

THE TOWN OF MOUNT AIRY, MARYLAND

**CHARTER AMENDMENT
RESOLUTION NO. 2021-3**

A RESOLUTION TO AMEND ARTICLE IV ENTITLED “MAYOR”, SECTION C4-4 ENTITLED “POWERS”; AND TO AMEND ARTICLE VII ENTITLED “TOWN OFFICERS AND EMPLOYEES”, SECTION C7-1 ENTITLED “COUNCIL SECRETARY AND TOWN CLERK”, SECTION C7-2 ENTITLED “TOWN ATTORNEY”, SECTION C7-3 ENTITLED “EMPLOYMENT OF OFFICERS AND OTHER PERSONNEL”, SECTION 7-4 ENTITLED “EMPLOYEE BENEFIT PROGRAMS, AND THE CREATION AND ENACTMENT OF NEW SECTION C7-5 ENTITLED “EMPLOYEE BENEFIT PROGRAMS”, OF THE CHARTER OF THE TOWN OF MOUNT AIRY FOR THE PURPOSE OF MEMORIALIZING IN THE CHARTER THE POSITION OF TOWN ADMINISTRATOR AND DEFINING HIS/HER DUTIES AND TRANSFERRING CERTAIN DUTIES WITH RESPECT TO HIRING AND TERMINATION OF TOWN ADMINISTRATIVE OFFICERS AND EMPLOYEES FROM THE POSITION OF MAYOR TO THE TOWN ADMINISTRATOR

WHEREAS, pursuant to Article XI-E of the Constitution of Maryland Article of the Md. Code Ann. as currently in effect and Md. Code Ann., Local Gov’t. Article §4-301 *et seq.* as currently in effect, and the Town Charter, Section C12-7, the Town Council of Mount Airy, the legislative body of the Town, has the authority to amend the Charter of the Town, in accordance with the procedures set forth therein; and

WHEREAS, the Town Charter makes to explicit reference to the position of Town Administrator, nor does it set forth his/her duties; and

WHEREAS, in connection with finances, budgeting and purchasing, Charter Amendment No. 2021-2 has been proposed that in relevant part proposes to transfer certain duties from the position of Mayor to the Town Administrator; and

WHEREAS, the purpose of this proposed Charter Amendment is to explicitly create the position of Town Administrator, define what his/her duties shall be and to transfer certain duties with respect to hiring and termination of Town administrative officers and employees from the position of Mayor to the Town Administrator; and

WHEREAS, a public hearing was held on this proposed Charter Amendment on November 1, 2021 as required by Md. Code Ann., Local Gov’t. Article §4-304(a)(2) before this Charter Amendment Resolution was considered for adoption; and

WHEREAS, the Town Council having determined that the proposed changes are in the best interests of the Town and its citizens, hereby enacts those changes to the Town Charter; and

WHEREAS, a complete and exact copy of this Charter Amendment Resolution shall be posted in the Town Hall building or other public place for forty (40) days following its adoption by the Council and a fair summary of the Charter amendment shall be published in a newspaper of general circulation in the Town at least four (4) times, at weekly intervals, within the forty (40) days following adoption of this Charter Amendment Resolution; and

WHEREAS, promptly after this Charter Amendment Resolution becomes effective, either as herein provided or following referendum, the Mayor of the Town shall send or cause to be sent to the Maryland Department of Legislative Services in accordance with Md. Code Ann., Local Gov't. Article §§4-308 and 4-109, the following information concerning this Charter Amendment Resolution: (i) the complete text of the Charter amendment; (ii) the date of referendum election, if any, held with respect thereto; (iii) the number of votes cast for and against this Charter Amendment Resolution by the Council or in a referendum; and (iv) the effective date of the Charter amendment.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE TOWN OF MOUNT AIRY:

Section 1. That Article IV of the Town Charter entitled "Mayor", Section C4-4 entitled "Powers" be and is hereby repealed and reenacted with amendments as follows:

§C4-4. Powers.

* * *

B. [Appointments] Nominations.

(1) ~~The Mayor shall appoint all the officers and hire full-time managerial employees, and those promoted by appointment, hiring or reorganization to managerial positions, except the Council Secretary and the Town Clerk of the government of the Town of Mount Airy as established by this Charter or by ordinance of the Council, with the advice and consent of the Council. Budgeted interns, part-time employees, seasonal hire employees, and full-time nonmanagerial employees may be hired directly by the Mayor following advertisement and interview conducted by the Town Administrator and Department Head without the advice and consent of the Town Council. For the purposes of this section, a "managerial employee" shall mean an employee whose primary duties include direct oversight of, and assignment of work to, two or more other employees, the authority to interview and recommend to the Mayor the hiring and firing of those employees, as well as the authority to evaluate and discipline those employees. Those positions that are managerial in nature shall include, but not be limited to, the Town Administrator, Town Clerk, Council Secretary, the Zoning Administrator, the Town Planner, and the Town Engineer, and the Chief of Police, but shall not include police officers of the Town Police Department under the Chief of Police's command irrespective of rank. All officers and employees so appointed shall serve at the pleasure of the Mayor, except as set forth in Subsection (2) below. The Mayor shall make said appointments annually on or before the first Monday in~~

~~June and may make additional appointments and fill vacancies at such other times as may be necessary in his judgment. The Mayor may appoint from among the registered voters such advisory committees or boards as he may deem appropriate. The Mayor shall nominate the Town Administrator, Chief of Police, and from among the registered voters persons for advisory commissions, committees, boards, task forces as they may deem appropriate and approved by the Council. The employment of the Town Administrator shall be governed by a contract that is approved by the Town Council, which shall include a term that the Mayor shall have the right to recommend termination of the Town Administrator pursuant to Subsection (2) below.~~

(2) ~~All officers and employees that serve at the pleasure of the Mayor may have their employment terminated by the Mayor at any time without cause. That termination shall only be effective until the next meeting of the Council, at which time the Council if it so chooses may override the termination by the votes of supermajority of the members of the Council eligible to vote on the matter. Termination of nominated employees.~~

(a) ~~All employees that are nominated by the Mayor may be recommended for termination by the Mayor at any time for just cause to the Town Council. That termination shall only become effective if the Council so chooses to agree with the recommendation of the Mayor by the votes of a supermajority of all the members of the Council eligible to vote on the matter. For the purposes of this subsection, "supermajority" shall mean:~~

* * *

~~Section 2. That Article VII of the Town Charter entitled "Town Officers and Employees", Section C7-1 entitled "Town Officers and Employee", Section C7-2 entitled "Town Attorney", Section C7-3 entitled "Employment of officers and other personnel", Section C7-4 entitled "Employee benefit programs" be and are hereby repealed and reenacted with amendments, and new Section C7-5 entitled "Employee benefits programs" be and is hereby created and enacted, as follows:~~

Article VII Town Officers and Employees

§C7-1. [~~Council Secretary and Town Clerk~~] Employment of officers and other personnel.

~~The Council may appoint a Council Secretary and a Town Clerk. A Council Secretary may be a member of the Council. A Town Clerk may not be a member of the Council. The Council Secretary and Town Clerk shall serve at the pleasure of the Council. The compensation of the Council Secretary and the Town Clerk shall be determined by the Council. The Council Secretary or the Town Clerk shall attend all meetings of the Council and keep a full and accurate account of the proceedings of the Council and keep such other records and perform such other duties as may be required by this Charter or the Council.~~

The Town Administrator shall nominate all the officers and full-time managerial employees, and those, hired into or reorganized into, promoted or placed into managerial positions, except the

Council Secretary and the Town Clerk of the government of the Town of Mount Airy as established by this Charter or by ordinance of the Council, with the advice and consent of the Council. Budgeted interns, part-time employees, seasonal hire employees, and full-time non-managerial employees may be hired directly by the Town Administrator following advertisement and interview conducted by the Town Administrator and Department Head without the advice and consent of the Town Council. For the purposes of this section, a "managerial employee" shall mean an employee whose primary duties include direct oversight of, and assignment of work to, two or more other employees, the authority to interview and recommend to the Town Administrator the hiring and firing of those employees, as well as the authority to evaluate and discipline those employees. Those positions that are managerial in nature shall include, but not be limited to, the Town Administrator, Town Clerk, Council Secretary, the Zoning Administrator, the Town Planner, and the Town Engineer, and the Chief of Police, but shall not include police officers of the Town Police Department under the Chief of Police's command irrespective of rank. All officers and employees so appointed shall serve at the pleasure of the Town Administrator. The Town Administrator shall make said nominations annually on or before the first Monday in June and may make additional nominations and fill vacancies at such other times as may be necessary in his judgment. The council shall take the nomination up for a ye or nay vote within 90 days of the nomination. No town employee shall be placed or prompted into a vacant position requiring nomination for more than 180 days without being nominated to the Council for a vote.

§C7-2. [~~Town Attorney~~] Council Secretary and Town Clerk.

~~The Mayor, with the advice and consent of the Council, may appoint a Town Attorney. The Town Attorney shall be a member of the bar of Carroll County or Frederick County. The Town Attorney shall be the legal adviser of the Town of Mount Airy and shall perform such duties in this connection as may be required by the Council or the Mayor. His compensation shall be determined by the Council. The Town of Mount Airy shall have the power to employ such legal consultants as may be necessary from time to time.~~

The Council shall appoint a Council Secretary and a Town Clerk. A Council Secretary may be a member of the Council. A Town Clerk may not be a member of the Council. The Council Secretary and Town Clerk shall serve at the pleasure of the Council. The compensation of the Council Secretary and the Town Clerk shall be determined by the Council. The Council Secretary or the Town Clerk shall attend all meetings of the Council and keep a full and accurate account of the proceedings of the Council and keep such other records and perform such other duties as may be required by this Charter or the Council.

§C7-3. [~~Employment of officers and other personnel~~] Town Attorney.

~~The Mayor with the advice and consent of the Council shall have the power to appoint such officers and full time managerial employees, as defined in § C4-4B(1) above, as may be necessary to execute the powers and duties provided by this Charter and to operate the Town government. All such officers and employees shall serve at the pleasure of the Mayor, except as set forth in § C4-4B(2). Budgeted interns, part-time staffers, seasonal hire employees and full-~~

~~time nonmanagerial employees may be hired directly by the Mayor following advertisement and interviews conducted by the Town Administrator and Department Head without the advice and consent of the Town Council. Compensation of all appointed officers and employees of the Town shall be determined by the Council. All officers and employees of the Town government shall be appointed only on a basis of merit and fitness.~~

The Council shall appoint a Town Attorney. The Town Attorney shall be a member of the bar of Carroll County or Frederick County. The Town Attorney shall be the legal adviser of the Town of Mount Airy and shall perform such duties in this connection as may be required by the Council or the Mayor. His compensation shall be determined by the Council. The Town of Mount Airy shall have the power to employ such legal consultants as may be necessary from time to time.

§C7-4. [~~Employee benefit programs~~] Town Administrator.

~~The Council by ordinance may provide for or participate in retirement plans or systems and hospitalization or other forms of benefit or welfare programs for its officers and employees and may expend public moneys of the Town for such programs.~~

- A. The Mayor shall recommend and the council shall, by a majority vote of its total membership, appoint a Town Administrator and fix the compensation and conditions of employment in accordance with a signed agreement between the Town and Town Administrator, except that notwithstanding any provisions of the written agreement to the contrary, the Town Administrator may be removed before the expiration of the term of employment by the Mayor and Council as provided by Subsection (b) of this section. The Town Administrator shall be appointed solely on the basis of executive and administrative qualifications. The Town Administrator shall not participate in Town election campaigns or run for any elective Town office while serving as Town Administrator.
- B. The Council may adopt a resolution to propose removal of the Town Administrator by a supermajority vote of its total membership and may suspend the Town Administrator with pay. The resolution shall set forth the reasons of such suspension and proposed removal. A copy of such resolution shall be served immediately upon the Town Administrator. The Town Administrator shall have fifteen (15) days in which to reply to the resolution in writing, and upon request shall be afforded a public hearing, which shall occur not earlier than ten (10) days nor later than fifteen (15) days after such hearing is requested. The hearing may be closed in accordance with the State Open Meetings Act as it relates to personal matters. After such hearing, if requested, and after full consideration, the Council may, by supermajority vote of its total membership adopt a final resolution of removal. The Town Administrator shall continue to receive full salary until the removal becomes effective.
- C. The Town Administrator shall be the appointed Chief Administrative and Financial Officer of the Town, responsible to the Council for the administration of all Town affairs placed in the Town Administrator's charge by or under the town Charter and Code of Ordinances.

The powers and duties of the Town Administrator shall include, but not limited to:

- (1) Appoint and, when necessary for the good of the Town, suspend or remove Town employees and appointed administrative officers, except as otherwise provided by law, this charter, or any personnel rules adopted pursuant to them. Appointment and removal of Town department heads or managerial employees shall require prior notification to the Mayor and Council;
- (2) Direct and supervise the administration of all departments, offices and agencies of the Town, except as otherwise provided by law or by this Charter;
- (3) Attend all Town Council meetings. The Town Administrator shall participate in discussion and provide relevant information at the request of the Mayor and/or Council;
- (4) See that all laws, provisions of this Charter and acts of the Mayor and/or Council, subject to enforcement by the Town Administrator or by officers subject to the Administrator's direction and supervision, are faithfully executed;
- (5) In consultation with the Council and Mayor prepare the annual budget and capital program to submit to the Council.
- (6) Submit to the Council and Mayor and make available to the public a complete report on the finances and administrative activities of the Town at the end of each fiscal year.
- (7) Make such other reports as the Council and Mayor may require concerning the operation of Town departments, offices and agencies;
- (8) Keep the Council and Mayor fully advised as to the financial condition and future needs of the Town;
- (9) Make recommendations to the Council and Mayor concerning the affairs of the Town;
- (10) Provide staff support services for the Council and Mayor when requested for in writing;
- (11) Perform any other duties specified by this Charter, City ordinances, or as may be required by the Council and Mayor; and
- (12) Designate by a letter filed from time to time with the Town Council, a qualified employee of the Town to perform the duties of the Town Administrator during any temporary absence or disability. In the event the Town Administrator fails to make such designation, the Mayor may recommend a qualified full-time employee to the Town Council for temporary appointment, to perform the duties of the Town Administrator until the return or cessation of disability of the Town Administrator.

D. All department heads, town officers and managerial employees shall serve at the pleasure of the Town Administrator and may be removed for just cause with prior notification to the Council and Mayor. Any person that is removed may file an appeal as set forth in this

Charter or Town Code.

- E. There is nothing precluding the extension of the contract of the current person holding the position of Town Administrator.
- F. If the position of Town Administrator becomes vacant for whatever reason, the Mayor shall start a search for a replacement within sixty (60) days of the position becoming vacant. The positions shall be filled within 180 days from the start of the search. During this time the person designated in Subsection C(12) above shall be the acting Town Administrator. If no such person was designated than the mayor shall be the acting town administrator until the position is filled. No elected official shall be named as a permanent replacement without first resigning from office.
- G. The Town Administrator shall be responsible for the administration of the Town's affairs to the Council.

§C7-5. Employee benefit programs.

The Council by ordinance may provide for or participate in retirement plans or systems and hospitalization or other forms of benefit or welfare programs for its officers and employees and may expend public moneys of the Town for such programs. No elected official shall participate in any program except for retirement.

Section 3. That cross references in the Charter to sections of the Charter that have been renumbered in this Amendment be and are hereby amended to conform to this Amendment.

Section 4. That any provision of the Town Charter inconsistent with these amendments be and are hereby repealed.

BE IT RESOLVED BY THE AUTHORITY AFORESAID, that this Charter Amendment Resolution shall take effect on the 21st day of December, 2021, fifty (50) days after adoption of this Charter Amendment Resolution by the Council unless petitioned to referendum in accordance with Md. Code Ann., Local Gov't. Article §§4-304(d) and 4-307 within 40 days following its adoption.

Approved this 1st day of November, 2021 by a vote of _____ in favor and _____ opposed.

ATTEST:

Pamela Reed, Secretary

Jason Poirier,
President of the Town Council

ATTEST:

Pamela Reed, Secretary

Jason Poirier, Acting Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.

This 1st day of November, 2021.

Thomas V. McCarron, Town Attorney

Note: Matter underlined is new material to be added to existing law. Matter in [brackets] and ~~striketrough~~ is proposed to be deleted from existing law.