

Chapter 391 of the Acts of 2008

AN ACT ESTABLISHING THE OFFICE OF TOWN MANAGER IN THE TOWN OF UPTON.

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. As used in this act, the following words shall have the following meanings:

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“Board”, the board of selectmen.

“Employee s”, persons who act on behalf of the town, whether appointed or hired, who receive compensation from the town and are under the jurisdiction of the board. For specific positions refer to the personnel b y-laws of the town.

“Hiring authority”, persons, boards and committees specifically empowered to employ individuals on behalf of the town.

“Manager”, the town manager.

“Town”, the town of Upton.

SECTION 2. There shall be an administrative officer in the town of Upton known as the manager. The manager, reporting directly to and supervised by the board, shall be the chief administrative officer of the town. The manager shall not set town policy but shall ensure that there is appropriate coordination in the implementation of town policy, working with the board and all elected and appointed boards and commissions.

The following responsibilities and authority shall devolve from the board to the manager:

(a) hiring, firing and disciplining employees under the jurisdiction of the board, pursuant to subsection (a) of section 4;

(b) compiling and recommending to the board a balanced budget, for approval in its entirety, for the departments under the jurisdiction of the board;

(c) fixing the compensation, within the appropriated amounts, of all town officers and employees under the jurisdiction of the board;

(d) reorganizing town departments under the jurisdiction of the board for more efficient operation;

(e) acting as the town's chief procurement officer; and

(f) signing the warrants for payment of town obligations.

The manager shall supervise, manage and coordinate the day-to-day activities of all town departments and employees under the jurisdiction of the board and coordinate all activities of said departments with the activities of other departments under the jurisdiction of other elected officials, boards and commissions.

With the exception of the board, all other elected boards, officials, commissions, trustees and committees are exempt from the provisions of this act. This exemption includes the departments, employees and appointments of other elected boards, commissions and committees of the town.

SECTION 3. The manager shall be appointed by the board on the basis of executive and

administrative qualifications and other hiring requirements set forth by the board. The manager shall be a person especially suited by a combination of education, training and professional experience to perform the duties of the office. The manager shall not serve Board of Selectmen for at least 12 months before his appointment. The manager shall devote his full-time to the office and shall not hold any other public office, elected or appointed, nor engage in any other business or occupation during the term unless that service is approved in advance by the vote of the board. The manager shall be subject to the personnel by-laws of the town unless the board exempts specific provisions of those by-laws as defined in a signed contract between the town and the applicant. The board may enter into a contract with the manager, not to exceed 5 years in length, setting forth the terms and conditions of the manager's employment.

A vacancy in the position of town manager shall be filled as follows. The board of selectmen shall appoint a screening committee of five (5) Upton residents for the purpose of identifying candidates for appointment to the position of town manager. The screening committee shall recommend to the Board of Selectmen a minimum of three (3) qualified candidates. After receiving the recommendations of the screening committee, the Board shall appoint a town manager from the recommended candidates; provided, however that the Board may, at its discretion, instead request the screening committee to submit additional candidates, or appoint a new screening committee for such purposes.

SECTION 4. The manager shall be responsible and accountable to the board for the efficient and orderly conduct of the departments and functions placed in his charge as manager and for the proper execution of the following powers and duties. The manager shall:

(a) be the hiring authority for all employees under the jurisdiction of the board, and may discipline or remove such employees in accordance with this section. The manager shall act in conformance with the personnel by-laws of the town. The manager shall oversee the efficient operation and administration of all officers, divisions and departments appointed by him.

(i) No appointment by the manager of a town officer or employee shall take effect within 15 days of notice being provided to the board. The board may approve or disapprove the manager's proposed appointment within said 15 days or the board may waive the 15 day right of refusal by a vote at an open meeting. The board may vote, in open session, to disapprove an appointment and shall state the reason or reasons, which shall be provided in the meeting minutes.

(ii) Upon appeal by a town officer or employee not subject to a collective bargaining agreement or other contract, brought within two business days of action taken by the Town Manager to discipline or remove such officer or employee, the board may, but need not, meet within 15 days to consider such appeal. The board may approve or disapprove the town manager's action within said 15 days and shall state the reason or reasons for its action, which reasons shall be set forth in summary form in the meeting minutes.

Notwithstanding any other provision of this section, however, failure of the board to act

within 15 days after the filing of the appeal shall constitute approval by the board of the town manager's action;

(b) in conjunction with the chair of the board, prepare and distribute agendas for the board's meetings. The manager or his designee shall be the recording and corresponding secretary for the board;

(c) ensure that all of the meetings of the board are properly posted and are in accordance with local, state and federal laws. The manager shall attend aforesaid meetings unless requested by the board not to be in attendance or upon approval by the chairman of the board of a request by the manager to be excused from attendance. The manager shall have the right to speak at the aforesaid meetings but shall not have a vote;

(d) prepare warrants for special and annual town meetings for consideration and signature by the board in compliance with town by-laws. Attend all sessions of annual and special town meetings, unless excused by the board, and be prepared to answer all questions concerning warrant articles;

(e) work in conjunction with the chair of the board and town counsel regarding any litigation or other legal matters in which the town has an interest, act as liaison between the town counsel and the board and affected town departments and officials, review and approve new requests, other than those of the chairman of the board, for use of town counsel on new matters and provide the board with monthly status reports on legal issues and concerns ;

(f) have the authority to execute contracts on behalf of the town up to \$25,000.00;

(g) serve as chief procurement officer of the town responsible for purchasing all supplies, materials and equipment for the departments under the jurisdiction of the board. Purchases by other boards shall be reviewed by the manager to ensure that they conform to all state and local laws and regulations. The manager shall keep a full and complete inventory of all town property, both real and personal;

(h) manage the town's insurance programs and serve as the contact with the insurance providers ;

(i) be responsible for the administration of personnel and personnel matters , including the personnel by-laws, files and all personnel policies that the board and the town may adopt. Such responsibilities shall include the enforcement of personnel policies, rules and regulations and managing personnel costs such as salaries, benefits, overtime and use of town-owned vehicles for employees under the jurisdiction of the board;

(j) evaluate all of the town officers and employees under the board in accordance with the personnel by-laws;

- (k) serve as the town's Americans With Disabilities Act director and affirmative action officer and administer the town's affirmative action program;
- (l) fix the compensation of all town officers and employees within the limits established by the personnel board, the relevant body and the appropriation;
- (m) to see that all laws, bylaws, other town meeting votes, and directives of the board of selectmen, that require enforcement by him or officers or employees subject to his direction and supervision, are faithfully carried out.
- (n) be responsible for keeping full and complete records of the administrative activities of the town and render a full report of the prior fiscal year to the board within 3 months of the end of that year. The manager shall have access to all town books and records for the performance of his duties;
- (o) keep the board informed as to the financial condition and needs of the town and recommend to the board any actions that should be taken;
- (p) serve as arbitrator of grievances and chief union negotiator for all collective bargaining agreements under the jurisdiction of the board. The board, from time to time, may provide advice and guidelines to the manager. The board shall retain the authority to execute the union contract agreements;
- (q) respond to and coordinate local response to emergency situations;
- (r) establish and maintain positive community relations with local organizations, groups and residents;
- (s) receive and act on questions and complaints filed with the board or the manager and inform the board of the status of the resolution;
- (t) serve as the board's liaison to news outlets, including the preparation of news releases and acting as spokesperson to the press when authorized by the board;
- (u) prepare written reports as directed by the board; and
- (v) perform other duties required by the by-laws or votes of the town meeting or by the board.

SECTION 5. The manager shall have budgetary powers and responsibilities, the manager shall:

- (a) prepare and present annually to the board for its review, approval and recommendations to the finance committee detailed budgetary estimates of amounts necessary for the administration of all town boards, officers, committees, divisions and departments under the jurisdiction of the board or the manager for the ensuing fiscal year,

including both capital and operating items. The manager shall present a requested balanced budget to the finance committee.

(b) review the warrants for all town meetings and ballot questions to ensure that they are proper and legal and that there are sufficient funds available for implementation.

(c) approve the warrants for the payment of town obligations after reviewing the expenditures and ensuring that they are proper and within the appropriation. The signature of the manager is sufficient for payment by the treasurer.

(d) have the authority to reorganize departments under the jurisdiction of the board for more efficient use of town resources in order to ensure that departmental activities are conducted within the budget as authorized by town meeting.

(e) ensure that the complete and full records of the financial activity of the town are maintained in accordance with state, federal laws and the town by-laws and render quarterly reports to the board. The board may require interim or condensed reports from time to time.

(f) seek out, prepare, coordinate and file applications for state, federal and private grants.

SECTION 6. During a temporary absence of 30 days or less, the manager shall designate by a letter filed with the board, a qualified administrative employee to exercise the powers and perform the duties of the manager not admitting to delay. If the manager fails to do so, or the designated person fails to serve to the satisfaction of the board, the board may appoint a qualified administrative employee or officer to serve. During an absence of greater than 30 days or a vacancy in the office, the board shall designate an interim manager with the full powers and authority of the manager.

SECTION 7. Every five years, the board of selectmen shall appoint from among the residents of the town a committee to review this act, as it may be amended from time to time. Such committee shall make such recommendations to the board of selectmen as it deems appropriate concerning proposed revisions. The committee shall be comprised of an odd number of members to a maximum of 7.

SECTION 8. The board, by an affirmative vote of its members, may initiate the removal or suspension of the manager by adopting a resolution to that effect. The resolution shall state the reason thereof; provided, however that no such resolution shall be adopted within 90 days of the annual town election. Any such resolution shall be adopted by action of the board only at a regularly scheduled meeting of the board and in open session. The board may suspend the manager for not more than 45 days. A copy of the resolution of suspension and removal shall be delivered in hand to the manager. The manager may request a public hearing within 7 business days after the copy of the resolution has been received by filing a written request with the board. If a request for a public hearing is properly filed, the board shall conduct a public hearing within 14 days from the receipt of the written request and, within 7 days after the hearing, may discharge the manager by a majority vote of the board. If the manager does not request a public hearing in writing within 7 business days of the receipt of the resolution, the board, by affirmative vote, may vote to remove or take any other action relative thereto.

SECTION 9. This act shall take effect upon its passage.

Approved December 17, 2008