

Cohasset Town Manager Act Chapter 34



Revised January 16, 2014

Chapter 34

AN ACT PROVIDING FOR A TOWN MANAGER IN THE TOWN OF COHASSET

Be it enacted, etc., as follows:

SECTION 1. Upon the effective date of this act, the Town of Cohasset shall be governed by the provisions of this act.

SECTION 2. Designation of Elected Officials

(a) Upon the effective date of this act, the registered voters of the town of Cohasset shall, in accordance with any applicable laws, by-laws, votes of the town or inter-local agreement continue to elect the following:

- (i) members of the board of selectmen;
- (ii) town moderator;
- (iii) town clerk;
- (iv) school committee members;
- (v) trustees of the Paul Pratt Memorial Library;
- (vi) assessors;
- (vii) board of health members;
- (viii) Cohasset Housing Authority members;
- (ix) planning board members;
- (x) recreation commissioners;
- (xi) sewer commissioners; and
- (xii) water commissioners.

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

(c) Notwithstanding the election by the voters of the town of the officers named in this section, such officers shall be available to the town manager for consultation, conference and

discussion on matters relating to the officer's respective offices. The town manager may require all such officials, except the board of selectmen, to prepare reports for the town manager necessary for the administration of any of the town manager's responsibilities.

SECTION 3. Powers and Duties of the Board of Selectmen

(a) The executive powers of the town shall be vested in the board of selectmen, who shall have all the powers given to boards of selectmen in the General Laws.

(b) The board of selectmen shall consist of 5 persons elected by the voters of the town. The term of each member of the board of selectmen shall not exceed 3 years or until a successor takes office. The board of selectmen shall annually elect a chairperson from among its members.

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

(d) The board of selectmen shall exercise, through the town manager, general supervision over all matters affecting the interests or welfare of the town.

(e) The board of selectmen shall appoint the town manager, town counsel, independent auditor and assistant or special counsels and all members of committees, boards, and commissions except those positions that the town by-laws provide are to be appointed by the troika, as hereinafter defined, that are elected by the voters or that, unless provided for by this act, may be otherwise appointed by town by-law, or the General Laws. The board of selectmen may make appointments to all positions and committees the board of selectmen creates for special or general purposes. For the purposes of this act, troika, shall mean a group composed of the town moderator, who shall be the chairman of the troika, the chairman of the board of selectmen and the chairman of the advisory committee.

(f) The board of selectmen shall have oversight of such boards, committees, positions or commissions appointed by the board of selectmen.

(g) The board of selectmen shall have the responsibility and authority for licenses and other non- personnel related functions as provided by the General Laws and the by-laws of the town.

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

(i) The board of selectmen shall be responsible for establishing and maintaining a written process for the preparation of the budget. The selectmen shall annually issue 1 or more written budget messages, including fiscal guidelines and the timeline for budget makers, at the beginning of each budget cycle or at a time established by the town by-laws.

(j) The board of selectmen shall review the annual proposed budget prepared by the town manager and make changes as the board of selectmen deems advisable. The town manager shall present the budget which incorporates the changes of the board of selectmen to the town meeting.

SECTION 4. Appointment of the Town Manager

(a) The board of selectmen shall create a search committee to assist in the selection of candidates for the position of town manager. The candidates shall be persons of demonstrated ability with administrative experience in public management or business administration and who are qualified by reason of education and experience. The town shall from time to time, by by-law, establish qualifications for the position of town manager. The board of selectmen, by a majority vote of its full membership, shall appoint a person to perform the duties of town manager. The town manager shall be a citizen of the United States.

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

(c) The board of selectmen may enter into a formal contract with the town manager and may set contract terms that shall have precedence over any personnel by-laws.

(d) The town manager may be appointed for successive terms of office, no term of which shall be more than 3 years or until a successor takes office. Before entering upon the duties of the

office, the town manager shall be sworn, in the presence of a majority of the members of the board of selectmen, to the faithful and impartial performance thereof by the town clerk or a notary public.

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

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

SECTION 5. Removal of Town Manager

(a) The board of selectmen, by a majority vote of its full membership, may remove the town manager. At least 30 days before such removal shall be effective, the board of selectmen shall file a preliminary written resolution with the town clerk setting forth reasons, if any, for the proposed removal, a copy of which shall be delivered to the town manager.

(b) The town manager may reply in writing to the resolution and may request, in writing, a public hearing; provided, however, that the request for a hearing shall be received by the town clerk not later than 10 days after the town manager's receipt of the resolution. If the town manager so requests, the board of selectmen shall hold a public hearing not earlier than 10 days nor later than 20 days after the filing of such request.

(c) Following the public hearing or, if none, at the expiration of 30 days following the filing of the preliminary resolution, the board of selectmen may adopt a final resolution of removal.

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

(e) Nothing contained herein shall limit the authority of the board of selectmen to suspend or remove the town manager as provided by the laws of the commonwealth.

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

SECTION 5A. Absence or Vacancy of Town Manager

(a) During a temporary absence, not to exceed 30 days, the town manager shall designate by a letter filed with the chair of the board of selectmen, an administrator to perform the duties of the office. Such delegation shall be limited to those matters not allowing for delay during the town manager's absence.

(b) If, in the sole opinion of the board of selectmen, the town manager's designee is unable to effectively perform the duties of the office during the temporary absence of the town manager, the board of selectmen shall have the absolute right to appoint a person to perform the duties of the office; provided, however, that those duties shall be limited to those matters not allowing for delay during the town manager's absence.

(c) During an absence of the town manager for 30 or more days, due to disability, illness or other circumstance, the board of selectmen shall appoint an acting town manager for the duration of the extended absence. Such designation will cease upon the return of the town manager.

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

(e) No member of the board of selectmen shall serve as acting town manager.

(f) If the board of selectmen determines, by majority vote of the full membership, that the town manager will be unable to resume the duties of the job for any reasons, including, but not limited to, resignation, termination or illness, the office of town manager shall be filled as soon as practicable by the board of selectmen, provided that the board of selectmen may appoint an acting town manager to serve until a town manager is appointed.

(g) Notwithstanding the duration of the absence of the town manager, the board of selectmen shall determine the powers and responsibilities of any acting or temporary town manager.

SECTION 5B. Administrative Responsibilities of the Town Manager

(a) The town manager shall be the chief administrative officer of the town and shall be responsible to the board of selectmen for the effective management of all town affairs placed in the town manager's charge by this act, by the board of selectmen, by by-laws or by vote of the

town meeting, and for the implementation of town policies placed in the town manager's charge by the board of selectmen.

(b) The town manager shall supervise all town departments with the exception of the school district and direct day-to-day affairs of the town.

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

(d) The town manager shall advise the board of selectmen of all matters requiring action by the board of selectmen or by the town.

(e) The town manager shall oversee the town's personnel system and staff in accordance with the town by-laws and shall oversee personnel evaluation policies and practices, enforcement of labor contracts, labor relations, collective bargaining and state and federal equal opportunities law compliance in the town.

(f) The town manager shall attend all meetings of the board of selectmen, except when excused, having the right to speak but not vote; and all annual and special town meetings and shall be permitted to speak when recognized by the moderator.

(g) The town manager shall administer, either directly or through a person appointed by the town manager in accordance with this act, the General Laws and special acts applicable to the town, all town by-laws and all regulations established by the board of selectmen.

(h) The town manager shall have access to all information necessary for the proper performance of the duties of town manager in accordance with the town bylaws, except for attorney-client privileged information that is provided to or by the board of selectmen, unless the board of selectmen specifically authorizes such access. Notwithstanding the preceding sentence, the town manager and any person acting under the town manager's supervision, direction or control shall have no authority to access the electronic communications of any town officer or employee, or information maintained in a personal work area or computer of any such officer or employee, unless such access has been approved in advance by the board of selectmen or by a member designated by the board of selectmen to act on such matters.

(i) The town manager may, without notice, cause the affairs of any division or department, except the school district, or the conduct of any officer or employee thereof to be examined.

(j) The town manager shall keep the board of selectmen fully informed regarding all departmental operations, fiscal affairs, general problems and administrative actions and shall submit periodic reports to the board of selectmen.

(k) The town manager shall coordinate the activities among boards, commissions and committees, concerned with long-range municipal planning, including physical or economic development and environmental or resource protection of the town.

(l) The town manager shall be responsible for the maintenance all town buildings, property and facilities, except those under the jurisdiction of the housing authority, sewer commission and water commission, unless requested by those agencies. The town manager shall develop, keep and annually update a full and complete inventory of all property of the town, both real and personal.

(m) Under subsection (H) of section 3, the town manager shall be responsible for the preparation of all town meeting warrants in accordance with the town by-laws and distribute, or cause to be distributed, copies of town meeting warrants to the residences of all registered voters of the town.

(n) Upon request, and with the approval of the board of selectmen, the town manager shall prosecute, defend or compromise all litigation to which the town is party.

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

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

SECTION 5C. Financial Responsibilities of the Town Manager

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

(b) The town manager shall be responsible for controlling all appropriated budget expenditures, which includes the power to approve or reject all warrants including payroll for the payment of town funds prepared by the town accountant in accordance with section 56 of chapter 41 of the General Laws.

(c) Annually, the town manager shall be responsible for the preparation of the proposed budget to be included in the annual town meeting warrant. The proposed budget shall be prepared in accordance with the most current budget process by the date set pursuant to subsection (i) of section 3 as approved by the board of selectmen.

(d) The town manager shall submit to the board of selectmen, by the date established pursuant to subsection (i) of section 3, a written proposed budget for the ensuing fiscal year.

(1) The proposed budget shall detail all estimated revenue from all sources, and all proposed expenditures, including debt service, for the previous, current and ensuing 5 fiscal years.

(2) The proposed budget shall detail all estimated expenditures for current operations during the ensuing fiscal year, detailed by agency, department, committee, purpose and position.

(3) In addition, the town manager shall prepare a written proposed capital improvements budget for the ensuing fiscal year and a 5 year forecast, and include both as part of the proposed annual budget.

(4) For the purpose of preparing the budget for the ensuing fiscal year, the town manager shall include an estimate of revenues to be collected and free cash available at the close of the current fiscal year, including estimated balances in special accounts.

(5) The town manager shall report on the estimated funds required to be levied and raised by taxation to defray all expenses and liabilities of the proposed budget together with an estimate of the tax rate necessary to raise such amount and include the information in the proposed budget.

(6) The town manager shall annually submit a town departmental and organizational structure.

(e) The town manager shall submit a preliminary budget and capital plan to the board of selectmen, the advisory committee and the capital budget committee pursuant to the budget process set forth in subsection (i) of section 3. The preliminary budget and capital plan shall be submitted not later than 70 days prior to the date of the annual town meeting.

(f) To assist the town manager in preparing the proposed annual budget of revenue and expenditures, all boards, officers and committees of the town, including the school committee, shall furnish all relevant information in their possession and submit to the town manager, in

writing, in such form as the town manager shall establish, a detailed estimate of the appropriations required and available funds.

(g) The town manager shall keep the board of selectmen informed regarding the availability of federal and state funds and how such funds might relate to unmet long-range needs.

(h) The town manager shall be responsible for filing all grant applications.

(i) After the close of each fiscal year and after the certification of free cash by the department of revenue, the town manager, as soon as practicable, shall cause to have prepared audited financial statements. Upon completion of the audit, the town manager shall promptly distribute the statements to the board of selectmen, chairman of the advisory committee and chairman of the capital budget committee.

SECTION 5D. Appointment Powers of the Town Manager

(a) The town manager shall appoint upon merit and fitness alone, and may remove, the police chief, fire chief and director of finance subject to the selectmen's approval by a majority vote of its full membership whose contracts and any changes thereto shall be approved by the board of selectmen.

(b) The board of selectmen shall appoint members of the conservation commission pursuant to section 8C of chapter 40 of the General Laws.

(c) The town manager shall appoint and may remove all department heads not included in subsection (a), as that term may be defined in the town organization chart established from time to time by the town meeting, and all employees under the direct supervision of the town manager. In addition, the town manager shall appoint and may remove all officers, subordinates and employees for whom no other method of selection is provided in this act, except employees of the school department.

(d) Appointments made by the town manager pursuant to subsection (a) shall become effective 15 days following the date of written notice of the appointment is filed with the board of selectmen, unless the board of selectmen shall, within that period, by a majority of its members present and voting, vote to reject the appointment or removal.

(e) Within the 15 day period, the board of selectmen may, by a majority of its members present and voting, vote to waive its power to reject an appointment pursuant to subsection (d), whereupon the appointment shall become effective immediately.

(f) All appointments by the town manager not included in subsection (a) shall become effective immediately.

(g) Any employee not protected by civil service law or union contract shall have the right to appeal the town manager's decision to discharge that employee to the board of selectmen. The appeal shall be initiated by filing a written notice of appeal with the town manager within 10 calendar days after receiving a written notice of discharge. The appeal shall be conducted pursuant to processes and procedures as may be established from time to time by the town by-laws.

(h) The town manager, subject to any applicable General Laws relating thereto, may temporarily assume the duties of any office which the town manager is authorized to fill by appointment, subject to approval by the board of selectmen.

(i) The town manager may appoint such ad hoc committees as the town manager deems necessary.

SECTION 5E. Collective Bargaining

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

(b) The board of selectmen may authorize use of additional counsel or persons to assist the town manager or negotiating committee in the negotiations at their request.

SECTION 5F. Procurement

(a) The town manager shall be the chief procurement officer and shall be responsible for purchasing for all town functions and departments, pursuant to chapter 30B of the General Laws and all other applicable statutes, procedures and by-laws.

(b) The town manager may, at the request of the school committee, delegate such duties for school department purchasing. (Sections 1 thru 5 revised 1/16/2014)

SECTION 6. The organization of the town into operating agencies may be accomplished through either of the methods provided in this section.

i. Subject only to express prohibitions in the Constitution of the Commonwealth and general and special laws and provisions of this act, the Board of Selectmen or the Town Manager may petition the Town Meeting, and, the Town Meeting may, by bylaw, reorganize, consolidate, or abolish any town agency, in whole or in part; establish such new town agencies as it deems necessary or advisable and may prescribe the functions of any such town agency; provided, however, that no function assigned by this act to a particular town agency may be discontinued or, unless the act specifically so provides, assigned to any other

ii. Nothing contained herein shall limit the authority of the Town to petition the general court for special legislation to organize operating agencies within the Town.

SECTION 7. All laws, bylaws, votes, rules and regulations whether enacted by authority of the Town or any other authority, which are in force in the Town of Cohasset on the effective date of this act, or any portion or portions thereof, not inconsistent with the provisions of this act, shall continue in full force and effect until otherwise provided by other law, bylaws, votes, rules and regulations, respectively.

SECTION 8. No contract existing and no action at law or suit in equity, or other proceeding pending on the effective date of this act, or the time of revocation of such acceptance, shall be affected by such acceptance or revocation of this act.

SECTION 9. Any person holding a town office or employment under the Town shall retain such office or employment and shall continue to perform his duties until provisions shall have been made in accordance with this act for the performance of said duties by another person or agency. No person who continues in the permanent full-time service or employment of the Town shall forfeit his pay grade or time in service. The position of town administrator to the Board of Selectmen shall be terminated upon approval of Town Meeting proposal by the Town Manager and subsequent approval by the general court.

SECTION 10. This act shall take effect on July 1, 1997

Approved June 30, 1997

Revisions to Act:

- Section 4 (C) (iii) and Section 4 (C) (v)(k) per Annual Town Meeting March 28, 1998, Article 30, Chapter 421 of the Acts of 1998
- Section 4 (c) iii per Annual Town Meeting March 25, 2000 Article 22, Chapter 330 of the Acts of 2000
- Sections 1 thru 6 revised per Annual Town Meeting April 22, 2013, Article 8, Chapter 3 of the Acts of 2014.