

# SENATE . . . . . No. 1965

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## The Commonwealth of Massachusetts

PRESENTED BY:

***Robert L. Hedlund***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act revising the charter of the town of Norwell.

PETITION OF:

| NAME:                    | DISTRICT/ADDRESS:   |
|--------------------------|---------------------|
| <i>Robert L. Hedlund</i> |                     |
| <i>Rhonda Nyman</i>      | <i>5th Plymouth</i> |

# SENATE . . . . . No. 1965

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By Mr. Hedlund, a petition (accompanied by bill, Senate, No. 1965) of Robert L. Hedlund and Rhonda Nyman (by vote of the town) for legislation to revise the charter of the town of Norwell. [Local Approval Received.] Municipalities and Regional Government.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
\_\_\_\_\_

An Act revising the charter of the town of Norwell.

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

1                   SECTION 1: The charter of the town of Norwell, which is on file in the office  
2 of the archivist of the commonwealth, as provided in section 12 of chapter 43B of the General  
3 Laws is hereby revised as follows:

4                   ARTICLE 3: Article 3 is hereby revised by striking out Section 3-1 in its entirety, and  
5 inserting in place Sections 3 -1 and 3- 2 as provided herein:

6                   Section 3 -1 Composition: There shall be a board of selectmen consisting of five (5)  
7 members elected for terms of three (3) years each, so arranged that the term of office of as nearly  
8 an equal number of members as is possible shall expire each year.

9                   Section 3 -2 Powers and Duties:

10                  (a) The executive powers of the town shall be vested in the board of selectmen, which  
11 shall serve as the chief policy-making board of the town.

12 (b) The board of selectmen shall have the powers and duties given to boards of selectmen  
13 under the Massachusetts Constitution and Massachusetts General Laws, except those powers and  
14 duties assigned by this Act to the town administrator, and shall have such additional powers and  
15 duties as may be authorized by this charter, by town by-laws, or by vote of town meeting. The  
16 board of selectmen shall be authorized to enter into intergovernmental and other agreements on  
17 such terms it deems beneficial to the citizens of Norwell, subject to the Massachusetts General  
18 Laws, this Act, town charter and by-laws or by vote of town meeting.

19 (c) The board of selectmen shall be responsible for the formulation and promulgation of  
20 policy directives and guidelines to be followed by all town departments serving under it, and in  
21 conjunction, with other elected town officials and multiple member bodies, to develop and  
22 promulgate policy guidelines designed to bring the operation of all town agencies into harmony,  
23 provided however, nothing in this section shall be construed to authorize any member of the  
24 board of selectmen, nor a majority of such members, to become involved in the day-to-day  
25 administration of any town agency. It is the intention of this provision that the board of  
26 selectmen shall act only through the adoption of broad policy guidelines and long-term plans or  
27 programs, which are to be implemented by officials and employees serving under it.

28 (d) The board of selectmen shall communicate periodically with all town agencies,  
29 departments, committees, and boards, including meeting with representatives of volunteer  
30 committees and boards, and shall consider the concerns and plans of all such agencies,  
31 departments, committees, and boards when formulating policy and long-term plans or programs.

(e) The board of selectmen shall cause the by-laws and rules and regulations for the government of the town to be enforced and shall cause an up-to-date record of all its official acts to be kept.

(f) The board of selectmen shall appoint the town administrator, a town counsel, and a town auditor by a majority vote of the board.

(g) The board of selectmen shall appoint such other offices, boards, committees, and commissions, by a majority vote of the board, as may be provided by the Massachusetts General Laws or by vote of the town. In the event of a vacancy in any of said offices, boards, committees, and commissions, the board of selectmen shall act to fill said vacancy within ninety (90) days from notice by the affected board to the board of selectmen of any vacancy.

This subsection shall not apply to the appointment or approval of any paid full or part-time employees, said appointments or approvals already provided for under Section 5-2(b)(2) of this charter.

(h) The board of selectmen shall be the licensing board of the town and shall have the power to issue licenses, in accordance with Massachusetts General Laws, to make all necessary rules and regulations regarding the issuance of such licenses and to attach such conditions and restrictions thereto as it deems to be in the public interest, and to enforce the laws relating to all businesses for which it issues licenses.

(i) The board of selectmen shall be responsible for ensuring that timely audits are conducted as required by law. The audits shall be performed by a certified public accountant, or firm of such accountants, who have no personal interests, direct or indirect, in the fiscal affairs of the town government or any of its officials.

Article 3, Section 3-4 is hereby repealed by striking out present text.

The remaining provisions of Article 3 shall be renumbered sequentially.

ARTICLE 4: Article 4 is hereby revised as follows:

Sections 4-1 (a), 4-1 (g), and 4-1 (h) are hereby repealed by striking out the text appearing in each clause therein in its entirety. The remaining provisions of Section 4-1 shall be reordered sequentially.

Section 4-3 is revised as follows:

Section 4 -3 Advisory Board

(a) Composition: There shall be an advisory board consisting of nine (9) members with three (3) members appointed each year for a term of three (3) years each. Members shall hold no other elective or appointed office in town government while on the advisory board, unless otherwise provided by this charter, town by-laws, or by vote of town meeting, and shall serve without pay. Members of the board shall choose from among its membership a chair, a vice-chair, and a clerk.

(b) Nomination Process for Advisory Board: Members of the advisory board shall be appointed by a majority vote of a nominating committee consisting of three (3) members, each duly authorized to represent their respective board or office: the town moderator, who shall serve as chair; one (1) member of the board of selectmen; and one (1) member of the advisory board, except that no member of the advisory board shall serve on a nominating committee if said member seeks re-appointment to the advisory board and said re-appointment would be the subject of that nominating committee. The nominating committee shall consider only the

education, skills and experience of individual candidates as they relate to the function of the advisory board.

(c) Responsibilities of the Advisory Board: The Advisory Board shall investigate and consider all articles in the warrant to be brought before the town and shall report and advise on such articles at town meeting. The Advisory Board shall consider short and long-range financial impacts including both revenue and expenses to ensure financial stability.

Section 4-4 is added to Article 4 of the charter to address Term of Office of Appointed Officials

ARTICLE 5: Article 5 is hereby revised as follows:

ARTICLE 5 shall be replaced in its entirety by striking the present Article 5 and inserting in place thereof Article 5 as provided herein:

ARTICLE 5: Town Administrator

Section 5 – 1: Appointment, Qualifications, and Term of Service

(a) Appointment: The board of selectmen shall appoint a town administrator for a term not to exceed three (3) years, as the board may determine, and said town administrator may be appointed for successive terms of office.

(b) Qualifications: The town administrator shall be a person of demonstrated ability with administrative experience in public management or business administration and who is qualified by reason of education, skills and experience. The board of selectmen may from time to time establish additional qualifications for the office of town administrator. To the extent permitted by law, the terms of the town administrator's employment may be the subject of a written

agreement between the parties setting forth the length of service, compensation and other terms that are customarily included in an employment contract.

(c) General Terms: The town administrator shall devote full time to the duties of said office and shall not engage in any other business or occupation during the term of his or her employment by the town without the written approval of the board of selectmen. The town administrator shall hold no elective office in the town during his or her tenure as town administrator, but the board of selectmen may appoint the town administrator to any appointed office or position consistent with the responsibilities of the town administrator. Before entering upon his or her duties, the town administrator shall be sworn to the faithful and impartial performance thereof by the town clerk. The town administrator shall not have served in an elected office for the town of Norwell for at least twenty-four (24) months prior to his or her appointment.

(d) Compensation: The board of selectmen shall set the compensation of the town administrator, not to exceed the amount appropriated by the town meeting.

(e) Performance Evaluation: The board of selectmen shall conduct an annual performance review of the town administrator. Annual performance reviews shall be based on the town administrator's accomplishments pursuant to the powers and duties specified under Section 5 -2 and of this charter, and the successful completion of any additional goals set by the board of selectmen the preceding year.

#### Section 5 -2 Powers and Duties of the Town Administrator

(a) In General: The town administrator shall be the chief administrative officer of the town. The town administrator shall be responsible to the board of selectmen for the effective

management of all town affairs placed in the town administrator's charge by this charter, the board of selectmen, or vote of the town meeting. The town administrator shall be responsible for the implementation of town policies and the coordination of operational and strategic planning for the town. The town administrator shall facilitate communication between all town departments and officials and communication between all town departments and officials and the public. The functions and duties of the town administrator shall include, but not be limited to, the following:

(b) Appointment Authority:

(1) The town administrator shall appoint and may remove a treasurer, and accountant.

The town administrator shall consult with the board of selectmen prior to making any appointment or removal under this subsection. Unless otherwise provided under law, said appointments or removals shall become effective on the twentieth day following the day notice of said appointments or removals is filed with the board of selectmen, unless the board of selectmen shall within said twenty (20) days reject, or sooner approve, said appointments or removals by a majority vote of the board.

(2) The town administrator shall appoint and may remove all other department heads that serve with any appointed board, commission or committee, other employees for whom no other method is provided under this charter, and shall approve the appointment and removal of all other employees, except employees of the school department, fire department and officers of the police department, pursuant to the Massachusetts General Laws or this charter. The town administrator shall consult with, and obtain the approval of, the appropriate appointed board, commission, or committee prior to making any appointment or removal under this subsection.



140 Unless otherwise provided under law, said appointments or removals shall become effective on  
141 the twentieth day following the day notice of said appointments or removals is filed with the  
142 board of selectmen, unless the board of selectmen shall within said twenty (20) days reject, or  
143 sooner approve, said appointments or removals by a majority vote of board members present and  
144 voting.

145 This subsection shall not apply to any department heads that serve with  
146 elected boards, commissions, or committees.

147 (3) The town administrator shall appoint and may remove all other department heads that  
148 serve with any elected board, commission, or committee, except employees of the school  
149 department, provided that the town administrator shall consult with, and obtain the approval of,  
150 said elected bodies prior to making any appointment or removal under this subsection, unless  
151 otherwise provided under the Massachusetts General Laws or this charter.

152 (4) Department heads shall, subject to the approval of the town administrator under  
153 Article 5, section 5-2 (b) appoint and may remove assistant department heads, subordinates, and  
154 employees, except employees of the school department, the fire department, and officers of the  
155 police department; the department head seeking to make said appointments shall consult with the  
156 appropriate elected or appointed board, commission, committee or official prior to making said  
157 appointments or removals, unless otherwise provided under the Massachusetts General Laws or  
158 this charter.

159 (5) The town administrator, in consultation with department heads and the affected board,  
160 as applicable, may transfer personnel between departments as needed. Such transfer is presumed

161 to be temporary, and requires the approval of the affected board. This subsection shall not apply  
162 to personnel of the school department.

163 (6) All appointments shall be based on education, skills and experience alone.

164 (7) Copies of notices of board and commission vacancies, job vacancies, and  
165 opportunities and requests for volunteers shall be conspicuously posted in town hall and on the  
166 town's official website. The town administrator may also advertise such vacancies and  
167 opportunities in local newspapers or other media at a cost not to exceed the amount appropriated  
168 by the town meeting.

169 (c) Administrative Responsibilities:

170 (1) Supervise the general activities and direct the operations of all town departments,  
171 unless otherwise provided under the Massachusetts General Laws, this charter, or town by-laws.  
172 This section shall not apply to the activities and operations of the school department and to the  
173 statutory responsibilities and functions of the school committee.

174 (2) Supervise and be responsible for all town employees unless otherwise provided under  
175 the Massachusetts General Laws, this charter, or town by-laws. This section shall not apply to  
176 employees of the school department and to the statutory responsibilities and functions of the  
177 school committee.

178 (3) Reorganize, consolidate, and establish departments under the town administrator's  
179 supervision and the jurisdiction of the board of selectmen, subject to the Massachusetts General  
180 Laws, this charter, town by-laws, or by vote of town meeting. Prior to taking any action under  
181 this subsection, the town administrator shall notify and obtain the approval of the board of

selectmen. The board of selectmen shall hold a public hearing and shall have thirty (30) days following said public hearing to approve any proposal under this subsection. With the approval of both the board of selectmen and advisory board, the town administrator may transfer all or part of any unexpended appropriation of a reorganized or consolidated department, board, or office to any other town department, board or office.

(4) Administer, either directly or through a person appointed by him, all provisions of general and special laws applicable to the town, and by-laws and votes of the town within the scope of his or her duty, and all policy rules and regulations made by the board of selectmen, provided, however, that any delegation shall be considered an act of the town administrator.

(5) Establish control and data systems appropriate for monitoring expenditures by town boards and departments to enable the town administrator to make periodic reports to the board of selectmen and the advisory board on the status of the town's finances.

(6) Develop and administer a personnel management system, including but not limited to, the creation of job descriptions, a reporting structure, determination of rates of pay, the development and implementation of an ongoing training program, evaluation process, personnel management and hiring policies, practices, and regulations relating to town employment.

(7) Manage and maintain all town buildings, properties and facilities, excluding those of the school department, pursuant to the town administrator's authority under this charter, town by-laws, or by vote of town meeting. The town administrator may maintain and repair other buildings, properties and facilities if and to the extent departments, agencies, boards, committees and commissions request and authorize such maintenance and repair activities, unless otherwise prohibited by the Massachusetts General Laws, this charter, town by-laws, or by vote of town

204 meeting. The town administrator shall keep and annually update a full and complete inventory  
205 of all town property, both real and personal.

206 (8) Attend and participate in all regular and special meetings of the board of selectmen  
207 and town meetings, unless excused therefrom by the board of selectmen.

208 (9) Cause full and complete records of meetings from the board of selectmen to be taken  
209 and maintained, and compile reports of the meetings as requested by the board of selectmen.

210 (10) Act as the liaison to, and represent the board of selectmen before, state, federal and  
211 regional authorities.

212 (11) Subject to policy established by the board of selectmen, approve all warrants and  
213 vouchers, including payroll warrants, for payment of town funds submitted by the town  
214 accountant. Any warrants generated by the town administrator shall be signed by the board of  
215 selectmen.

216 (12) In consultation with the board of selectmen, identify and submit applications for  
217 state and federal grants for which the town is eligible. Approve all grant applications submitted  
218 by other boards, commissions, and departments of the town on behalf of the town, or as a  
219 member of a proposed or active regional agreement, consortium, or similar partnership.

220 (13) Perform any other duties consistent with his or her office as may be required by by-  
221 law or vote of the town or by vote of the board of selectmen.

222 (d) Financial Management and Reporting: Budget Preparation

223           (1) Prepare and submit at a public meeting to the board of selectmen and the advisory  
224 board not less than ninety (90) days prior to the annual town meeting a proposed written budget  
225 for town government, excluding the school committee, for the ensuing fiscal year.

226           (2) Detail in said proposed budget all estimated revenues from all sources and all  
227 expenditures, including debt service, in each case for the previous, current, and ensuing years.

228           (3) Include in said proposed budget free cash, stabilization funds, and other funds  
229 available for appropriation for the ensuing fiscal year, including estimated balances in special  
230 accounts.

231           (4) Provide additional financial reports as established by town by-law and vote of town  
232 meeting.

233           (5) All departments, boards, officials, and committees of the town, including the school  
234 committee, shall, within the timeframe reasonably requested by the town administrator, furnish  
235 all relevant information in their possession and submit to the town administrator, the board of  
236 selectmen, and the advisory board, in writing, a reasonable estimate of the appropriations  
237 required and any other funds expected to be available. The town administrator shall cooperate  
238 and share information with all departments, boards, officials, and committees of the town,  
239 including the school committee, in preparation of said budget.

240           (6) Assist the board of selectmen to develop a long-range financial plan for the town,  
241 including preparation of a multi-year forecast of expected revenues and expenditures.

242           (e) Labor Relations

(1) Negotiate collective bargaining contracts on behalf of the board of selectmen, which contracts shall be subject to approval, ratification and execution by the board of selectmen. The board of selectmen may authorize use of special counsel to assist the town administrator in the negotiations at its discretion.

(2) Administer and ensure adherence to collective bargaining agreements.

(f) Procurement: Act as the chief procurement officer under the provisions of Chapter 30B of the Massachusetts General Laws, responsible for the purchasing of all supplies, materials, and equipment for the town, including the bidding and awarding of all contracts, except for the school department.

#### Section 5 - 3 Vacancy in the Position of Town Administrator

(a) Permanent Vacancy: The board of selectmen shall fill any permanent vacancy in the office of the town administrator as soon as feasible in accordance with Article 5, Section 5-1 of this charter. Pending the appointment of a town administrator, the board of selectmen shall, within a reasonable period of time appoint some other capable person to temporarily perform the duties of the town administrator until a permanent replacement is appointed.

(b) Temporary Absence or Disability:

(1) The board of selectmen shall designate a capable officer of the town to perform the duties of town administrator during a temporary absence or disability. If the person so designated is unable to serve, the board of selectmen may designate some other capable person to perform the duties of town administrator.

(2) Powers and Duties of Acting Administrator – The powers and duties of the acting town administrator under section 5.B.1 shall be limited to matters not permitting 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 unless authorized by the board of selectmen.

#### Section 5 – 4: Removal and Suspension Proceedings

The board of selectmen may remove or suspend the town administrator from office after first applying the following procedures, unless otherwise provided under an employment contract or Massachusetts General Laws:

(a) Notice: By the affirmative vote of at least 3 of its members, the board of selectmen may adopt a preliminary resolution of removal setting forth in reasonable detail the reason or reasons for the proposed removal. The preliminary resolution may suspend the town administrator for a period not to exceed 45 days. A copy of the resolution shall be delivered to the town administrator immediately following adoption and a copy shall be filed with the town clerk.

(b) Public Hearing: Within 5 days after the delivery of the preliminary resolution of removal, the town administrator may request a public hearing on the reasons cited for removal by filing a written request with the board of selectmen. The board shall convene said hearing not less than 20 but not more than 30 days after a request is filed. The board of selectmen shall give the town administrator not less than 5 days written notice of the date, time, and location of said hearing. The town administrator may waive, in writing, such time limits. The town administrator may file a written statement with the board of selectmen responding to the reasons

cited for the proposed removal. The board of selectmen shall receive said statement not less than 48 hours prior to the time set for said hearing. The town administrator may be represented at the hearing by his or her own counsel. The town administrator shall be entitled to present evidence, call witnesses, and, personally or through counsel, question any witness appearing at the hearing.

(c) Removal: The board of selectmen may, by the affirmative vote of at least 3 of its members, adopt a final resolution of removal that shall be effective upon adoption, as follows:

(1) If the town administrator does not request a public hearing, then upon the expiration of 10 days from the date of delivery to him or her of the preliminary resolution of removal, the selectmen may act as stated above.

(2) If the town administrator does request a public hearing, then 5 days from the completion of the public hearing, or 45 days from the date of the adoption of the preliminary resolution, whichever occurs later, the board of selectmen may act as stated above.

Failure to adopt a final resolution of removal within the time limitations provided in this section shall nullify the preliminary resolution of removal. This section vests all authority and fixes all responsibility for such suspension or removal in the board of selectmen. The action of the board of selectmen in removing the town administrator shall be final. The town administrator shall continue to receive his or her salary until a final resolution of removal has become effective.

Article 6 of the charter is hereby added as provided herein:

## ARTICLE 6 GENERAL PROVISIONS

### Section 6 -1: Severability



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

## Section 6 -2: Continuation of Existing Government

(a) Continuation of existing laws, bylaws: The town's charter, all special acts, by-laws, rules and regulations which are in force on the effective date of this Act that are not inconsistent with the provisions of this Act shall continue in full force until amended or repealed and elected and appointed officials, boards, commissions, and committees shall have all of the powers, duties and responsibilities, which are in force on the effective date of this Act that are not inconsistent with this Act, which are given to the respective boards, officials and agencies by law, this Act, town by-law or by vote of town meeting.

(b) Continuation of personnel: Any office or position in the administrative service of the town or incumbents in such offices, shall continue to function as they did previously until a change in those offices, positions or incumbents is effected in accordance with the provisions of this charter.

Article 7 of the charter is hereby added as provided herein:

## ARTICLE 7: Transitional Provisions

### Section 7-1: Increasing the Membership of the Board of Selectmen

At the annual election following the acceptance of this charter revision by the voters of the town of Norwell, two (2) additional selectmen shall be elected one (1) to a term expiring at

the town election in the third year following the election of said selectman and one (1) to a term expiring at the town election in the second year following the election of said selectman. The candidate receiving the highest number of votes shall be elected to the three-year term, and the candidate receiving the next highest number of votes shall be elected to the two-year term. Thereafter, as the terms of selectmen expire, successors shall be elected for terms of three (3) years.

## SECTION 2: Effective Date

This Act shall take effect upon its passage by the general court and, if approved by the voters of Norwell, shall take effect as this act so provides, but not otherwise.

## SECTION 3: Acceptance at Town Election

This charter revision shall be submitted for acceptance to the voters of the town of Norwell at an annual town election held following its approval in the form of the following question which shall be placed on the official ballot to be used at said election: Shall an act entitled "AN ACT REVISING THE CHARTER OF THE TOWN OF NORWELL" be accepted? A summary prepared by the town counsel noting in summary form the major changes proposed in the charter by this act shall appear on the ballot. - - - -

and to authorize the board of selectmen to act on behalf of the town relative to any inquiries and minor changes made by the general court concerning the proposed Act or take any other action relative thereto."