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HOUSE . . . . . No. 4478

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

AN ACT ESTABLISHING THE POSITION OF TOWN ADMINISTRATOR IN THE TOWN OF FAIRHAVEN.

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. The executive powers of the town of Fairhaven shall be vested in the board of selectmen, who shall have all the powers given to boards of selectmen by the General Laws, except for those executive powers granted to the town administrator.

The board of selectmen shall serve as the chief goal-setting and policy-making agency of the town of Fairhaven. The duties and responsibilities for day-to-day management of the town shall be delegated to the town administrator. The board shall act through the adoption of policy directives and guidelines which are to be implemented by the town administrator and the officers and employees appointed by, or under the authority of, the board. Individual selectmen shall not purport to represent the board or exercise the authority of the board except when specifically authorized by the board.

The board of selectmen shall:

(a) enact rules and regulations to implement policies and to issue interpretations;

(b) exercise, through the town administrator, general supervision over all matters affecting the interests or welfare of the town;

(c) appoint the town counsel and any special counsels, and all members of committees, boards and commissions except the finance committee and except those appointed by the moderator, elected by the voters or under the jurisdiction of the school committee and may make appointments to temporary posts and committees they create for special purposes;

(d) have general administrative oversight of such boards, committees and commissions appointed by the board of selectmen;

(e) have the responsibility and authority for licenses and other quasi-judicial functions as provided by the General Laws and by the by-laws of the town of Fairhaven;

(f) issue all town meeting warrants;

(g) review the annual proposed budget submitted by the town administrator and make recommendations with respect to the annual proposed budget as they deem advisable; provider, however, the town administrator shall present the budget to the town meeting, incorporating the recommendations of the board of selectmen;

(h) appoint, and may re-appoint, and enter into a contract for the employment of a town administrator for a term of not more than 3 years, who shall be a person with executive and administrative qualifications and especially fitted by education, training and experience to perform the duties of the office. The town may from time to time, by by-law, establish such additional qualifications as it deems necessary and appropriate;

(i) remove the town administrator at any time, for just cause following a formal procedure including a written intent to dismiss, a written response and a public hearing, to be completed within 30 days after the issuance of a written intent to dismiss, in accordance with the terms of the town administrator's contract;

(j) set the compensation for the town administrator, not to exceed an amount appropriated by the town meeting; and

(k) designate a qualified person as acting town administrator to perform the duties of the office during any vacancy exceeding 30 days, caused by the town administrator's absence, illness, suspension, removal or resignation. The appointment of an acting town administrator shall be for a period not to exceed 180 days.

SECTION 2. The town administrator shall be the chief administrative officer of the town of Fairhaven and shall act as the agent for the board of selectmen. The town administrator shall be responsible to the board of selectmen for coordinating and administering all town affairs under the jurisdiction of the board of selectmen.

The town administrator's powers and duties shall include the following:

(a) consult and advise the board of selectmen regarding its policies; and implement those policies;

(b) attend all meetings of the board of selectmen, except when excused, and consult with and advise the board of selectmen on all matters that come before the board;

(c) attend all town meetings and advise the town meeting on all warrant articles within the jurisdiction of the board of selectmen;

(d) attend all finance committee meetings, except when excused by the board of selectmen, and keep the finance committee informed on all matters under the jurisdiction of the town administrator that come before the committee;

(e) manage and direct the daily reporting and supervision of all town departments under the jurisdiction of the board of selectmen including the following: assessors, Building Commission, Council on Aging, police, civil defense, animal control officer, gas inspector, plumbing inspector, wiring inspector and weights and measures inspector, recreation, highway, water, sewer, tree and park, planning, finance, finance director, collector, treasurer, accounting, veterans, town counsel, other committees appointed by and under the jurisdiction of the board of selectmen and the fire department, subject to section 42 of chapter 48 of the General Laws;

(f) review and advise the board of selectmen on all warrants for the payment of town funds as prepared by the town accountant in accordance with section 56 of chapter 41 of the General Laws;

(g) except with respect to the school department, the town administrator shall have sole authority over the administration of personnel policies for all town employees. With respect to the fire department, such authority shall be subject to the provisions of section 42 of chapter 48 of the General Laws. The town administrator shall act as the personnel board under all applicable laws and by-laws, except as otherwise set forth herein. The personnel board as presently constituted shall be eliminated upon the appointment of the town administrator. The town may enact by-laws establishing the wages, salaries and other benefits of employees, not inconsistent with the authority granted to the town administrator in this act. Notwithstanding its elimination, all actions taken prior to the appointment of the town administrator by the personnel board within its authority, and by any other town official or board, with respect to personnel, including the appointment of all officers and employees, shall continue in full force and effect subject to future action by the town administrator within his or her authority;

(h) administer the town's insurance policies, including the ability to settle claims; provided, however, all insurance contracts and claims settlements shall receive the approval of the board of selectmen;

(i) with the approval of the board of selectmen, appoint and remove all department heads under the direct control of the town administrator. Each department head, with the approval of the town administrator, shall appoint and remove all department staff within their respective departments. All appointments shall be based entirely on merit and fitness. All appointments and terminations shall be conducted in accordance with the General Laws, personnel policies, by-laws of the town of Fairhaven and of any applicable employment contracts, and with respect to the fire department, shall be subject to the provisions of section 42 of chapter 48 of the General Laws;

(j) with the approval of the board of selectmen, reorganize any departmental structures under the jurisdiction of the town administrator;

(k) with the approval of the board of selectmen, negotiate all collective bargaining agreements on behalf of the town, except for the school department. The town administrator may seek the assistance of labor counsel if the town administrator deems it necessary to effect successful negotiations. All final agreements must be approved and executed by the board of selectmen;

(l) with the approval of the board of selectmen, establish compensation packages for all town employees under the jurisdiction of the town administrator not subject to a collective bargaining agreement. Such compensation shall not exceed the amount appropriated therefor by town meeting and shall be subject to all applicable laws and by-laws;

(m) submit to the board of selectmen a written proposed budget for town government for the ensuing fiscal year. 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 years. It shall include proposed expenditures for both current operations and capital projects during the ensuing year, detailed by department, committee, agency, purpose and position and proposed financing methods. The proposed budget shall include estimated revenues and free cash available at the close of the fiscal year, including estimated balances in special accounts. The town may, by by-law establish additional financial information and reports to be provided by the town administrator. To assist the town administrator in preparing the proposed annual budget of revenue and expenditures, the finance director, all boards, officers and committees of the town, including the school committee, shall furnish to the town administrator, in a writing in such a form as the town administrator shall establish, all relevant information in their possession, including a detailed estimate of the appropriations required and any available funds;

(n) report on the probable amount required to be levied and raised by taxation to defray all expenses and liabilities of the town together with an estimate of the necessary tax rate;

(o) establish calendar dates by which the proposed budget, revenue statement and tax rate estimate are to be submitted to the board of selectmen;

(p) submit annually to the board of selectmen a 5-year capital improvements program, or the same as approved by a formal capital planning committee, to include: (i) a list of all capital improvements and supporting data proposed to be undertaken during the next 5 years; (ii) cost estimates, methods of financing and recommended time schedule; and (iii) the estimated annual cost of operating and maintaining any facility to be constructed or acquired;

(q) advise the board of selectmen at least monthly, of all departmental year-to-date revenues;

(r) direct action as deemed necessary to ensure that all operating and capital budgets under the direct control of the town administrator are maintained in accordance with the town meeting vote that approved those budgets and coordinate efforts with the governing bodies of those departments not under the direct supervision of the town administrator to ensure that those operating and capital budgets are maintained in accordance with the town meeting vote that approved those budgets;

(s) keep and complete records of the office of the town administrator and annually submit to the board of selectmen, unless requested to do so more frequently, a full report of the operations of the office;

(t) be responsible for coordination of operational and strategic planning for the town;

(u) serve as the procurement officer for the town, establish and enforce procurement policies and guidelines in accordance with applicable state laws;.

(v) manage and oversee the use, maintenance, security and, with the approval of the board of selectmen, regulate the rental for all the town buildings, properties and facilities, including information technology, except those under the jurisdiction of the school department, unless requested by the school department;

(w) prepare the application of all town warrants for approval by the board of selectmen;

(x) with the approval of the board of selectmen, prosecute, defend and settle all litigation for or against the town, subject to such appropriation as may be necessary to effect settlement, and except for litigation involving only the school department, or its officers and employees;

(y) delegate and direct any qualified town official or employee to carry out any duty that is within the authority of the town administrator;

(z) during a temporary absence, with the approval of the board of selectmen, the town administrator may designate a qualified administrative employee or officer to exercise the powers and perform the duties of the town administrator; and.

(aa) perform any other duties or tasks assigned by the board of selectmen, town meeting or as mandated by applicable state law.

SECTION 3. The town administrator of the town of Fairhaven shall have access to all municipal books, papers and documents or information necessary for the proper performance of the duties of the town administrator. The town administrator may, without notice, cause the affairs of any division or department under the town administrator’s supervision, or the conduct of any officer or employee thereof, to be examined.

SECTION 4. All laws, by-laws, votes, rules and regulations, whether enacted by authority of the town of Fairhaven or any other authority, which are in force in the town on the effective date of this act, not inconsistent with this act, shall continue in full force and effect.

SECTION 5. No contract existing, and no action at law or suit in equity, or other proceeding pending, on the effective date of this act shall be affected by this act.

SECTION 6. The town of Fairhaven shall be governed by the provisions of this act. To the extent that this act modified or repeals existing General Laws and special acts or the by-laws of the Town of Fairhaven, this act shall govern.

SECTION 7. This act shall not impair the rights or obligations of any person holding a town office, or employed by the town, on its effective date, except those duties assigned by this act to another officer or employer, and except those duties which are subsequently assigned to another officer or employee pursuant to this act. No person who continues in the permanent full-time service or employment of the town shall forfeit his pay, grade or time in service as a result of the enactment of this act.

SECTION 8. This act shall take effect upon its acceptance by the town of Fairhaven by a vote at town meeting.