

Chapter *342*  
of the Acts of 2022

T H E C O M M O N W E A L T H O F M A S S A C H U S E T T S

*In the One Hundred and Ninety-Second General Court*

AN ACT ESTABLISHING THE POSITION OF TOWN MANAGER IN THE TOWN OF TYNGSBOROUGH.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. There is hereby established in the town of Tyngsborough the office of town manager to be appointed by majority vote of the full Tyngsborough board of selectmen and to serve for a term of not more than 3 years. The board shall fix the compensation for the town manager annually within the amount appropriated by the town. The town manager shall be appointed on the basis of educational, executive and administrative qualifications and experience. Not less than 3 months prior to the expiration of any contract term, the board of selectmen shall vote on whether to reappoint the town manager and such reappointment shall be by majority vote of the full board; provided, however, that section 8 of this act shall not apply to such vote. To be eligible for appointment, the town manager shall not have served in an elective town office in the town of Tyngsborough for at least 12 months prior to appointment. The town manager shall devote full time to the office and shall not, unless approved in advance by the board of selectmen, hold any other public office, elected or appointed, unless in an ex officio capacity, nor engage in any business or occupation during such service.

SECTION 2. The board of selectmen shall provide for an annual review of the job performance of the town manager based upon the duties of the manager listed in section 3, a summary of which shall be prepared and be a public record. Failure to administer an annual review shall not prohibit the board of selectmen from authorizing any annual increase in compensation.

SECTION 3. (a) The town manager shall be the chief administrative officer of the town, directly responsible to the board of selectmen for the administration of all town affairs for which the office of town manager is given responsibility pursuant to this act. The town manager shall supervise, direct and be responsible for the efficient administration of all functions

and activities for which the office of town manager is given authority, responsibility or control pursuant to this act, any by-law, town meeting vote or vote of the board of selectmen, and shall have duties, including, but not limited to:

(i) to appoint and, in appropriate circumstances, remove, subject to any applicable collective bargaining agreement, personnel by-law or employment contract, an assistant town manager, department heads, officers, agents and other employees of the town for whom no other method of selection or removal is provided by this act, other than those under the jurisdiction of the school committee and the board of library trustees; provided, however, that the town manager shall forthwith give written notice of such appointment to the board of selectmen and the respective board or department to whom the appointee provides staff support; and provided further, that appointment of agents of appointed or elected multiple-member bodies or of department heads for departments for which an appointed or elected board provides policy direction shall be made only after consultation with the respective appointed or elected multiple-member body;

(ii) to administer the town personnel system, including, but not limited to personnel by-laws, policies and procedures, rules and regulations, collective bargaining agreements and employment contracts and to prepare and maintain a current plan establishing personnel staffing requirements for each town department, excepting school and library personnel;

(iii) to attend all regular and special meetings of the board of selectmen unless absence is approved in advance by the chair of the board of selectmen; provided, however, that the town manager shall have a voice, but no vote, in all proceedings of the board of selectmen;

(iv) to ensure that a full and complete record of the financial and administrative activities of the town is kept and rendered as often as may be required by the board of selectmen; provided, however, that not less than once a year, a full written report of all town administrative operations during the period reported on shall be made available to the public;

(v) to keep the board of selectmen fully advised as to the needs of the town and recommend to the board of selectmen and to other elected and appointed town officers and departments adoption of such measures requiring action by them or by the town meeting as the town manager may deem necessary or expedient;

(vi) to be responsible for the maintenance, repair, rental and use of all town buildings and facilities, excluding those facilities where, by law, the jurisdiction and control is vested in another board or department;

(vii) to prepare and present to the board of selectmen an annual operating budget for the town and develop material for the preparation of a proposed capital improvement plan for the next 5 fiscal years with the assistance of any committee that may be created by by-law for such purposes;

(viii) to ensure that a complete inventory of all property of the town, both real and personal, is kept, excluding property under the control of the library trustees or school committee;

(ix) to negotiate, on behalf of the board of selectmen, all contracts involving wages, hours and other terms and conditions of employment and collective bargaining agreements; provided, however, that all such contracts and agreements shall be subject to the approval of the board of selectmen;

(x) to be the chief procurement officer for the town, in accordance with chapter 30B of the General Laws, and be responsible for purchasing all supplies and services for all departments and activities of the town, including awarding and executing contracts therefor; provided, however, that the town manager shall be certified by the inspector general as a Massachusetts certified public purchasing official, or receive a similar certification, at the time of initial appointment or within a reasonable period of time following such appointment; and provided further, that the town manager shall report to the board of selectmen any contracts signed under the authority of this subsection;

(xi) to execute warrants for payment of bills and payrolls prepared by the town accountant in accordance with section 56 of chapter 41 of the General Laws and to report the same to the board of selectmen at the first meeting following such action; provided, however, that in the event of a temporary or permanent vacancy in the office of the town manager and assistant town manager, the board of selectmen shall have sole authority to sign such warrants;

(xii) to see that the provisions of this act, town by-laws and other votes of the town meeting and of the board of selectmen that require enforcement by the town manager are faithfully performed;

(xiii) to inquire, at any time, into the conduct and operation of any office or performance of duties of any town officer, employee, department or multiple-member body;

(xiv) to attend all sessions of all town meetings and, when authorized by the moderator, answer questions raised by voters relating to warrant articles and matters over which the town manager exercises any supervision;

(xv) to, with the approval of the board of selectmen, reorganize, consolidate or abolish, in whole or in part, town departments under the supervision of the town manager, provide for new town departments, subject to any appropriation required therefor and provide for a reassignment of powers, duties and responsibilities among such departments so established or existing; provided, however, that no authority or responsibility assigned by the General Laws may be so reorganized, consolidated or abolished;

(xvi) to facilitate communications, coordination and operations between and amongst town departments serving under the town manager, board of selectmen and other officers and multiple member bodies elected directly by the voters; provided, however, that, the town manager may reasonably require appointed and elected officers of the town or their representatives to meet with the town manager from time to time; and provided further, that the town manager may attend and speak at any meeting of any multiple member body, but may not vote at the meeting;

(xvii) to seek state, federal, regional and all other grants that may be of benefit to the town. The town manager shall review and, following notification to the board of selectmen, approve all grant applications otherwise requiring approval of the board of selectmen;

(xviii) to, with the approval of the board of selectmen and finance committee, transfer the appropriation of 1 town department or agency to another, so far as is consistent with the use for which the funds were voted by the town;

(xix) to perform any other duties required to be performed by the town manager by by-law or vote of the board of selectmen; provided, however, that if an assistant town manager is appointed, the town manager may delegate any of the duties and responsibilities consistent with this act to such assistant; and provided further, that the actions of the assistant shall be deemed to be those of the town manager;

(xx) to ensure that the board of selectmen is fully informed of the town's emergency preparedness planning; provided, however, that in time of public danger or emergency, the town manager, in collaboration with the emergency management director, shall direct and oversee management of town resources pursuant to any applicable state law, regulation or other protocol, directive or agreement to which the town is a signatory or participant; and

provided further, that should the town manager be unavailable, the emergency management director shall perform such duties as may be necessary;

(xxi) to take such other action, consistent with this act, as may be authorized by vote of the board of selectmen.

(b) All appointments of department heads and multiple-member bodies made pursuant to subsection (a) shall become effective on the fifteenth day following the day on which such notice of appointment is filed with the board of selectmen, unless the board shall, within that 15-day period by a majority vote of the full board, vote to reject such an appointment or has sooner voted to affirm it. A copy of each notice of appointment shall be posted on the town bulletin board and website when submitted to the board of selectmen.

Notwithstanding any other provision of this act to the contrary, when a vacancy occurs or will occur on a date certain in the office of fire chief or police chief, and prior to exercising any authority pursuant to subsection (a), the town manager shall consult with the board of selectmen as to the criteria and process for appointment.

The board of selectmen shall retain the authority to appoint legal counsel, the town accountant, members of the board of registrars, members of the zoning board of appeals, certain members of the community preservation committee as set forth by by-law, members of the conservation commission, members of the historical commission, members of the cultural council, members of the recreation commission and members of the council on aging.

SECTION 4. Should an assistant town manager be appointed pursuant to subsection (a) of section 3, the assistant town manager shall exercise the powers and perform the duties of the town manager during an absence of the town manager of not more than 15 days. If an assistant town manager has not been appointed, the town manager, with the approval of the board of selectmen, shall by letter filed with the town clerk and board of selectmen, designate another qualified town officer or employee to serve in such capacity.

SECTION 5. Any vacancy in the office of town manager shall be filled as soon as possible by the Tyngsborough board of selectmen. Pending such regular appointment, the board of selectmen shall appoint a qualified town officer, employee or individual, who may but need not be the assistant town manager, if any, to perform the duties of the office on an acting basis, and who shall be referred to as the acting town manager. Such temporary appointment may not exceed 3 months; provided, however, that no more than 2 additional 3-month renewals may be approved by the board of selectmen. Compensation for such

person shall be set by the board of selectmen within the amount approved by town meeting for the position of town manager.

SECTION 6. The powers and duties of a temporary or acting town manager pursuant to sections 4 and 5 shall be limited to matters not admitting of delay and shall include authority to make temporary, emergency appointments or designations to town office or employment but not to make permanent appointments or designations.

SECTION 7. The Tyngsborough board of selectmen may, by a vote of not less than 4 of its members, terminate the town manager for cause at any time after the opportunity for a hearing for which the town manager has received not less than 10 days prior written notice. The board of selectmen may place the town manager on paid administrative leave pending such hearing. The action of the board of selectmen in suspending or removing the town manager shall be final and all authority and responsibility for such suspension or removal shall be vested and fixed solely in the board of selectmen.

SECTION 8. (a) When a vacancy exists in the office of town manager, the board of selectmen shall establish a screening committee to review applicants for the position of town manager; provided, however, that in the alternative, it may adopt a preliminary resolution waiving the requirement for a screening committee and by a vote of not less than 4 of its members, make a direct appointment of a candidate, including the assistant town manager, if any, meeting the qualifications set forth in section 1.

(b) If a screening committee is appointed pursuant to this section, it shall consist of 5 or 7 persons who live or work in the town, representing to the extent possible a broad demographic and occupational base. Not more than 2 members of the board of selectmen shall serve on the committee.

(c) (1) The screening committee shall review all applications received by it, screen qualified candidates to the extent permitted by law and provide for an interview to be conducted with the number of candidates it deems to be necessary and appropriate.

(2) The committee shall submit to the board of selectmen the names, in no particular order, of not less than 3 persons whom it has determined to be best suited to perform the duties of the town manager.

(3) By majority vote of the entire board of selectmen, 1 such nominee may be selected to serve as town manager. If none of the nominees are selected, the board of selectmen may establish a new screening committee or choose an alternative method of reviewing applicants in accordance with subsection (a).

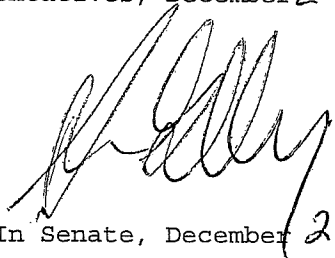
(4) Upon the appointment of a town manager or the appointment of a new screening committee as set forth in paragraph (3) of this subsection, the screening committee shall be considered discharged.

SECTION 9. The incumbent town administrator in office on the effective date of this act shall be the first town manager and shall continue in office until the town manager's non-reappointment, resignation, retirement or removal in accordance with sections 1 or 7. At that time, appointment of a new town manager shall be undertaken in accordance with section 8.

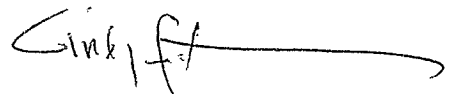
SECTION 10. This act shall take effect upon its passage.

House of Representatives, December 29, 2022.

Passed to be enacted,

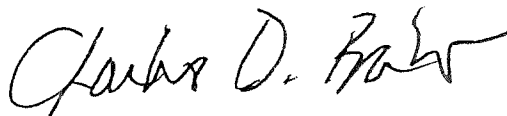
 Speaker.  
In Senate, December 29, 2022.

Passed to be enacted,

, President.

December 29, 2022.

Approved,  
at 11 o'clock and 45 minutes, A. M.

  
Governor.