

**AN ACT ESTABLISHING A BOARD OF SELECTMEN – TOWN ADMINISTRATOR  
FORM OF GOVERNMENT FOR THE TOWN OF BERLIN**

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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 Town of Berlin, hereafter referred to as “Town” shall be governed by the provisions of this act. To the extent that this act modifies or repeals existing General Laws and special acts or the by-laws of the Town, this act shall govern.

**SECTION 2: BOARD**

The executive powers of the Town shall be vested in the Board of Selectmen, hereafter referred to as “Board”, who shall have all the powers given to Boards of Selectmen by the General Laws, except as otherwise provided herein.

The Board shall serve as the chief goal-setting and policy-making agency of the Town. The duties and responsibilities for day-to-day management of the Town shall be delegated to the Town Administrator, hereafter referred to as “Administrator”. The Board shall act through the adoption of policy directives and guidelines which shall be implemented by the Administrator and the officers and employees appointed by, or under the authority of, the Board. Individual Board members shall not purport to represent the Board or exercise the authority of the Board except when specifically authorized by the Board.

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The Board shall:

- (a) enact rules and regulations to implement policies and to issue interpretations;
- (b) exercise, through the Administrator, general supervision over all matters affecting the interests or welfare of the town;
- (c) appoint the Department Heads, Town Counsel, and joint appointments, except those elected by the voters; appointed by the Moderator, Building Inspector, Fire & EMS Chief, or Library Trustees, or under the jurisdiction of the School Committee, and may make appointments to temporary posts and committees the Board creates for special purposes; and may make appointments for any other positions not otherwise referenced herein; and may appoint any open position in the Town, if the authorized appointing or hiring authority, fails to fill a position within 90 days of vacancy;
- (d) have general administrative oversight of such boards, committees and commissions appointed jointly or severally by the Board;
- (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;
- (f) issue all town meeting warrants;
- (g) review the annual proposed budget submitted by the Administrator and make recommendations with respect to the annual proposed budget as the Board deems advisable, and present the budget and recommendations to the Finance Committee for its review and recommendations;
- (h) appoint, and may re-appoint, an Administrator, who shall:
  - 1) be a person with executive and administrative qualifications and especially fitted by education, training and experience to perform the duties of the office; provided, that
    - a. the Town may from time to time, establish such additional qualifications as it deems necessary and appropriate; and
    - b. identification and screening of appropriate candidates is coordinated by the Personnel Committee and/or a hiring committee including both Town employees and Town residents

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- 2) need not be a resident of the Town or of the Commonwealth of Massachusetts at the time of appointment, nor at any time during the period of such service;
- 3) not have served in an elective office in the Berlin town government for at least twelve months prior to appointment;
- 4) not be subject to the personnel by-law of the Town, except as referenced in the contract.

(i) enter into an employment contract for a term of not more than 3 years with a Administrator for salary, fringe benefits and other conditions of employment, including but not limited to, severance pay, reimbursement for expenses incurred in the performance of his duties or office, liability insurance, conditions of discipline, termination, dismissal, and reappointment, performance standards and leave;

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

(k) designate a qualified person as acting Administrator to perform the duties of the office during any vacancy exceeding 30 days, caused by the Administrator's absence, illness, suspension, removal or resignation; provided, that the appointment of an acting Administrator shall be for a period not to exceed 180 days, but one renewal may be voted by the Board not to exceed a second six (6) months. Compensation for such person shall be set by the Board.

(l) suspend or remove the Administrator, by a majority vote of its membership, at any time, for just cause following a formal procedure including a written intent to suspend or dismiss, a written response and a public hearing, to be completed within 30 days after the issuance of a written intent to suspend or dismiss, in accordance with the terms of the Administrator's contract;

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### **SECTION 3: TOWN ADMINISTRATOR**

The Town Administrator shall be the chief administrative officer and chief financial director of the Town and shall act as the agent for the Board. The Administrator shall be responsible to the Board for coordinating and administering all town affairs under the jurisdiction of the Board, and all functions and activities for which the office of Administrator is given authority, responsibility or control by this special act, by by-law, by town meeting vote, by vote of the Board, or otherwise. The Administrator's powers and duties shall include those outlined in subsections 3-1 to 3-3, inclusive.

#### **SECTION 3-1: DAILY OPERATIONS**

The Administrator 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. The Administrator shall:

- a) consult and advise the Board regarding its policies and implement those policies.
- b) advise the Board as to the needs of the Town and recommend to the Board and to other elected town officers and agencies for adoption such measures requiring action by them or by the town meeting as the Administrator may deem necessary or expedient. The Administrator shall keep the Board informed on issues affecting the administration and governance of the town, in a timely manner.
- c) attend all meetings of the Board, except when excused, and consult with and advise the Board on all matters that come before the Board.
- d) attend all Town Meetings and advise the town meeting on all warrant articles within the jurisdiction of the Board.
- e) attend Finance Committee meetings as necessary and keep the Finance Committee informed on all matters under the jurisdiction of the Administrator that come before the committee.
- f) manage, supervise and be responsible for the efficient administration of all departments, commissions, boards and offices, except the Board; provided, however, that said Administrator shall not exercise any control over the discretionary power vested by statute in any such board, committee, commission or officer.

- g) supervise and direct the activities of the town's departments, boards, commissions and officers now under the jurisdiction of the Board, as well as any other departments as may be assigned by general by-laws of the Town, state statutes or this act. For this purpose, the Administrator shall have authority to require the persons so elected, or their representatives, to meet with the Administrator, at reasonable times, for the purpose of effecting coordination and cooperation among all agencies of the Town. The Administrator shall have the right to attend and speak at any public meeting of any multiple member body.
- h) reorganize, abolish, consolidate or establish a department or position under the Administrator's authority as the Administrator deems appropriate, subject to the approval of the Board before implementation and funding by town meeting, if necessary, for more efficient use of town resources;
- i) act as chief procurement officer for the Town, in accordance with the provisions of Chapter 30B of the Massachusetts General Laws, and to appoint such assistant procurement officers as provided in Chapter 30B of the Massachusetts General Laws; establish and enforce procurement policies and guidelines in accordance with applicable state laws; responsible for purchasing all supplies, materials, services and equipment for the departments under the jurisdiction of the board; have the authority to award and sign contracts that do not exceed \$50,000, commonwealth highway contracts, and state and federal grants; provided further, that a contract that exceeds \$50,000 shall require the approval of the Board; provided further, that the Administrator shall have the authority to sign a contract approved by the Board on behalf of the town; and provided further, that contracts and grants signed by the Administrator shall be promptly reported, in writing, to the Board. Purchases by other boards shall be reviewed by the Administrator to ensure that they conform to all state and local laws and regulations.
- j) keep a full and complete inventory of all town property, both real and personal;
- k) administer the town's insurance policies, including claims settlement; provided, however, that all insurance contracts and claims settlements shall receive the approval of the Board.
- l) manage and oversee the use, maintenance, repair, security, and with the approval of the Board, regulate the rental for all the town land and buildings, which fall under the jurisdiction of the Board by by-law or law, except for schools, libraries, and lands held for conservation purposes; other municipal boards may request that the Administrator coordinate the maintenance and repair of the land and buildings under their respective jurisdictions;
- m) with the approval of the Board, work with Town Counsel to prosecute, defend and settle all litigation for or against the Town, subject to such appropriation as may be necessary to effect settlement, except for litigation involving only the school department, or its officers and employees.
- n) delegate, authorize or direct any employee appointed under the jurisdiction of the Board to exercise any power, duty or responsibility which the Administrator is authorized to exercise;
- o) be responsible for coordination of operational and strategic planning for the Town.
- p) keep complete records of the office of the Administrator and annually submit to the Board, unless requested to do so more frequently, a full report of the operations of the office.
- q) respond to and coordinate local response to emergency situations in conjunction with public safety officers;
- 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 Administrator 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) perform any other duties or tasks assigned by the Board, assigned by the town meeting or mandated by applicable state law.
- v) during a temporary absence, with the approval of the Board, the Administrator may designate a qualified administrative employee or officer, other than a Board member, the moderator, a member of the school

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committee or of the finance committee, to exercise the powers and perform the duties of the Administrator of not more than twenty (20) working days. Such delegation shall be made by letter filed with the Town Clerk, and the Board.

- a. The powers and duties of the temporary or acting Administrator, under subsection (a), above, shall be limited to matters not admitting 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.

### SECTION 3-2 PERSONNEL & HUMAN RESOURCES

Exercise overall responsibility for human resources for the Town including, but not limited to: authority for hiring, supervision, evaluation, discipline and removal of town employees under the jurisdiction of the Board. The Administrator shall:

- a) assist the Personnel Committee in the implementation and administration of the personnel by-laws of the Town and salary and classification plan;
- b) coordinate the recruitment and screening of suitable candidates for consideration and appointment of the department heads by vote of the Board; provided, however, that the Administrator shall provide the Board with relevant material for the evaluation of not more than five candidates; provided further, that if the Board does not appoint any of the candidates, the Administrator shall continue to present candidates until one is appointed; and provided further, that the department heads may be removed by vote of the Board after consultation with the Administrator;
- c) appoint and remove individuals under the jurisdiction of the Board except for Department Heads and Town Counsel, and except as may otherwise be provided by law; provided, however, that the Administrator shall consult appropriately prior to appointing and provide notice to the Board of the anticipated appointment and the terms and conditions of employment for the appointment which the Board shall approve or disapprove within 14 days of the notice; provided, however, further, that a failure of the Board to act within this 14-day period shall be deemed approval of the appointment and the terms and conditions thereof; and provided further, that the termination or removal of positions so appointed shall be subject to the same appointment notice and approval requirements;
- d) assist all other hiring authorities in search, selection, and hiring processes for their direct reports;
- e) recommend individuals to the Board of Selectmen for appointment to any open position in the Town, if the authorized appointing or hiring authority fails to fill a position within 90 days of vacancy;
- f) be responsible for the supervision, management, evaluation and discipline of the other town employees under the jurisdiction of the Board; the annual performance evaluations of the department heads; and overseeing the performance evaluation program conducted by the department heads for employees within their respective departments;
- g) Act as non-voting facilitator of Personnel Committee when it hears appeals of disciplinary suspensions of not more than 5 days; act on behalf of the Board in the grievance process pursuant to collective bargaining agreements; the Board, from time to time, may provide advice and guidelines to the Administrator;
- h) administer the personnel by-law and collective bargaining agreements entered into by the town, and work with the Personnel Committee to develop and implement personnel policies and procedures for all town employees, except with respect to the school department. With respect to the fire department, such authority shall be subject to section 42 of chapter 48 of the General Laws;
- i) with the approval of the Board, negotiate all collective bargaining agreements on behalf of the town, except for the school department. The Administrator may seek the assistance of counsel if the Administrator deems it necessary to effect successful negotiations. All final agreements must be approved and executed by the Board;

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- j) with the approval of the Board and in conjunction with the Personnel Committee, establish compensation packages for all town employees under the jurisdiction of the 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;
- k) to inquire and make investigation, at any time, into the conduct and operation of office or performance of duties of any officer or employee, department, board, commission or other town agency.

### **SECTION 3-3: FINANCIAL**

In their role as chief financial officer, the Administrator shall have budgetary powers and responsibilities:

- a) establish dates by which the proposed budget, revenue statement and tax rate estimate are to be submitted to the Board.
- b) prepare and present annually, to the Board detailed budgetary estimates of amounts necessary for the administration of all town boards, officers, committees, divisions and departments the ensuing fiscal year, including both capital and operating items. Upon approval and recommendation to the Finance Committee, the Administrator shall present a requested proposed budget to the finance committee.
- c) 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.
- d) submit annually to the Board 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
- e) 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.
- f) act as necessary to ensure that all operating and capital budgets under the direct control of the 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 Administrator to ensure that those operating and capital budgets are maintained in accordance with the town meeting vote that approved those budgets.
- g) review and advise the Board 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 and approve all payroll and expense warrants for payment of town funds. Such approval shall be sufficient authority to authorize payment of the same by the Town Treasurer. In the event of the absence of the Administrator, the Board shall approve such warrants.
- h) seek out, prepare, coordinate and file applications for state, federal and private grants
- i) 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, unless requested more frequently.

**SECTION 4:** The Administrator shall have access to all municipal books, papers and documents or information necessary for the proper performance of the duties of the Administrator. The Administrator may, without notice, cause the affairs of any division or department under the Administrator's supervision, or the conduct of any officer or employee thereof, to be examined.

**SECTION 5:** All laws, by-laws, votes, rules and regulations, whether enacted by authority of the Town 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 6:** 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 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 their pay, grade or time in service as a result of this act.

**SECTION 8:** This act shall take effect upon its acceptance by the Town by a vote at the town meeting and approval by the legislature.