

# Chapter 12

## Town Manager Act

### An Act Relative To The Form of Government in the Town of Danvers

Passed to be enacted: House of Representatives: 12/04/97

Senate: 12/08/97

Governor Approved: 12/18/97

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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 regular town election in the town of Danvers for the purpose of electing selectmen and members of the school committee required to be elected under this act, the trustees of the Peabody Institute Library and the moderator and town meeting members required to be elected under the provisions of chapter 294 of the acts of 1930, shall be held annually on the first Tuesday in May and shall be part of the annual town meeting. All articles in the warrant to be decided otherwise than by ballot shall be considered at the annual town meeting to be held on the third Monday in May. Any vacancies on the board of trustees of said Peabody Institute Library caused by death, resignation, disqualification or otherwise shall be promptly filled by vote of the remaining members of said board of trustees until the next annual election.

**Section 2.** The board of selectmen shall consist of five members who shall be elected for staggered three-year terms. At each town election, the voters shall elect one or more selectmen, as the case may be, for three-year terms to replace those whose terms are about to expire. When a vacancy occurs among the selectmen by reason of death, resignation, change of residence from the town or other disability, the remaining selectmen shall have the power to fill the vacancy until the next annual town election, at which the voters shall elect a selectman for the remainder of the unexpired term. Before entering upon the duties of their office, the selectmen shall be sworn to the faithful performance thereof by the town clerk or a justice of the peace.

**Section 3.** The board of selectmen shall appoint and may remove the town accountant, members of the board of appeals, election officers and registrars of voters, except the town clerk, and shall carry out all other powers conferred on them by law. Said board of selectmen shall appoint and may remove a town manager or temporary town manager in accordance with the provisions of sections 8, 9, and 11. Selectmen shall be *ex-officio* town meeting members.

**Section 4.** The school committee shall consist of five members, elected for staggered three-year terms. At each town election, the voters shall elect one or more school committee members, as the case may be, for three-year terms to replace those whose terms are about to expire. When a vacancy occurs among the members of the school committee by reason of death, resignation, change of residence from the town or other disability, the remaining members of the school committee shall have the power to fill the vacancy until the next annual election, at which the voters shall elect a member of the school committee for the remainder of the unexpired term. Before entering upon the duties of their office, the school committee members shall be sworn to the faithful performance thereof by the town clerk or a justice of the peace.

**Section 5.** All of the powers, rights, duties and liabilities, except as hereinafter provided, now or hereafter conferred or imposed by law upon the school committee shall be exercised and performed by the school committee. Nothing in this act shall be construed to affect the powers and duties of the school committee as provided by law, except as specifically provided herein.

**Section 6.** No person shall hold more than one elected or appointed position in the town unless multiple office holding is in accordance with the provisions of section 20 of chapter 268A of the General Laws. The town manager, subject to any applicable provision of the General Laws relating thereto, may assume the duties of any office, which said town manager is authorized to fill by appointment.

**Section 7.** For the purpose of making investigations or surveys, the board of selectmen may employ such experts, counsel and other assistants and incur such other expenses, not exceeding in any year the sum of \$10,000 or such larger sum as may be appropriated for the purpose by the

town, as they may deem necessary, and the same shall be paid by the treasurer upon a warrant signed by the majority of said board of selectmen.

**Section 8.** The selectmen elected as provided herein shall appoint, as soon as practicable, for a term of five years a town manager who shall be a person especially fitted by education, training and experience to perform the duties of the office. Said town manager shall be appointed without regard to his political beliefs. Said town manager shall not be required to be a resident of the town or of the commonwealth when appointed but shall be a resident of the town during the term of office thereof. Said town manager may be appointed for successive terms of office. Before entering upon the duties of the office of town manager, said town manager shall be sworn to the faithful and impartial performance thereof by the chairman of the board of selectmen, and town clerk or a justice of the peace. Said town manager shall execute a bond in favor of the town for the faithful performance of the duties of said office in such sum and with such surety as might be fixed or approved by said board of selectmen.

**Section 9.** In the event the town manager position becomes vacant, the position shall be filled as soon as possible by the board of selectmen. Pending the appointment of a town manager or the filling of any such vacancy, said board of selectmen may appoint a suitable person to perform the duties of the office. A person appointed to serve as temporary town manager may be appointed to an initial term as such temporary manager not to exceed six months and may be re-appointed to one additional term not to exceed six months.

**Section 10.** The town manager may designate, by letter filed with the town clerk, a qualified officer of the town to perform the duties of the town manager during a temporary absence or disability. In the event of the failure of said town manager to make such designation, the board of selectmen may, by resolution, designate an officer of the town to perform the duties of the town manager until said town manager resumes full responsibilities of the office.

**Section 11.** The board of selectmen, by a majority vote of the full membership of the board, may remove the town manager. At least 30 days before such proposed removal shall become effective, said board of

selectmen shall file a preliminary written resolution with the town clerk setting forth in detail the specific reasons for such proposed removal and a copy of such resolution shall be delivered to the town manager. Said town manager may reply in writing to the resolution and may request a public hearing. If said town manager so requests, said board of selectmen shall hold a public hearing not earlier than 20 nor later than 30 days after the filing of such request. After such public hearing, if any, otherwise at the expiration of 30 days following the filing of the preliminary resolution and after full consideration, the selectmen by a majority vote of the full membership of said board may adopt a final resolution of removal. In the preliminary resolution, said board of selectmen may suspend said town manager from duty but shall, in any case, cause to be paid to him forthwith any unpaid balance of the salary due at the time of such suspension together with the salary thereof for the next three calendar months following the filing of the preliminary resolution.

**Section 12.** The town manager shall receive such compensation for services as town manager as the board of selectmen shall determine but such compensation shall not exceed the amount appropriated therefore by the town.

**Section 13.** In addition to the specific powers and duties provided in this act, the town manager shall have the general powers and duties set forth below:

- a) The town manager shall supervise and direct the administration of all departments, commissions, boards and offices, except the board of selectmen, the school committee, the town accountant, the board of appeals, the trustees of the Peabody Institute Library, election officers and the registrars of voters.
- b) Said town manager, in accordance with the provisions of this act and except as otherwise expressly prohibited by the General Laws, may reorganize, consolidate or abolish departments, commissions, board or offices under the direction and supervision of said town manager, in whole or in part, and may establish such new departments, commissions, boards or offices as may be deemed necessary by said town manager and, in so doing, said town manager may transfer the

duties, powers and appropriation of one department, commission, board or officer to another.

- c) Except as otherwise provided in this act, said town manager shall appoint upon merit and fitness alone and, subject to the provisions of chapter 31 of the General Laws where applicable, may remove all officers and employees of the town, except employees of the school department and the Peabody Institute Library; provided, however, that town officers and employees not subject to the provisions of said chapter 31 shall not be removed by said town manager except on five days' notice in writing setting forth cause for such removal.
- d) Notwithstanding the provisions of section 108 of chapter 41 of the General Laws but subject to all applicable provisions of chapter 31 of the General Laws, said town manager shall fix the compensation of all town officers and employees subject to removal by said town manager.
- e) Said town manager shall attend all regular meetings of the board of selectmen except meetings at which removal of the town manager is being considered.
- f) Said town manager shall keep full and complete records of the office of town manager and shall render as often as may be required by the board of selectmen a full report of all operations during the period reported on.
- g) Said town manager shall keep the board of selectmen fully advised as to the needs of the town and shall recommend to said board of selectmen for adoption such measures requiring action by them or by the town as may be deemed necessary or expedient by said town manager.
- h) Said town manager shall have jurisdiction over the rental and use of all town property, except schools, and shall be responsible for: (i) the maintenance and repair of all town buildings, including school buildings; (ii) the preparation of plans for work on existing buildings and on new buildings, except schools; and (iii) the supervision of all work on existing buildings and new buildings, including work on

schools done in accordance with plans and specifications prepared by the school committee.

- i) Said town manager shall purchase all supplies and materials and equipment, except books for schools, and shall award all contracts for all departments of the town and for the Peabody Institute Library. Said town manager shall make purchases for departments not under the supervision of said town manager only upon requisition duly signed by the head of such department.
- j) Said town manager shall administer either directly or through persons appointed by him in accordance with this act all provisions of general and special laws applicable to said town, all by-laws and all regulations established by the board of selectmen.
- k) Said town manager shall have the authority to prosecute, defend and compromise all litigation to which the town is a party and to employ special counsel to assist the town counsel whenever, in the judgment of said town manager, it may be necessary.
- l) Said town manager shall perform such other duties, consistent with the office, as may be required by the by-laws or by vote of the town or by vote of said board of selectmen.

**Section 14.** The town manager may, without notice, cause the affairs of any division or department under his control or the conduct of any officer or employee thereof to be examined. Said town manager shall have access to all town books and papers for information necessary for the proper performance of his duties.

**Section 15.** The town manager shall appoint a planning board to consist of five members who shall serve for staggered three-year terms. If for any reason a vacancy occurs in the membership of the planning board, the vacancy shall be filled forthwith by said town manager for the unexpired term. The members of the planning board appointed hereunder shall organize for the proper conduct of their duties and shall possess all of the powers and duties of planning boards established in accordance with section 81A of chapter 41 of the General Laws. Before entering upon the

duties of their office, planning board members shall be sworn to the faithful performance thereof by the town clerk or a justice of the peace.

**Section 16.** Pursuant to this act and chapter 111 of the General Laws, the town manager shall appoint a board of health to consist of three suitably qualified persons who shall serve for staggered three-year terms. If for any reason a vacancy occurs in the membership of the board of health, such vacancy shall be filled forthwith by said town manager for the unexpired term. The members of the board of health appointed hereunder shall organize for the proper conduct of their duties and shall possess all of the powers and rights and shall be subject to all of the duties and liabilities conferred or imposed by law upon boards of health of towns but, in the performance of their duties, they shall be subject to the general supervision and direction of said town manager. Before entering upon the duties of their office, members of said board of health shall be sworn to the faithful performance thereof by the town clerk or a justice of the peace.

**Section 17.** The town manager shall appoint a municipal light board to consist of three suitably qualified persons to serve for staggered three-year terms. If for any reason a vacancy occurs in the membership of the municipal light board, the vacancy shall be filled forthwith by said town manager for the unexpired term. The members of the municipal light board appointed hereunder shall organize for the proper conduct of their duties and shall possess all of the powers and rights and shall be subject to all of the duties and liabilities conferred or imposed by law upon municipal light boards but, in the performance of their duties, they shall be subject to the general supervision and direction of said town manager. Before entering upon the duties of their office, members of the municipal light board shall be sworn to the faithful performance thereof by the town clerk or a justice of the peace.

**Section 18.** Pursuant to section 24 of chapter 41 of the General Laws, the town manager shall appoint a principal assessor and two other assessors who shall serve for staggered three-year terms. The principal assessor shall devote full time and attention to the duties of the office of principal assessor and shall be the chairperson of the board of assessors. If for any reason a vacancy occurs in the membership of said board, such vacancy shall be filled forthwith by said town manager for the unexpired term. Said principal assessor and assessors appointed hereunder shall

organize for the proper conduct of their duties and shall possess all of the powers and rights and shall be subject to all of the duties and liabilities conferred or imposed by law upon assessors of towns but, in the performance of their duties, they shall be subject to the general supervision and direction of the town manager. Before entering upon the duties of their office, assessors shall be sworn to the faithful performance thereof by the town clerk or a justice of the peace.

**Section 19.** The town manager shall appoint a suitably qualified person to the office of town clerk. Said town clerk shall have the powers, perform all of the duties and be subject to all of the liabilities and penalties now or hereafter conferred or imposed by law upon town clerks. Said town clerk shall be subject to the general supervision and direction of said town manager in the performance of said duties. Said town clerk shall serve *ex-officio* as clerk of the board of selectmen. Before entering upon the duties of said office, said town clerk shall be sworn to the faithful performance thereof by the chairperson of said board of selectmen or a justice of the peace.

**Section 20.** The town manager shall appoint a suitably qualified person to the office of town treasurer. Said town treasurer shall have all of the powers, perform all of the duties and be subject to all of the liabilities and penalties now or hereafter conferred or imposed by law upon town treasurers; provided, however, that in the conduct of said office, said town treasurer shall be subject to the supervision and direction of said town manager. Whenever it shall be necessary to execute any deed conveying land or any other instrument required to effect any vote of the town, the same shall be executed by said town treasurer on behalf of the town unless the town shall vote otherwise. Before entering upon the duties of said office, said town treasurer shall be sworn to the faithful performance thereof by said town clerk or a justice of the peace.

**Section 21.** The town manager shall appoint a suitably qualified person to the office of collector of taxes. Said collector of taxes shall have the powers, perform all of the duties and be subject to all of the liabilities and penalties now or hereafter conferred or imposed by law upon collectors of taxes; provided, however, that in the performance of such duties, said collector of taxes shall be subject to the general supervision and direction of said town manager. Before entering upon the duties of said office, said

collector of taxes shall be sworn to the faithful performance thereof by the town clerk or a justice of the peace.

**Section 22.** The town manager shall appoint a board of water and sewer commissioners to consist of three suitably qualified persons to serve for staggered three-year terms. If for any reason a vacancy occurs in the membership, such vacancy shall be filled forthwith by said town manager for the unexpired term. Said water and sewer commissioners appointed hereunder shall organize for the proper conduct of their duties and shall possess all of the powers and rights and be subject to all of the duties and liabilities conferred or imposed upon water and sewer commissioners by chapter 229 of the Special Acts of 1916, and chapter 191 of the acts of 1874 but, in the performance of their duties, the board of water and sewer commissioners shall be subject to the general supervision and direction of said town manager. Before entering upon the duties of their office, said board of water and sewer commissioners shall be sworn to the faithful performance thereof by the town clerk or a justice of the peace.

**Section 23.** The town manager shall appoint a board of commissioners of trust funds to consist of three suitably qualified persons to serve for staggered three-year terms. If for any reason a vacancy occurs in the membership of said board of commissioners of trust funds, such vacancy shall be filled forthwith by said town manager for the unexpired term. The members of said board of commissioners of trust funds appointed hereunder shall organize for the proper conduct of their duties and shall possess all of the powers and rights and be subject to all of the duties and liabilities conferred or imposed by section 45 of chapter 41 of the General Laws or any other applicable provisions imposed upon boards of commissioners of trust funds of towns but, in the performance of their duties, said board of commissioners of trust funds shall be subject to the general supervision and direction of said town manager. Before entering upon the duties of their office, said board of commissioners of trust funds shall be sworn to the faithful performance of their duties by the town clerk or a justice of the peace.

**Section 24.** The town manager shall appoint a suitably qualified person to the office of tree warden. Said tree warden shall have all of the powers, perform the duties and be subject to all of the liabilities and penalties now or hereafter conferred or imposed by law upon tree wardens

but, in the conduct of said office, the tree warden shall be subject to the supervision and direction of said town manager. Before entering upon the duties of said office, said tree warden shall be sworn to the faithful performance thereof by the town clerk or a justice of the peace.

**Section 25.** The town manager shall appoint an attorney or law firm to act as town counsel for a term not to exceed three years. Upon initial appointment and once in each subsequent three-year period, said town manager's appointment of said town counsel shall be subject to ratification by the board of selectmen. Said town counsel shall perform such legal services, including written opinions, as may be required by law, by vote of the town meeting, by said town manager or by any board of town officers. Said town counsel shall at all times, upon request of said town manager, furnish legal advice, counsel and an opinion to any officer of the town who may require advice upon any subject concerning the duties of such officer. Said town counsel shall prosecute all suits and other legal proceedings ordered to be brought by the town or by said town manager and shall defend all actions or suits brought against the town or its officers in their official capacity and shall try and argue any and all causes in which the town shall be a party before any court, board of referees or commission and shall appear at any and all hearings on behalf of the town whenever such services may be required. Before entering upon the duties of said office, said town counsel shall be sworn to the faithful performance thereof by the town clerk or a justice of the peace.

**Section 26.** The town manager shall be the chief fiscal officer of the town. Warrants for the payment of town funds prepared by the town accountant in accordance with the provisions of section 56 of chapter 41 of the General Laws shall be submitted to said town manager. The approval of such warrant by said town manager shall be sufficient authority to authorize payment by the town treasurer but the board of selectmen shall approve all warrants in the event of the absence of said town manager or a vacancy in the office of town manager.

**Section 27.** Whenever any payroll, bill or other claim against the town is presented to the town manager, said town manager shall, if the same seems to be of doubtful validity, excessive in amount or otherwise contrary to the interests of the town, refer it to the board of selectmen who shall immediately investigate the facts and determine what, if any, payment

shall be made. Pending such investigation and determination by said board of selectmen, payment shall be withheld.

**Section 28.** Every officer shall pay into the treasury of the town all amounts received on behalf of the town and shall make a true return thereof to the town accountant stating the amounts upon which such amounts were received.

**Section 29.** The aggregate annual compensation of each town employee appointed by the town manager shall be limited to the amount established in accordance with the provisions of this act and all fees received in accordance with the provisions of any general or special law shall be paid in to the treasury of the town.

**Section 30.** All officers, board and committee members and employees, whether elected or appointed, shall comply with the provisions of chapter 268A of the General Laws.

**Section 31.** On or before March 1 of each year, the town manager shall submit to the board of selectmen a careful, detailed estimate in writing of the probable expenditures of the town government for the ensuing year stating the amount required to meet the interest and maturing bonds and notes or other outstanding indebtedness of the town and showing specifically the amount necessary to be provided for each fund and department, together with a statement of the expenditures of the town for the same purposes in the two preceding years and an estimate of the expenditures for the current year. Said town manager shall also submit a statement showing all revenues received by the town in the preceding fiscal year and an estimate of the amount of income from all sources of revenue exclusive of taxes on property in the ensuing year. Said town manager shall report 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 tax rate necessary to raise such amount. For the purpose of enabling said town manager to make up the annual estimate of expenditures, all boards, officers and committees of the town shall, upon said town manager's written request, furnish all information in their possession and submit to said town manager a detailed written estimate of the appropriations required for the efficient and proper conduct of their respective departments during the next fiscal year.

**Section 32.** The board of selectmen shall consider the tentative budget submitted by the town manager and make such recommendations relative thereto as they deem expedient and proper in the interests of the town. On or before April 1 of each year, said board of selectmen shall transmit a copy of the budget, together with the recommendations relative thereto, to each member of the finance committee.

**Section 33.** There shall be a finance committee to consist of nine persons who shall not be town meeting members, to be appointed by the moderator at the first annual town meeting held after the effective date of this act who shall hold office, three until the expiration of three years, three until the expiration of two years and three until the expiration of one year from said annual town meeting and thereafter at each annual town meeting three members of said committee shall be appointed by the moderator to serve for three-year terms. Before entering upon the duties of the office, finance committee members shall be sworn to the faithful and impartial performance thereof by the town clerk or a justice of the peace.

All questions pertaining to the appropriation or expenditure of money, the creation of debt, the disposition of town property and all other questions affecting the town shall be referred to the finance committee for the purpose of making recommendations but nothing in this section shall be construed to prohibit the appointment of special committees to investigate matters pertaining to the town or to execute work authorized by it. Said finance committee shall have the power to consult with such departments, officers, employees and committees as may have information concerning any matters under consideration and it shall be the duty of all departments, officers, employees or committees to furnish such information as they possess that may be required by said finance committee. Said finance committee shall also have the power to examine, in connection with any subject under investigation or consideration, all books, vouchers, papers and other instruments in the custody or possession of any officer, employee or agent of the town.

Before making recommendations under each article of the warrant, the finance committee shall hold public hearings in relation thereto after first notifying the selectmen, town manager and town meeting members of the time and place of such hearing. The finance committee shall report in

writing to the town meeting all of its recommendations under the various articles of the warrant. The recommendation reported by the finance committee under any article shall be treated in the town meeting as a motion under the article. The recommendation shall be subject to amendment by a majority of the town meeting members voting on the motion to amend. If there shall be a majority and a minority report of the finance committee, the minority report shall have precedence over all other motions to amend the report of the committee.

**Section 34.** Chapter 13 of the acts of 1949 is hereby repealed.

**Section 35.** This act shall take effect upon its passage.