

HOUSE No. 5359

Substituted by the House, on motion of Ms. Garlick of Needham, for a bill with the same title (House, No. 4484) [Local Approval Received]. October 20, 2022.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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:

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

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

19 SECTION 3. The town manager shall be the chief administrative officer of the town,
20 directly responsible to the board of selectmen for the administration of all town affairs for which
21 the office of town manager is given responsibility pursuant to this act. The town manager shall
22 supervise, direct and be responsible for the efficient administration of all functions and activities
23 for which the office of town manager is given authority, responsibility or control pursuant to this
24 act, any by-law, town meeting vote or vote of the board of selectmen, including but not limited to
25 those set forth in the following subsections:

26 (a) (1) To appoint and, in appropriate circumstances, remove, subject to any applicable
27 collective bargaining agreement, personnel by-law or employment contract, an assistant town
28 manager, department heads, officers, agents and other employees of the town for whom no other
29 method of selection or removal is provided by this act, other than those under the jurisdiction of
30 the school committee and the board of library trustees; provided, however, that the town manager
31 shall forthwith give written notice of such appointment to the board of selectmen and the
32 respective board or department to whom the appointee provides staff support; and provided
33 further, that appointment of agents of appointed or elected multiple-member bodies or of
34 department heads for departments for which an appointed or elected board provides policy
35 direction shall be made only after consultation with the respective appointed or elected multiple-
36 member body.

37 (2) All appointments of department heads and multiple-member bodies made
38 pursuant to paragraph (1) shall become effective on the 15th day following the day on which
39 such notice of appointment is filed with the board of selectmen, unless the board shall, within
40 that 15 day period by a majority vote of the full board, vote to reject such an appointment or has
41 sooner voted to affirm it. A copy of each notice of appointment shall be posted on the town
42 bulletin board and website when submitted to the board of selectmen.

43 (3) Notwithstanding any other provision of this act to the contrary, when a vacancy
44 occurs or will occur on a date certain in the office of fire chief or police chief, and prior to
45 exercising any authority pursuant to paragraph (1), the town manager shall consult with the
46 board of selectmen as to the criteria and process for appointment.

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

52 (b) To administer the town personnel system, including, but not limited to personnel by-
53 laws, policies and procedures, rules and regulations, collective bargaining agreements and
54 employment contracts; the town manager shall also prepare and maintain a current plan
55 establishing personnel staffing requirements for each town department, excepting school and
56 library personnel.

57 (c) To attend all regular and special meetings of the board of selectmen unless absence is
58 approved in advance by the chair of the board of selectmen. The town manager shall have a
59 voice, but no vote, in all proceedings of the board of selectmen.

60 (d) To ensure that a full and complete record of the financial and administrative activities
61 of the town is kept and rendered as often as may be required by the board of selectmen. Not less
62 than once a year, a full written report of all town administrative operations during the period
63 reported on shall be made available to the public.

64 (e) To keep the board of selectmen fully advised as to the needs of the town and
65 recommend to the board of selectmen and to other elected and appointed town officers and
66 departments adoption of such measures requiring action by them or by the town meeting as the
67 town manager may deem necessary or expedient.

68 (f) To be responsible for the maintenance and repair, rental and use of all town buildings
69 and facilities, excluding those facilities where by law the jurisdiction and control is vested in
70 another board or department.

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

75 (h) To ensure that a complete inventory of all property of the town, both real and
76 personal, is kept, excluding property under the control of the library trustees or school
77 committee.

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

82 (j) To be the chief procurement officer for the town, in accordance with the provisions of
83 chapter 30B of the General Laws, and be responsible for purchasing all supplies and services for
84 all departments and activities of the town, including awarding and executing contracts therefor.
85 The town manager shall be certified by the inspector general as a Massachusetts certified public
86 purchasing official, or receive a similar certification, at the time of initial appointment or within
87 a reasonable period of time following such appointment. The town manager shall report to the
88 board of selectmen any contracts signed under the authority of this subsection.

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

95 (l) To see that the provisions of this act, town by-laws and other votes of the town
96 meeting and of the board of selectmen that require enforcement by the town manager are
97 faithfully performed.

98 (m) To inquire, at any time, into the conduct and operation of any office or performance
99 of duties of any town officer, employee, department or multiple-member body.

100 (n) To attend all sessions of all town meetings and, when authorized by the moderator,
101 answer questions raised by voters relating to warrant articles and matters over which the town
102 manager exercises any supervision.

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

109 (p) To facilitate communications, coordination and operations between and amongst town
110 departments serving under the town manager, board of selectmen and other officers and multiple
111 member bodies elected directly by the voters. The town manager may reasonably require
112 appointed and elected officers of the town or their representatives to meet with the town manager
113 from time to time. The town manager may attend and speak at any meeting of any multiple
114 member body, but may not vote at the meeting.

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

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

121 (s) To perform any other duties required to be performed by the town manager by by-law
122 or vote of the board of selectmen. If an assistant town manager is appointed, the town manager
123 may delegate any of the duties and responsibilities consistent with this act to such assistant;
124 provided, however, that the actions of the assistant shall be deemed to be those of the town
125 manager.

126 (t) To ensure that the board of selectmen is fully informed of the town's emergency
127 preparedness planning. In time of public danger or emergency, the town manager, in
128 collaboration with the emergency management director, shall direct and oversee management of
129 town resources pursuant to any applicable state law, regulation or other protocol, directive or
130 agreement to which the town is a signatory or participant. Should the town manager be
131 unavailable, the emergency management director shall perform such duties as may be necessary.

132 (u) To take such other action, consistent with this act, as may be authorized by vote of the
133 board of selectmen.

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

140 SECTION 5. Any vacancy in the office of town manager shall be filled as soon as
141 possible by the Tyngsborough board of selectmen. Pending such regular appointment, the board
142 of selectmen shall appoint a qualified town officer, employee or individual, who may but need

143 not be the assistant town manager, if any, to perform the duties of the office on an acting basis,
144 and who shall be referred to as the acting town manager. Such temporary appointment may not
145 exceed 3 months; provided, however, that no more than 2 additional 3-month renewals may be
146 approved by the board of selectmen. Compensation for such person shall be set by the board of
147 selectmen within the amount approved by town meeting for the position of town manager.

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

152 SECTION 7. The Tyngsborough board of selectmen may, by a vote of no less than 4 of
153 its members, terminate the town manager for cause at any time after the opportunity for a hearing
154 for which the town manager has received at least 10 days prior written notice. The board of
155 selectmen may place the town manager on paid administrative leave pending such hearing. The
156 action of the board of selectmen in suspending or removing the town manager shall be final, it
157 being the intention of this provision to vest all authority and fix all responsibility for such
158 suspension or removal solely in the board of selectmen.

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

165 (b) If a screening committee is appointed pursuant to this section, it shall consist of 5 or 7
166 persons who live or work in the town, representing to the extent possible a broad demographic
167 and occupational base. No more than 2 members of the board of selectmen shall serve on the
168 committee.

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

172 (2) The committee shall submit to the board of selectmen the names, in no particular
173 order, of a minimum of 3 persons whom it has determined to be best suited to perform the duties
174 of the town manager.

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

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

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

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