c) Powers and Duties

The elector of the Oliver Smith will shall act as the town's representative to the Smith Charities Trust.

Section 4-10 Filling vacancies

If a vacancy occurs in the membership of the school committee, the housing authority, the redevelopment authority or the library trustees, whether by failure to elect or otherwise, the mayor shall, within thirty days following the date such vacancy is declared to exist, call a joint meeting of the town council and the remaining members of whichever agency in which a vacancy is declared to exist to act to fill the said vacancy. At any such joint meeting, a majority of those present and voting shall choose, from among the registered voters, a person to serve for the balance of the unexpired term. Any person so chosen shall be sworn and commence to serve forthwith. Participants in such joint meeting to fill such vacancies shall give consideration to whichever of the defeated candidates for the seat in which the vacancy is declared to exist received the highest number of votes at the last annual town election immediately preceding the date the vacancy is declared to exist. In the event the vacancy is in the position appointed by outside authority, the town council shall forthwith notify such authority and request the appointment of a successor.

If a vacancy occurs in the position of town moderator, the members of town meeting shall elect a moderator from their own membership to complete the unexpired term. If a vacancy occurs in the position of elector of the Oliver Smith will, the town council shall appoint a replacement to fill the position for the remainder of the unexpired term.

If a vacancy occurs in the position of county commissioners, it shall be filled in accordance with the provisions of the Hampshire County Charter.

Part V - Recall of Elected Office Holders

Section 5-1 Application

Any holder of an elected office in the town may be recalled therefrom by the voters of the town in the manner provided in this section, except that the maximum number of members of a multiple member body that may be recalled is less than a majority. No recall petition shall be filed against an officer within nine months after taking office; further, no person shall be subject to recall if the term of office of such person expires within six months of issuance of the certificate described in section 5-2.

Section 5-2 Recall Petition

A recall petition may be initiated by the filing of an affidavit containing the name of the officer sought to be recalled and a statement of the grounds for recall, provided that the affidavit is signed by at least one hundred registered voters for any officer elected at large and at least twenty-five registered voters from the precinct in question for any officer elected by precinct. The town clerk shall within twenty-four hours of receipt submit the affidavit to the registrars of voters in the town, and the registrars shall within an additional twenty-four hours certify thereon the number of signatures which are names of registered voters of the town.

If the affidavit shall be found and certified by the town clerk to be sufficient, the town clerk shall thereupon deliver to said voters making the affidavit, copies of petition blanks demanding such recall, copies of which printed forms the town clerk shall keep available. Such blanks shall be issued by the town clerk with signature and official seal attached thereto. They shall be dated; shall be addressed to the town council; shall contain the names of all the persons to whom they are issued, the number of blanks so issued, the name of the person whose recall is sought, the office from which removal is sought and the grounds of recall as stated in the affidavit; and shall demand the election of a successor in said office. A copy of the affidavit shall be entered in a record book to be kept in the office of the town clerk.

Said recall petitions shall be returned and filed with the town clerk within twenty days after certification of the signatures on the affidavit and shall have been signed by at least fifteen percent of the registered voters of the town for any officer elected at large. For any officer elected by precinct, said recall petition shall be returned and filed with the town clerk within twenty days after the certification of the signatures on the affidavit and shall have been signed by at least fifteen percent of the registered voters from the precinct represented by the officer to be recalled. Voters shall add to their signatures the street and number, if any, of their residences.

The town clerk shall forthwith submit the petitions to the registrars of voters in the town, and the registrars shall, within five days, certify thereon the number of signatures which are names of registered voters of the town.

Section 5-3 Recall Election

If the petition shall be found and certified by the town clerk to be sufficient, the town clerk shall forthwith submit the same with such certificate to the town council, and the town council shall within five days give written notice of the receipt of the certificate to the officer sought to be recalled and shall, if the officer does not resign within five days thereafter, order an election to be held on a date fixed by them not less than sixty-five and not more than ninety days after the date of the town clerk's certificate that a sufficient petition has been filed. The recall election for any officer elected by precinct shall only be held in the precinct that the officer represents.

If a vacancy occurs in said office after a recall election has been ordered, the election shall nevertheless proceed as provided in this section.

An officer sought to be recalled may not be recalled if the term of office of such person expires within six months of issuance of the certificate described in section 5-2.

An officer sought to be recalled may not be a candidate in the recall election. The nomination of other candidates, the publication of the warrant for the recall election and the conduct of the same shall all be in accordance with the provisions of law relating to elections, unless otherwise provided in this charter.

Section 5-4 Office Holder

The officer sought to be recalled shall continue to perform the duties of the office until the recall election. If said officer is not recalled, the officer shall continue in office for the remainder of the unexpired term. If recalled, the officer shall be deemed removed upon the qualification of the successor, who shall hold office during the unexpired term. If the successor fails to qualify within five days after receiving notification of election, the incumbent shall thereupon be deemed removed and the office vacant. The vacancy created thereby shall be filled in accordance with this charter.

Section 5-5 Form of the Ballot

The form of the question to be voted upon shall be substantially as follows:

“Shall (here insert the name and title of the elective officer whose recall is sought) be recalled?”

Under the proposition shall appear the word “Candidates,” the directions to the voters required by chapter 54, section 42 of the general laws of the commonwealth, and beneath this the names of candidates nominated in accordance with the provisions of law relating to elections. If a majority of the votes cast upon the question of recall is in the affirmative, the candidate receiving the highest number of votes shall be declared elected and shall hold office during the unexpired term. If a majority of the votes on the question is in the negative, the ballots for candidates need not be counted.

No recall election shall be effective unless at least twenty percent of those entitled to vote shall have voted.

Section 5-6 Repeat of Recall

In the case of an officer subjected to a recall election and not recalled thereby, no recall petition shall be filed against such officer during the remainder of the officer's current term.

Section 5-7 Office Holder Recalled

No person who has been recalled from an office, or who has resigned from office while recall proceedings were pending against such person, shall be appointed to any town office within one year after such recall or such resignation.

Part VI - Town Manager

Section 6-1 Appointment, Term of Office, Qualifications

The town council shall appoint, by the affirmative vote of four members of the council, a town manager, who shall serve at the pleasure of the council. The town manager shall be a person of proven administrative ability, especially qualified by education and training and with prior experience as a city or town manager, an assistant city or town manager or the equivalent public or private sector level experience. The town council may from time to time establish such additional qualifications as are deemed necessary and appropriate.

The town manager shall devote full time to the duties of the office and shall not hold any other elective or appointive office, nor shall the town manager engage in any other business, unless such action is approved in advance in writing by the town council.

The town manager need not be a resident of the town or of the commonwealth at the time of appointment but shall establish residence within the town within six months following appointment, unless the town council shall extend such time.

Section 6-2 Powers of Appointment

Except as otherwise provided by this charter, the town manager shall appoint, based upon merit and fitness alone, the town attorney and all town officers and employees for whom no other method of selection is provided in this charter, except

employees of the school department and the town library, and shall report such action to the town council for information and record.

Section 6-3 Administrative Powers and Duties

The town manager shall be the chief administrative officer of the town and shall be responsible to the town council for the proper operation of town affairs for which the town manager is given responsibility under this charter. The powers, duties and responsibilities of the town manager shall include, but need not be limited to, the following:

(a) to supervise, direct and be responsible for the efficient administration of all officers and employees appointed by the town manager and their respective departments and of all functions for which the town manager is given responsibility under the laws of the commonwealth, this charter, by bylaw or by vote of the town council;

(b) to administer either directly or through a person or persons supervised by the town manager, in accordance with this charter, all provisions of general or special laws applicable to the town, all bylaws and all regulations established by the town council;

(c) to coordinate all activities of town agencies under the direction of the town manager;

(d) subject only to express prohibitions in the laws of the commonwealth or this charter, to reorganize, consolidate or abolish such departments or offices as are under the authority of the town manager, in whole or in part; to establish such new departments or offices as the town manager deems necessary; and to transfer the duties, powers and appropriation when incident to reorganization of one department or office to another;

(e) to attend all regular and special meetings of the town council and the town meeting unless excused and to answer all questions addressed to the town manager which are related to matters the general supervision of the town manager;

(f) to keep the town council fully informed as to the needs of the town and to recommend to the council for adoption such measures requiring action by them as the town manager deems necessary or expedient;

(g) to ensure that complete and full records of the financial and administrative activity of the town are maintained and to render reports to the town council as may be required, including an annual report and monthly reports of town income and expenditures;

(h) to prosecute, defend and compromise all litigation to which the town is a party and to employ special counsel whenever in the judgement of the town council it may be necessary;

(i) to have jurisdiction over the rental and use of all town property, except school department property and property under the control of the trustees of the town library, provided, however, that rental agreements of more than three years in duration shall be subject to the approval of the town council;

(j) to be responsible for the maintenance and repair of all town buildings, except school department property and property under the control of said library trustees, and, if so requested by the school committee or the library trustees, as appropriate, to be responsible for the maintenance and repair of school and library buildings;

(k) to be responsible for the preparation of plans and the supervision of construction work on existing buildings or on the construction of new buildings other than school department buildings and buildings under the control of said library trustees, if deemed necessary with the assistance of a building needs committee and/or a building committee;

(l) to administer the municipal procurement act, except that the town manager may delegate the duties and responsibilities of the chief procurement officer as appropriate, and to encourage joint purchasing agreements with the school department and with other town and regional entities;

(m) to enter into agreements and award all contracts for the town, except those relative to the school department or the town library, unless and to the extent that the school committee or the trustees of the town library so request;

(n) to develop and maintain a full and complete inventory of all town owned real and personal property, except property of the school department;

(o) to administer personnel policies, practices or rules and regulations, any classification system, compensation or employee benefit plan and any related matters for all town employees, except employees of the school department, and to administer all collective bargaining agreements, except for school department agreements, entered into by the town;

(p) to fix the compensation of all town officers and employees appointed by the town manager within the limits established by appropriation and any applicable compensation plan or collective bargaining agreement;

(q) to be responsible for the negotiation of all collective bargaining agreements with town employees over wages and other terms and conditions of employment, except employees of the school department, within guidelines set by the town council, and, if deemed necessary, to employ special counsel to assist in the performance of these duties, provided, however, that the terms of collective bargaining agreements shall be subject to the approval of the town council;

(r) to prepare and submit an annual operating budget, capital improvement program and long-term financial forecast as prescribed in part IX of this charter;

(s) to adjust line item budgets within appropriations of the municipal budget to meet contingencies during the fiscal year;

(t) to act as the chief fiscal officer of the town with authority to approve warrants for the payment of town funds prepared by the controller in accordance with the provisions of chapter 41, section 56 of the general laws, such approval to be sufficient to authorize payment by the town treasurer, provided, however, that the mayor shall approve all such warrants in the absence of the town manager;

(u) to investigate or inquire into the affairs of any town agency under the supervision of the town manager or the job-related conduct of any officer or employee thereof;

(v) to assist the town council in recruiting persons appropriate for single member non-compensated town positions and for membership on multiple member boards, commissions and committees;

(w) to delegate, authorize or direct any officer or employee of the town to exercise any power, duty or responsibility which the office of town manager is authorized to exercise, provided, however, that all acts that are performed under such delegation shall be considered to be the acts of the town manager;

(x) to perform such other duties as necessary or as may be assigned by the laws of the commonwealth, this charter, by bylaw or by vote of the town council.

Section 6-4 Compensation

The town manager shall receive such compensation for services as the town council shall determine, but said compensation shall be within the limits of available appropriations.

Section 6-5 Vacancy in Office

Any vacancy in the office of town manager shall be filled as soon as possible by the town council. Pending appointment of the town manager or the filling of any vacancy, the council shall forthwith appoint some other qualified person to perform the duties of the town manager. The appointment of the acting town manager shall be for

a term not to exceed six months, provided, however, renewals, not to exceed an additional three months per renewal, may be provided.

Section 6-6 Temporary Absence

The town manager may designate by letter filed with the town council and town clerk a qualified department head, officer or employee of the town to perform the duties of the town manager as acting town manager during a temporary absence or disability, including any leave of absence granted by the town council. The town council may not revoke such designation until at least fourteen days have elapsed, whereupon it may appoint such other person to perform the duties of the town manager. In the event of the failure of the town manager to make such designation, or if the person so designated is for any reason unable to serve or is deemed not qualified by the town council, the council may designate some other qualified person to perform the duties of the town manager until the town manager shall return.

Section 6-7 Powers of the Acting Town Manager

The powers of the acting town manager under section 6-5 and 6-6 shall be limited to matters not admitting of delay, provided, however, that no acting town manager under section 6-6 shall have the power to make any permanent appointment to, or removal from, any town office or position.

Section 6-8 Removal of the Town Manager

The town council may, by the affirmative vote of four members of the council, terminate, remove or suspend the town manager from office in accordance with the following procedure:

Prior to removal or termination, the town council shall adopt a preliminary resolution of removal by the affirmative vote of four members of the council. The preliminary resolution may suspend the town manager for a period not to exceed thirty days. A copy of the resolution shall be delivered to the town manager forthwith. If so requested by the town manager, the town council shall provide a written statement setting forth the reasons for the removal or termination within five days after the manager's request.

Within five days after the receipt of the preliminary resolution, the town manager may request a public hearing by filing a written request for such hearing with the town council. If such a hearing is requested, the hearing shall be held at a meeting of the town council not later than twenty days from the date of said request. At such hearing the town manager shall be entitled to address the town council and make comments related to the preliminary resolution. The town manager shall also be entitled to be represented by an attorney and to summon witnesses.

If a public hearing has not been requested by the town manager, the town council may adopt a final resolution of removal, which may be effective immediately, by the affirmative vote four members of the council at any time after ten days following the date of delivery of a copy of the preliminary resolution to the town manager. If the town manager requests a public hearing, the town council may, at the conclusion of the hearing or within five days of the conclusion of the hearing, adopt a final resolution of removal by the affirmative vote of four members of the council.

The town council may suspend, by the affirmative vote of four members of the council, the town manager pending and during any public hearing as requested by the town manager. The town manager shall continue to receive the current salary until the final date of removal shall become effective unless provided otherwise. The action of the town council in terminating, removing or suspending the town manager shall be final.

final.

Section 6-9 Annual Review of the Town Manager

The town council shall annually prepare and deliver to the town manager a written evaluation of the town manager's performance. The council shall publish in at least one newspaper of general circulation in the town a notice stating the date and time of the town council meeting when the annual evaluation shall be scheduled. Such notice shall appear at least fourteen days before said meeting. A more extensive evaluation process shall be carried out at the conclusion of each three years in office. A portion of the more extensive evaluation process shall be in executive session.

Part VII - Superintendent of Schools

Section 7-1 Appointment, Term of Office, Qualifications

A superintendent of schools to oversee the operation of the Amherst school department shall be appointed under the terms of the agreement establishing School Union 26. In accordance with chapter 71, section 63 of the general laws, as amended, a joint committee of the school committees of the participating towns shall determine the relative amount of service to be rendered by the superintendent in each town, fix the compensation and other conditions of employment and make determinations concerning the superintendent's continuation in office. The superintendent of schools shall have experience in teaching and school administration, hold appropriate academic degrees and be eligible for state certification as a superintendent of schools. The joint school committee may from time to time establish such additional qualifications and residency requirements as are deemed necessary and appropriate.

Section 7-2 Powers of Appointment

The superintendent of schools shall appoint, based upon merit and fitness alone, all administrative, instructional and supportive services officers and employees of the school department, assigning and transferring such staff as the interests of the district may dictate and reporting such action, as necessary, to the school committee for information and record.

Section 7-3 Administrative Powers and Duties

The superintendent of schools shall be the chief administrative officer of the school department and shall be responsible to the school committee for the proper operation of school affairs for which the superintendent is given responsibility under this charter.

The superintendent of schools shall be responsible for the development and maintenance of a positive educational program designed to meet the needs of the community and to carry out the policies of the school committee. The goals of the superintendent shall be to inspire, lead, guide and direct every member of the administrative, instructional, and supportive services staff in setting and achieving the highest standards of excellence, so that each individual student enrolled in the schools in the district may be provided with a complete, valuable, meaningful and personally rewarding education.

The powers, duties and responsibilities of the superintendent of schools shall include, but need not be limited to, the following:

(a) to supervise, direct and be responsible for the efficient administration of all officers and employees appointed by the superintendent of schools and their respective departments and of all functions for which the superintendent of schools is given responsibility under the laws of the commonwealth, this charter, by bylaw or by vote of the school committee;

(b) to administer either directly or through a person or persons supervised by the superintendent of schools, in accordance with this charter, all provisions of general or special laws applicable to the schools, all bylaws and all regulations established by the school committee;

(c) to coordinate all activities of the school department under the direction of the superintendent of schools;

(d) subject only to express prohibitions in the laws of the commonwealth or this charter, to reorganize, consolidate or abolish such offices as are under the authority of

the superintendent of schools, in whole or in part; to establish such new offices as the superintendent of schools deems necessary, and to transfer the duties, powers and appropriation when incident to reorganization from one office to another;

(e) unless excused, to attend all regular and special meetings of the school committee, of its relevant subcommittees and of the town meeting, insofar as the warrant includes issues relevant to the school department, and to answer all questions addressed to the superintendent of schools which are related to matters under the general supervision of the superintendent;

(f) to keep the school committee fully informed as to the needs of the schools and recommend to the committee for adoption such measures requiring action by them as the superintendent of schools deems necessary or expedient;

(g) to ensure that complete and full records of the financial and administrative activity of the school department are maintained, including data regarding school personnel, student population and scholastic records; and to render reports to the school committee as may be required, including monthly reports of school department income and expenditures;

(h) to prosecute, defend and compromise all litigation to which the school department is a party and to employ special counsel whenever in the judgement of the school committee it may be necessary;

(i) to have jurisdiction over the rental and use of all school department property, provided, however, that rental agreements of more than three years in duration shall be subject to the approval of the school committee;

(j) to be responsible for the maintenance and repair of all school department property;

(k) within the framework of a long-term planning process, to make recommendations to the school committee with reference to the location and size of new school sites and of additions to existing sites and to the location and size of new buildings on school sites; to be responsible for the preparation of plans and the supervision of work on existing school buildings or on the construction of new buildings, if deemed necessary with the assistance of a building needs committee and/or a building committee;

(l) to act as the chief procurement officer for the school department and, in consultation with the town manager, to be responsible for the purchase of all supplies, materials and equipment required by the school department;

(m) to enter into agreements and award all contracts relative to the school department;

(n) to develop and maintain a full and complete inventory of all school department real and personal property;

(o) to administer personnel policies, practices or rules and regulations, any classification system, compensation or employee benefit plan and any related matters for all employees of the school department and to administer all collective bargaining agreements entered into by the town with respect to employees of the school department;

(p) to fix the compensation of all officers and employees appointed by the superintendent of schools within the limits established by appropriation and any applicable compensation plan or collective bargaining agreement;

(q) to be responsible for the negotiation of all collective bargaining agreements with employees of the school department over wages and other terms and conditions of employment within guidelines set by the school committee and, if deemed necessary, to employ special counsel to assist in the performance of these duties, provided, however, that the terms of collective bargaining agreements shall be subject to the approval of the school committee;

(r) to prepare and submit an annual operating budget, capital improvement program and long-term financial forecast as prescribed in part IX of this charter;

(s) to investigate or inquire into the affairs of any office under the supervision of the superintendent of schools or the job-related conduct of any officer or employee thereof;

(t) to keep the school committee and the public informed about modern educational practices and trends and about policies, practices and problems in the district's schools and to act as a liaison between the school department and the community, attending, or delegating a representative to attend, all meetings of town agencies at which matters pertaining to the schools appear on the agenda or are expected to be raised;

(u) to hold such meetings of teachers and other employees as necessary for the discussion of matters concerning the improvement and welfare of the schools and to encourage full and open discussion of educational policies, no matter how controversial, between and among administrators, teachers, parents, students, school committee members and other citizens so as to develop a cooperative approach to the solution of school and school/community issues;

(v) to study and revise on a continuing basis, and in consultation with staff, all curriculum goals and courses of study to ensure that:

- learning or performance objectives are related to approved goals and are utilized to evaluate the effectiveness and efficiency of instructional activities;

- instructional activities promote the individualization of learning opportunities as well as the acquisition of basic communication, computation, critical thinking and creative thinking skills;

- attention is given to the development of interpersonal communication skills and the development of career awareness and occupational skills at appropriate levels;

- cultural diversity is encouraged as a source of enrichment and positive ethnicity;

- instructional activities support other policies and directions approved by the school committee;

(w) to recommend to the school committee for its adoption all courses of study and major changes in instructional activities and time schedules to be used in the schools; in this regard, to encourage the development of alternative modes of education in response to student needs, staff talent, parent/teacher cooperation and careful evaluation of administrative issues;

(x) to recommend policies to the school committee concerning the transportation of students in accordance with the law and the requirements of safety;

(y) to be responsible for the assignment of students to school classes and buildings;

(z) to delegate, authorize or direct any officer or employee of the school department to exercise any power, duty or responsibility which the office of superintendent of schools is authorized to exercise, provided, however, that all acts that are performed under such delegation shall be considered to be the acts of the superintendent of schools;

(aa) to perform such other duties as necessary or as may be assigned by the laws of the commonwealth, this charter, bylaw or by vote of the school committee.

Section 7-4 Vacancy in Office

Any vacancy in the office of superintendent of schools shall be filled as soon as possible by the Union 26 joint school committee. Pending appointment of the superintendent of schools or the filling of any vacancy, the committee shall appoint a qualified officer to perform the duties of the superintendent.

Section 7-5 Temporary Absence

The superintendent of schools shall designate the assistant superintendent of

schools or, in the absence of an assistant superintendent of schools, another qualified officer to perform the duties of the superintendent of schools during a temporary absence or disability on the part of the superintendent, including any leave of absence granted by the joint committee.

Section 7-6 Powers of the Acting Superintendent of Schools

The powers of the acting superintendent of schools under section 7-4 and 7-5 shall be limited to matters not admitting of delay, provided, however, that no acting superintendent under section 7-5 shall have the power to make any permanent appointment to, or removal from, any school department office or position.

Part VIII - Administrative Organization

Section 8-1 Publication of Administrative Code

For the convenience of the public, there shall be an administrative code including a written description of the administrative organization of town offices, departments and multiple member bodies. The code shall state the mode of selection, terms of office and general powers and duties of each town office, department and multiple member body. The administrative code and any amendments thereto shall be considered an appendix to, but not an integral part of, the bylaws of the Town of Amherst.

Section 8-2 Personnel Administration

The town manager shall propose, for adoption by the town council, rules and regulations establishing a personnel system. The personnel system shall make use of modern concepts of personnel management and may include, but need not be limited to, the following elements: a method of administration; personnel policies indicating the rights, obligations and benefits of employees; a classification plan; a compensation plan; a method of recruiting and selecting employees based upon merit principles; an equal opportunity plan; a centralized record keeping system; a performance evaluation system; disciplinary procedures; and other elements that are determined necessary. All town agencies and positions shall be subject to the rules and regulations adopted under this section, except employees of the school department.

The superintendent of schools shall propose, for adoption by the school committee, rules and regulations establishing a personnel system applicable to employees of the school department. The personnel system shall make use of modern concepts of personnel management and may include, but need not be limited to, the elements listed above.

Part IX - Financial Procedures

Section 9-1 Initial Budget Process

The annual budget process shall begin in October of each year with a series of informal meetings between the town manager and the superintendent of schools to reach a common understanding of the general revenue and expenditure situation facing the town. As a guideline, the parties shall refer to the "year two" budget prepared in the previous year.

On or about October 15, the mayor shall convene a budget meeting of the town council together with the town manager, the school committee, the superintendent of schools, the chair of the board of trustees and the director of the town library and the members of the financial advisory committee of town meeting. At said meeting, the town manager shall present a report as to the town's overall financial condition, the revenues and expenses expected over the next five years and any tentative

revenues and expenses... recommendations as to the allocations of revenue among town agencies and among operating budgets, capital budgets and reserves for the next two years.

On or about November 1, the town council shall call a town meeting, the primary purpose of which shall be for members to hear and debate the mayor's report on the "State of the Town." This report shall include, but need not be limited to, an identification of factors that will impact on the financial condition of the town over the next five years, revenue and expenditure trends, potential sources of new or expanded revenues and long-term actions that may be taken to enhance the financial outlook. The report shall also include initial, tentative decisions regarding the budgets for the next two years.

At its discretion, the town council may schedule additional public hearings during this period.

On or about November 15, the mayor shall convene a second budget meeting of the town council with the attendees as noted above to discuss guidelines for the preparation of operating and capital budgets for the next two years. The process shall seek to build agreement by collaboration, consultation and cooperation, but the final responsibility for the setting of guidelines shall rest with the town council, which shall set said guidelines by majority vote no later than December 1.

As the budget process develops after December 1, the town manager, in consultation with the superintendent of schools, shall be responsible for keeping the town council and the financial advisory committee advised of significant changes to the revenue and expenditure forecasts.

Section 9-2 Preparation of the Budget

Between December 1 and February 15, the town manager, the superintendent of schools and the library director shall draft operating and capital budgets for the activities and services for which they are responsible. Such budgets shall be prepared in accordance with the guidelines adopted by the town council and shall cover a two year period, beginning on the subsequent July 1 and ending on June 30 two years thereafter, except that the budget for each fiscal year shall be presented separately.

Section 9-3 Submission of the Budget

On or about February 15, the superintendent of schools and the library director shall submit the budgets adopted by their respective boards to the town manager for inclusion in the overall budget of the town, together with their detailed reasons for any deviations from the guidelines set by the council.

On or about March 1, the town manager shall submit unified operating and capital budgets to the town council and to the financial advisory committee, together with detailed reasons for any deviation from the council's guidelines with respect to the municipal budget and detailed reasons for any such deviation previously submitted to the manager by the superintendent of schools and the library director. Where differences exist between budgets and previous guidelines, the manager shall also make recommendations to bring the unified budgets within the guidelines.

Section 9-4 Action on the Budget

Between March 1 and April 15, the town council and the financial advisory committee shall review the proposed unified budget in detail. In so doing, the council and the financial advisory committee may hold a series of public hearings.

On or about April 15, the town council shall adopt final operating and capital budget recommendations for presentation to the annual town meeting.

The mayor shall present the budgets for the subsequent two years to town meeting. The budget shall be presented and voted as a series of separate appropriations by functional area. Town meeting may comment on the second year figures but shall take action on the budget for the forthcoming year as follows:

- (a) approve the operating budget recommended by the town council - by a majority vote for final appropriation;
- (b) approve the capital budget recommended by the town council - by a majority vote for final appropriation, provided that, where funds are proposed to be transferred from the stabilization fund, a two-thirds majority vote is required;
- (c) to recommend shifts within the operating or capital budgets or recommend

an increase or decrease in the operating or capital budgets - by a majority vote. In such instance, the respective operating or capital budget shall be returned to the town council for further action. In the event of action described under (c) above, the town council shall take action as follows:

(a) approve the recommendation(s) of town meeting, in which event the appropriation is final;

(b) after due consideration, return the budget to town meeting with the council's final recommendation, which may differ from the council's original recommendation.

Town meeting may vote by a two-thirds majority to override the final recommendations of the town council. In this event, the original recommendations of town meeting shall become the final appropriation. Should town meeting fail to override the council's final recommendations, the council's final recommendations shall become the final appropriation.

Section 9-5 Adjustments by the Town Council

As described in section 3-6(h), as circumstances warrant in the course of the fiscal year in question, the town council shall be authorized to approve the transfer of spending authority from one appropriation of the municipal budget to another, within the total appropriated annual municipal budget, in an amount not to exceed five percent of the appropriation being reduced.

Section 9-6 Capital Improvements

The town manager shall, in conjunction with a joint capital planning committee established for such purpose, maintain a list of capital improvements expected to be required over the next five years, their estimated cost, the proposed method of financing and their estimated annual cost for operations and maintenance. Said list shall serve as a basis for preparation of the two-year capital budgets referred to in sections 9-1 through 9-4 above.

Section 9-7 Annual Audit

The town council shall provide for an annual audit of the books and accounts of the town to be made by a certified public accountant, or firm of accountants, who have no personal interest, direct or indirect, in the fiscal affairs of the town government or any of its offices.

Section 9-8 Precedence of the Regional School District Agreement

The provisions of the Agreement Establishing a Regional School District Comprising the Towns of Amherst, Pelham, Leverett and Shutesbury of June 1953, as amended, take precedence over the budgetary procedures stipulated in the above sections of part IX.

Part X - General Provisions

Section 10-1 Charter Revision or Amendment

This charter may be replaced, revised or amended at any time in accordance with any procedure made available under the constitution and laws of the commonwealth.

Section 10-2 Automatic Review of Charter

At the election following a date ten years from the date on which this charter becomes effective, there shall be a town-wide referendum on the question: "Should a charter commission be established to review or amend the current charter of the Town of Amherst?" If the question is answered in the affirmative, those candidates whose names appear on the same ballot shall be elected to serve on said commission. The charter commission thus elected shall proceed to review and amend this charter or to draft a new charter in accordance with the constitution and laws of the commonwealth.

Section 10-3 Severability

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

Section 10-4 Rules of Interpretation

The following rules shall apply when interpreting this charter:

(a) Specific Provisions to Prevail

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

(b) Number

Words imparting the singular number may extend and be applied to several persons or things; words imparting the plural number may include the singular.

(c) Number of Days

Where periods are provided in this charter within which some action is to occur, if the final day of such period falls on a Saturday, Sunday or holiday, then the period shall be extended to include the first day of business thereafter.

Section 10-5 Definitions

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

a) Charter

The word "charter" shall mean this charter and any amendments to it made through any methods provided under the constitution and laws of the commonwealth.

(b) Town

The word "town" shall mean the Town of Amherst and shall be taken to encompass the municipal, school and library operating entities.

(c) Voters

The word "voters" shall mean registered voters of the town.

(d) Majority Vote

The words "majority vote" shall mean a majority of those present and voting, provided a quorum is present when a vote is taken, unless a higher number is required by the laws of the commonwealth, by the terms of this charter or by the town council's or town meeting's own rules.

(e) Town Agency or Agency

The words "town agency" or the word "agency" shall mean any board, commission, committee, department or office of town government, whether elected, appointed or otherwise constituted.

(f) Multiple Member Body

The words "multiple member body" shall mean any board, commission or committee.

(g) Resident

The word "resident" in reference to a precinct shall mean one whose actual domicile is in a given precinct where one intends to remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode. Any student eligible and electing to be a registered voter of the town of Amherst shall satisfy this definition.

Part XI - Transitional Provisions

Section 11-1 Abrogation of Certain Existing Special Acts

This charter supersedes and repeals Amherst's current special act charter, including "An Act Establishing a Town Manager Form of Government for the Town of Amherst" of 1953, as amended, and "An Act Establishing in the Town of Amherst Representative Town Government by Limited Town Meetings" of 1938, as amended.

Section 11-2 Continuation of Existing Laws

All bylaws, resolutions, rules, regulations and votes of the town meeting, and all special acts and acceptances of the laws of the commonwealth other than those noted in section 11-1, which are in force at the time this charter is adopted and which are not inconsistent with the provisions of this charter, shall continue in full force until amended or repealed. Where provisions of this charter conflict with provisions of town bylaws, rules, regulations, orders and special acts and acceptances of laws of the commonwealth, the charter provisions, subject to state law, shall govern.

Section 11-3 Existing Officials and Employees

Any person holding a town office or employment under the town shall retain such office or employment and shall continue to perform the duties of the office until provisions shall have been made in accordance with this charter for the performance of the said duties by another person or agency.

Section 11-4 Continuation of Government

All town officers, boards, commissions, committees or agencies, including members of town meeting, shall continue to perform their duties until re-appointed or re-elected, or until successors to their respective positions are fully appointed or elected or until their duties have been transferred and assumed by another town office, board, commission, committee or agency.

Section 11-5 Continuation of Obligations

All official bonds, obligations, contracts and other instruments entered into or executed by or to the town before the adoption of this charter and all taxes, special assessments, fines, penalties or forfeitures incurred or imposed, due or owing to the town, shall be enforced and collected, and all writs, prosecutions, actions and causes of action, except as herein otherwise provided, shall continue without abatement and remain unaffected by this charter. No legal act done by or in favor of the town shall be rendered invalid by the adoption of this charter.

Section 11-6 Transfer of Records and Property.

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

11-7 Time of Taking Effect

This charter shall become fully effective upon ratification by the voters, except as otherwise provided in this section:

(a) First Election Under the Charter

A special election to elect the first officers under this charter shall be held on a date fixed by the board of selectmen on or about the fourth Tuesday in October following adoption of this charter. At such election the eligibility and other provisions incorporated in this charter with respect to specific offices shall be in effect.

(b) Town Meeting

Five members of town meeting shall be elected in each precinct at the first fall election. At the time such members are qualified, the terms of town meeting members in the third year of their terms shall expire. Five members shall also be elected in each precinct at the second fall election. At the time such members are qualified, the terms of town meeting members then in the third year of their terms shall expire. Finally, five members shall be elected in each precinct at the third fall election. At the time such members are qualified, the terms of town meeting members then in the third year of their terms shall expire, whereupon the total number of town meeting members shall have been reduced to one hundred and fifty.

(c) Town Council

(c) Town Council

The mayor and six additional members of the town council shall be elected at the first fall election. The mayor shall be elected for a full term of three years. The three candidates for councillor with the highest number of votes shall be elected for partial terms of two years, and the three candidates with the next highest number of votes shall be elected for partial terms of one year. At the time such members of the town council are qualified, the terms of all current members of the board of selectmen shall expire.

(d) Town Moderator

A town moderator shall be elected at the first fall election for a term of three years. At the time such officer is qualified, the term of the moderator elected at the preceding annual election shall expire.

(e) School Committee

Six members of the school committee shall be elected at the first fall election. The two candidates with the highest number of votes shall be elected for full terms of three years; the two candidates with the next highest number of votes shall be elected for partial terms of two years; and the two candidates with the next highest number of votes shall be elected for partial terms of one year. At the time such members of the school committee are qualified, the terms of all current member of the school committee shall expire.

(f) Other Elected Officers

No other town officers shall be elected at the first fall election. The terms of members of the housing authority; members of the redevelopment authority; trustees of the town library and of The Jones Library, Incorporated; the county commissioners and the elector of the Oliver Smith will shall be extended to the next fall election following the date of the normal expiration of the officers' terms

(g) Compensation for Members of the Town Council

Until altered in accordance with section 3-10, the salary for the mayor shall be three thousand dollars per year, and the salary for the other members of the town council shall be one thousand five hundred dollars per year.

(h) Review of Citizen Committees

Within eighteen months of the effective date of this charter, the town council shall conduct a review of the structure and mandate of citizen committees and shall, where authorized, take action to establish, reorganize, combine or dissolve committees as deemed necessary to ensure their effective contribution to the interests of the town; in the case of committees specifically established by town meeting, the town council shall place its recommendations for any change on the warrant for the next town meeting.

(i) Definition of Conflict of Interest

Within one year of the effective date of this charter, the rules and procedures committee of town meeting shall define and clarify the conflict of interest laws referred to in section 2-5 with respect to town meeting members.