

CHAPTER 3 Select Board  
(Berson edits in blue) (Fuller edits in red) (ATM 2022 Articles)  
Questions or discussed at prior meetings

**§ 1. The Select Board**

3-1-1 A Select Board of five members, hereinafter in this chapter to be known as "the Board," shall be elected at-large for three-year overlapping terms.

3-1-2 Vacancies in the office of Selectman shall be filled by special election in accordance with the provisions of M.G.L. Chap. 41, Sect. 10.

3-1-3 The Select Board shall normally hold at least one regularly scheduled evening meeting a month, and as otherwise needed to conduct Town business, and shall provide an opportunity for citizens to speak.

3-1-4 Members of the Board shall each receive an annual honorarium not to exceed three thousand dollars (\$3,000) and shall receive actual and necessary expenses incurred in the performance of their duties of office, as provided by general law and vote of the Town. The Chairperson shall receive an additional amount not to exceed five hundred dollars (\$500) annually as provided by vote of the Town. **[Amended 5-11-2015 ATM, Art. 46, effective 5-18-2016]**

New 3-1-5 A Board Member shall not serve on an appointed Town Multi-member body established by Charter or to which the Board is the appointing authority.

~~(EXISTS as 3-12-2 Members of the Board shall be ineligible to serve on appointive Town multi-member bodies established by this Charter or By-law to which the Board is the appointive authority.)~~

**§ 2. Policy Leadership and Leadership**

3-2-1 The Board shall serve as the **chief executive?** goal-setting and policy-making agency of the Town. The Board shall cause the policies of the Town to be ~~regularly~~ published on the first of April, July, October and December 31, during the calendar year, and copies shall be made available to those requesting them.

3-2-2 In addition to the power of adopting policies for the Town, the Board shall have the power to enact rules and regulations establishing Town policies, not otherwise governed by General Law, Charter, or By-law, provided, however, that if an appropriation shall be necessary to implement such action, the vote of the Board shall be effective only when such appropriation has been authorized by the Town Meeting.

3-2-3 The Board shall issue policy statements setting the outer limits of possible budget expenditures, as provided in clause 8-2-6.

New 3-2-4 Each year, on the first Monday following the second Tuesday of January, the Chair of the Board and the Town Manager shall address the elected and appointed boards, the Town Officers and the Public as to the State of the Town of Orleans, which address may be virtually presented.

New 3-2-5 The Board shall delegate the specific responsibilities for the administration and operation of the ordinary Town affairs to the Town Manager. (EXISTING 3-4-1)

### § 3. Executive Powers

3-3-1 Except as otherwise provided by this Charter, all executive powers of the Town shall be vested in the Board and it shall have all of the powers and duties given to Boards of Selectmen under the Constitution and General Laws of the Commonwealth, and such additional powers and duties as may be authorized by the Charter, by By-law, or by any other Town Meeting vote

3-3-2 Members of the Board shall possess no individual authority unless such authority shall have previously been granted by vote of the Board.

3-3-3 The Board shall cause the Charter, 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.

New: 3-3-3 The Board shall cause a contemporaneous record of all proceedings of the Board's official acts and proceeding to be preserved.

3-3-4 The Board shall develop and annually update the Town's Emergency Plan and publish appropriate emergency response guidance to its citizens. (Add more? "publicize and put on the Town's website")

New 3-3-4 Each year, The Board shall develop, promulgate, and implement, The Emergency Plan for the Town, and publish it on the Town's website on October 1,

3-4-1 The Board shall delegate the responsibility for the administration of the Town's business to the Town Manager. As such, the Board shall not administer the day-to-day affairs of the Town.

### § 4. ~~Administration~~ Code of Conduct

New 4-1-1 The Select Board shall forthwith adopt a policy which requires it and all elected and appointed board members, officials, and officers; to promulgate and enact a Code of Conduct, which charges all members to maintain the highest ethical standards and fair dealing with regard to the public, other agencies and by and between themselves. The Code shall be adopted on or before October 1 of each year. It shall be published on the Town's website. Violations of the Code, as to penalties and proceedings may be provided by Town By-Laws.

### § 5. Powers in Intergovernmental Relations

3-5-1 The Board shall be responsible for the development and implementation of intermunicipal and regional cooperation with one or more other towns, civil divisions, subdivisions, or agencies of the Commonwealth or the United States government.

3-5-2 In developing any intermunicipal agreement, the Board shall may delegate the negotiation to the Town Manager, who shall carefully weigh all factors, including the cost of establishing, implementing and maintaining the agreement, the cost of liability insurance as well as the potential advantages of the proposed agreement. Any agreement shall clearly delineate the responsibilities of the several parties to such agreements. Any limitations to

a proposed agreement shall be governed by Board policy. (Voted by CRC 12/20/21)

New: 3-5-2 In Developing an Intergovernmental agreement, the Board shall meet and consult with the Finance Committee relative to the terms and conditions of the agreement. The Town Counsel shall approve the agreement prior to final execution.

~~3-5-3 Any contract or formal agreement establishing such cooperation which requires an appropriation of Town funds in excess of \$500,000 or entails a commitment by the Town in excess of five years, shall require the approval of Town Meeting. [Amended 5-11-2015 ATM, Art. 47, effective 5-18-2016]~~

3-5-4 **New 3-5-3** The Town Manager shall normally represent the Town on regional and/or intermunicipal committees. When deemed necessary, the Town Manager shall designate, in writing, a Town employee or other person to represent the Town.

3-5-4 Members of the Board shall normally represent the Town on regional and/or intermunicipal committees. When deemed necessary, the Board shall designate a Town employee or other person to represent the Town.

New: 3-5-4 A Board Member or a designee may represent the Town on a regional and/or intergovernmental committee.

## § 6. Powers of Coordination

3-6-1 The Board shall maintain liaison with all multi-member bodies.

3-6-2 The Board shall mediate disputes among Town multi-member bodies.

New: 3-6-2 The Board shall mediate and/or arbitrate disputes by and between Town's multi-member bodies. The Board's determination shall be binding and final on all issues in dispute.

## § 7. Powers of Investigation Powers to Investigate

3-7-1 The Board may investigate and may authorize the Town Manager to investigate the affairs of the Town and the conduct of any Town department, office, or agency, including any claims against the Town, and for this purpose the Board may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. The report of such investigation shall be filed with the Town Clerk, and a summary report thereof shall be printed in the next Town report.

New: 3-7-1 The Board may authorize the Town Manager ... to conduct an investigation of any department, official, employee, officer or agent of the Town. The Town Counsel is authorized to enforce a subpoena issued by the Board in the Courts of this Commonwealth.

## § 8. Specific Powers, Administrative Administration, Duties, and Responsibilities

3-8-1 The Board shall act as the licensing authority of the Town and shall have the power and responsibility required to issue licenses, to make all necessary rules and regulations regarding the issuance of such licenses, and to attach conditions and impose such restrictions as it considers to be in the public interest, and further to enforce, or cause to be enforced, the laws, rules, and regulations relating to all

businesses for which it issues licenses. **The Board may delegate to the Town Manager the power to issue licenses that they have designated to be of a short-term nature.**

New: 3-8-1 The Board, upon the Vote of four Members may authorize The Town Manager to issue licenses.

3-8-2 The Board shall be recognized as head of the Town government for all ceremonial purposes.

3-8-3 The Board shall act as Park Commissioners pursuant to the provisions of General Laws Chapter 45, Section 2, and shall have and exercise all the authority, powers and duties of Park Commissioners conferred by the General Laws of the Commonwealth, the Charter, or the By-Laws of the Town of Orleans.

New: 3-8-3 The Board may appoint a Board of Park Commissioners, by Town By-Law to exercise the powers provided by M.G.L., C. 45, Sec. 2.

3-8-4 The Board shall review, based on Board policy, the General Bylaws of the Town and propose any revisions to Town Meeting.

**3-8-5** The Select Board shall have the full role of and all powers and authorities of a Board of Selectmen under any general or special laws, and its members and officers shall have the full role of and all of the powers and authority of the members and officers of a Board of Selectmen under any general or special laws. **[Amended 5/13/2019 ATM, Art. 59, approved 6-23-2020 Annual Town Election, Question 5.]**

## **§ 9. Powers of Appointment**

**3-9-1** The Board shall have the power to appoint (a) a Town Manager as provided in Chapter 4; (b) a Town Counsel; (c) a Town Accountant/Director of Municipal Finance, (c) a Police Chief; (d) a Fire Chief; (e) three members of a Board of Registrars of Voters for overlapping three - year terms; (f) Election Officers; (g) five members and three associate members of a Zoning Board of Appeals for overlapping three-year terms; (h) ~~three~~ **five** members and two associate members of a Board of Water and Sewer Commissioners for overlapping terms (j) three members of a Community Preservation Committee.

3-9-2 The Board shall also appoint the following multi-member bodies, as provided in Chapter Six: (a) a Board of Assessors; (b) a Planning Board; (c) a Conservation Commission; (d) a Council on Aging; (e) a Historical Commission; ~~and~~ (f) a Cultural Council; **and (g) a Charter Review Committee?**

3-9-3 The multi-member bodies enumerated in clause 3-9-2 shall be responsible to the Board through the Town Manager and shall be responsive to requests emanating from the Town Manager's office.

## **§ 10. Other Town Multi-Member Bodies**

3-10-1 The Board shall also have the power to appoint such other multi-member bodies ~~as may be in existence on the effective date of this Charter~~ and for whom no other method of appointment is herein provided. The Board shall also appoint such other multi-member bodies as may be hereafter established by General Law, Charter, By-law, vote of the Town Meeting, or vote of the Select Board.

## § 11. Town Counsel

3-11-1 The Town Counsel shall be requested to schedule some regular working hours at the Town offices.

3-11-1 New: Town Counsel shall have a Juris Doctor Degree and be admitted to practice and be in good standing before the Bar of this Commonwealth. Town Counsel shall have no less than 6 years of continuous practice in the areas of municipal law, zoning law, land use regulation, contract and tort law, insurance law, environmental and conservation law, administrative law, and trial practice and experience.

3-11-2 Access to the Town Counsel shall be scheduled through the office of the Town Manager.

3-11-2 New: Request to access the Town Counsel by board members, Town officers and officials shall be in writing for professional services and shall be scheduled by the Town Manager, in a timely and responsive manner.

3-11-3 The opinions of the Town Counsel shall be delivered in writing, and a permanent public file of such opinions shall be established under the care of the Town Clerk, which shall be made available for inspection to those requesting it.

3-11-3 New: Unless privileged by law, the advice and opinions of the Town Counsel shall be in writing and shall be filed with the Town Clerk, within 3 business days of issuance. The written advice and opinions shall be deemed a Public Record.

## ~~§ 12. Prohibitions (Delete Section)~~

~~3-12-1 Except for the purpose of investigation authorized by this Charter, the Board or its members shall deal with Town officers and employees who are subject to the direction and supervision of the Town Manager solely through the Town Manager and neither the Board nor its members shall give orders to any such officer or employee, either publicly or privately. (DELETE)~~

~~3-12-1 Members of the Board shall be ineligible to serve on appointive Town multi-member bodies established by this Charter or By law to which the Board is the appointive authority. (See new 3-1-5)~~

## CHAPTER 4

### The Town Manager

Insertions in red (Fuller); blue (Berson); ATM 2022 Articles

## § 1. Appointment

4-1-1 The Select Board, by an affirmative vote of at least four members, shall appoint a Town **Manager**.

4-1-2 The Select Board in its search for a Town **Manager**, shall advertise in the International City Management Association (I.C.M.A.) Newsletter or similar professional publication and in at least two newspapers having state-wide or regional circulation.

4-1-3 No person who has held elective Town office during the preceding twelve months within the Town of Orleans shall be eligible for the position of Town **Manager**.

## **§ 2. Qualifications**

4-2-1 The Town **Manager** shall be appointed on the basis of educational, executive and administrative qualifications and experience. The educational qualifications shall consist of at least a bachelor's degree, preferably in public administration, granted by an accredited degree - granting college or university. The professional experience shall include at least five years of prior full time compensated executive service in public or business administration. Alternatively, at least ~~two~~ **three** years of prior full-time compensated executive service in public or business administration, and a master's degree in an appropriate discipline shall qualify an applicant. **(Voted by CRC 1/3/22 6-1-0)**

## **§ 3. Duties**

4-3-1 The Town **Manager** shall be the chief **administrative Executive** Officer of the Town and shall be responsible for administering and coordinating all employees, activities and departments placed by General Law, or Charter or By-law under the control of the Select Board or the Town **Manager**. The Town **Manager** shall implement the goals and carry out the policies of the Select Board.

4-3-2 The Town **Manager** shall devote full time to the Town **Manager's** office; the Town **Manager** shall not become a candidate for, or hold, any elective office during the Town **Manager's** term of appointment; and the Town **Manager** shall engage in no business activity during the Town **Manager's** term, except with the written consent of the Select Board. The Town **Manager** shall:

- (a) Attend all meetings of the Select Board, except when excused, and shall have the right to speak but not to vote.
- (b) Assemble, prepare and present to the Select Board all annual operating and capital budgets of the Town and be responsible for the development and annual revision of the Capital Improvements Plan.
- (c) Administer during the fiscal year the annual operating budget and capital outlay appropriations as voted by the Town to assure all such funds are expended or committed in accordance with General Laws, Charter, bylaws, and the Town Meeting votes relating thereto. **(Sentence about moving budget items removed with Charter update - gml.)****

- (d) Inform the Select Board on all departmental operations, fiscal affairs, general problems, and administrative actions, and to this end shall submit periodic written reports to the Board, no less frequently than annually.
- (e) Inform the Board on a continuous basis regarding the availability of state and federal funds and how such funds might possibly relate to short-range and long-range needs and goals and solicit and prepare applications for such grants.
- (f) Be responsible for the day-to-day administration of the Town's personnel system.
- (g) Act as chief procurement officer for the Town, excepting the School Department.
- (h) Be responsible for overseeing the enforcement of zoning, acting through the Building Inspector or a zoning enforcement agent.
- (i) Develop, keep, and annually update a full and complete inventory of all real and personal property of the Town, except school property.
- (j) Possess the right to attend and speak at any regular meeting of any Town multi-member body.
- (k) Negotiate collecting bargaining contracts on behalf of the Select Board, unless the Board shall have designated another negotiator.
- (l) Perform such other duties as assigned by Charter, By-law, or vote of the Select Board.

#### **§ 4. Responsibilities for Appointments**

4-4-1 ~~Subject to the approval of the Select Board,~~ The Town **Manager** shall appoint and, on the basis of merit and fitness alone, and except as otherwise is provided by general law, Charter, or personnel By-laws, may suspend or remove: a Town Clerk ~~who need not be a Town resident~~; a Town Accountant; a Town Collector-Treasurer; a full-time professional Assessor who shall not be a member of the Board of Assessors; a **Director of Planning and Community Development**; a Conservation Agent who shall not be a member of the Conservation Commission; and a Director of Public Works and Natural Resources, all of whom need not be residents. The Town **Manager** may also appoint other positions, subject to the availability of funds. **[Amended 5-11-2015 ATM, Art. 53, effective 5-18-2016]**

4-4-2 The Town **Manager** shall also appoint, on the basis of merit and fitness alone, and, except as may otherwise be provided by General Law, Charter, personnel By-law, or collective bargaining agreements, may suspend or remove: (a) Town employees, including secretarial and clerical personnel; (b) other part-time secretarial and clerical employees, in consultation with the elected Town officials to whom said employees report; (c) all employees of appointed Town multi-member bodies; (d) one or more inspectors; and (e) all other full-time, part-time or seasonal employees, except those of the Police and Fire Departments and the School Department. All such appointments and removals may be reversed by an affirmative vote of at least four members of the Select Board taken within 14 days.

New 4-4-3 Department of Municipal Finance. There shall be a Department of Municipal Finance under the direct control and supervision of the Town Manager. The Town Manager would appoint a Director of Municipal Finance who would be the Chief Financial Officer of the Town and be responsible for the supervision and coordination of the Town Accountant, Town Treasurer and Town Assessor.

## § 5. Responsibilities in Personnel Administration

4-5-1 Under general policy guidelines of the Select Board, the Town Manager shall administer and enforce collective bargaining contracts, personnel rules, regulations, and By-laws adopted by the Town.

## § 6. Responsibilities for Administrative Reorganization

4-6-1 With the approval of the Select Board, the Town Manager may establish, reorganize, consolidate or abolish any department or position placed by this Charter under his or her direction and supervision, except as otherwise provided by General Law or this Charter.

4-6-2 The creation of any new full-time compensated position shall require approval by the affirmative vote of four members of the Select Board, and such action shall not be effective until the position has been funded by Town Meeting vote provided, however, that the reclassification of an existing full-time compensated position by the Town Manager shall not be deemed the creation of a new full-time compensated position.

## § 7. Responsibilities for Disbursements

4-7-1 Warrants or vouchers for the payment of Town funds, prepared and signed by the Town Accountant/Director of Municipal Finance in accordance with General Law procedures, shall be submitted to the Town Manager, and his or her approval thereof shall be sufficient authorization for payment by the Treasurer, provided, however, that at least three members of the Select Board shall approve all Warrants in the Town Manager's absence or in the event of a vacancy in his or her office. [Amended 5-11-2015 ATM, Art. 53, effective 5-18-2016]

## § 8. Evaluation

4-8-1 The Select Board shall annually evaluate the performance of the Town Manager. The Board shall adopt a written set of procedures and criteria which shall form the basis for the evaluation.

4-8-2 A copy of the evaluation shall be provided to the Town Manager.

## § 9. Removal

4-9-1 The Select Board, by the affirmative vote of at least three members, may initiate the removal of a Town Manager by adopting a resolution to that effect. Said resolution shall state the reasons therefor, provided that no such resolution shall be adopted within sixty days following any Town election that has changed the makeup of the Board. Any



such resolution shall be adopted only at a regular scheduled public meeting and in open session.

4-9-2 The adoption of said resolution shall serve to suspend the Town **Manager** for not more than forty-five days, during which the salary shall continue to be paid. A copy of such resolution shall be delivered forthwith to the Town **Manager** in hand, or sent by registered mail, return receipt requested, to his or her place of residence.

4-9-3 Within five days following receipt of such resolution, the Town **Manager** may file a written request for a public hearing. Upon such request, the Board shall schedule a hearing within two weeks, and it shall be held in a public place. At least seven days prior to the public hearing, the Board shall advertise the hearing in a newspaper of local circulation and shall cause identical notices stating the purpose, location, time, and date to be posted in the Town hall and in every post office in the Town.

4-9-4 The Moderator shall preside at any such hearing, ~~or designate a professional neutral hearing officer to conduct and preside at such a public hearing in the Moderator's place. The rules of evidence shall not apply to the removal hearing process and/or proceedings.~~ (Preliminary vote 1/3/22. 7-0-0) **(Check 5-3-1 (d) - PF 1/3/22)**

4-9-5 At any such hearing, the reasons for the removal shall first be read aloud. The Town **Manager** shall then have the right to respond, personally or through counsel. The Select Board and the Town **Manager** shall have the power to compel testimony and to subpoena any Town records.

4-9-6 Final removal of any Town **Manager** shall be effected by the affirmative vote of at least ~~three~~ **four** members of the Select Board at a public meeting of the Board, the time and place of which are announced, held within seven days of such hearing, if any. If no hearing has been requested, final removal may be effected by an affirmative vote of at least ~~three~~ **four** members, at a meeting of the Board held not earlier than fourteen days after the resolution is adopted initiating the removal. The salary of the Town **Manager** shall be paid for a period of sixty days after the vote effecting removal from office or in accordance with the termination clause in his or her contract.

4-9-7 The Town **Manager** shall provide the Select Board with at least ninety days' notice of his or her resignation, provided, however, that the Board may shorten or waive such requirement.

4-9-8 New: In the event the Town **Manager** contests and or litigates the removal process, proceedings and/or determinations and **an?** all costs, fees, damages, and expenses incurred by the Town **Manager**, direct or indirectly, in relation to the removal shall be the sole responsibility of the Town **Manager**.

## **§ 10. Filling Vacancy**

4-10-1 When a vacancy arises in the office of the Town **Manager** the Select Board shall advertise the vacancy as soon as possible. The Board shall fill the vacancy as soon as possible but, in any case, within ~~six~~ **four** months.

## **§ 11. Absence of the Town Manager**

4-11-1 For absence of the Town Manager for up to fourteen calendar days, the Select Board shall annually designate a Town employee to temporarily assume the duties of Town Manager.

4-11-2 The Select Board shall designate, effective within 14 calendar days of any vacancy, a Town employee or other person to exercise the powers and perform the duties of the Town Manager during a vacancy caused by the temporary absence, suspension, removal, resignation or death of the Town Manager. This designation shall be for a period not to exceed ninety days, and it may be renewed, in the case of suspension, removal, resignation, or death only once for an additional period not to exceed ninety days.