



MEETING POSTING

TOWN OF NANTUCKET

Pursuant to MGL Chapter 30A, § 18-25

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NANTUCKET TOWN CLERK
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Committee/Board/s	TOWN COUNCIL STUDY COMMITTEE
Day, Date, and Time	WEDNESDAY, July 24, 2024, at 3:00PM until 5:00PM
Location / Address	MEETING TRAILER AT 131 PLEASANT STREET (Room A) AND REMOTE PARTICIPATION VIA ZOOM 3
Signature of Chair or Authorized Person	Joe Grause

WARNING: IF THERE IS NO QUORUM OF MEMBERS PRESENT, OR IF MEETING POSTING IS NOT IN COMPLIANCE WITH THE OML STATUTE, NO MEETING MAY BE HELD!

AGENDA

Please list below the topics the chair reasonably anticipates will be discussed at the meeting

<https://us06web.zoom.us/j/82470330593?pwd=nZv7LBWl8gbXqSZmX4bRG9ZjG64Faj.1>

Meeting ID: 824 7033 0593

Passcode: 678439

- I. Call to Order
- II. Acceptance of Agenda
- III. The Town Council Study Committee Meeting is being recorded.
- IV. Review and Approval of minutes of July 10th meeting.
- V. Review of Collins Center Draft of Executive Branch Section of Proposed new Charter. POTENTIAL approval vote on this section.
- VI. Continuation of Collins Center new Town Charter Discussion - Legislative Branch
- VII. Public Comment/Questions
- VIII. Adjournment

Minutes of the July 10, 2024, Meeting of the
Nantucket Town Council Study Committee

Committee Members attending in person: Joe Grause, Chair, Jeff Carlson, Vice-chair, Beau Barber, Kelly Steffen, Curtis Barnes, Jill Vieth, Tom Dixon and Donna Martino (non-voting.)

Committee Members attending via Zoom: Rachel Mandle, Caroline Baltzer

Collins Center consultants attending: Anthony Wilson, Mel Kleckner, and Patricia Lloyd

1. Chair Joe Grause called the meeting to order at 3:00 PM. After reading the Standard hybrid/Zoom meeting script, the Committee voted to accept the agenda as distributed.
2. Chair Joe Grause shared:
 - a. the highlights of his 7/3/24 meeting with Town Manager, Libby Gibson. Ms. Gibson was supportive of the Committee's request for additional funding for the Collins Center consulting contract, and
 - b. Ms. Gibson will speak to members of the Select Board about supporting the Committee's draft Charter and Town Meeting article as a Select Board article, giving the Committee extra time to complete its work for ATM 2025.
3. Donna Martino distributed a list of currently scheduled and potential public outreach activities to the Committee
4. The Meeting Minutes for TCSC Meetings of May 22nd, May 29th and June 12th were considered and approved.
5. At this point Chair Grause turned the meeting over to the Collins Center team. Referring to materials that had been sent to the Committee in advance of the meeting, Anthony Wilson, Mel Kleckner and Patricia Lloyd led a discussion on a draft of the Executive Branch section of a proposed Town Council Town Charter. The discussion was wide-ranging and covered Sections 3.1 to 3.4 of the draft document.

In particular, the Committee discussed the following issues:

- a. In Section 3-1(a), the Committee agreed that the Town Manager's contract should have a term of three years and, similar to the current Town Charter's language, any future Town Manager should reside on Nantucket (with a six-month window to establish residency.)
- b. The current practice of delivering an annual performance review (by the Town Council) to the Town Manager would be maintained.
- c. Sections 3.2 (a, b & c) generated significant discussion. It was agreed that the Town Manager would have primary authority to hire/terminate Town employees as well as appoint members of various committees and commissions with approval by the Town Council. The Committee did not reach consensus on several details and hence tabled completing this

section until the powers and duties of the Legislative body (Town Council) are discussed.

- d. Sections 3.2 (d to t) were largely not controversial and generally aligned with the Town's current practices.
 - e. Sections 3.3 and 3.4, dealing with temporary absences and suspension or removal of a Town Manager were also non-controversial.
 - f. The Committee agreed that the Collins Center would prepare an amended draft of the Article 3, Executive Branch for review and possible approval at the next meeting. It was also agreed that the agenda for the next meeting would be to move on to the Legislative Branch (Town Council) draft of the Charter.
- 6. There was a question from a member of the public (Lucy Hehir) regarding the change from Open Town Meeting to Town Council form.
 - 7. The Meeting was adjourned by Chair Grause at 4:35pm

Respectfully Submitted,

Curtis Barnes and Joe Grause
Secretaries Pro Tem



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DRAFT MEMORANDUM

TO: Nantucket Town Council Study Committee
FROM: Project Team, Collins Center for Public Management
DATE: July 8, 2024
RE: Preliminary Draft of Executive Article

Please find attached an initial draft of the Executive section of the council manager form of government. The relevant section of the existing Nantucket charter is included after each section in bracketed red text.

The current executive sections of the charter are included in two separate but related articles; Article 3-Select Board and Article 4-Town Manager. Under the new council manager form, the executive article includes the appointed town manager, who assumes most of the executive and administrative functions of the former elected board of selectmen. The elected town council will be addressed in a separate Legislative section. In the council manager form the town council assumes the legislative function of town meeting but also serve as a policy board with key checks and balances to the town manager's authority (appointments, contracts, budgets, etc.).

We look forward to discussing the Executive section of the town council charter with you on Wednesday afternoon.

DRAFT ARTICLE 3

EXECUTIVE BRANCH

Section 3-1 Appointment and Qualifications

(a) The town council shall appoint a town manager by a majority vote of the full council. The town manager shall be a person of proven administrative ability, especially qualified by education and training with prior experience as a city or town manager, or an assistant city or town manager or the equivalent public or private sector level experience. The town council may establish such additional qualifications as deemed necessary and appropriate. [See 4.2a which establishes the limitation of term length and the requirement of residency.]

(b) The town manager shall devote full time to the duties of the office and shall not hold any other elective or appointive office, nor shall the town manager engage in any other business, unless such action is approved in advance in writing by the town council. [See similar provision in 4.2b.]

(c) The town manager need not be a resident of the town or of the Commonwealth. [See 4.2a which requires residency within 6 months of initial appointment.]

(d) The town manager shall receive compensation for services as the town council shall determine, but such compensation shall be within the limits of available appropriations. [NA]

(e) There shall be an annual review of the town manager's job performance conducted by the town council. The town council shall prepare and deliver to the town manager a written review of the town manager's performance in a manner provided by ordinance or employment agreement. This review shall include specific metrics related to goals and objectives developed collaboratively by the town manager and town council. [NA]

Section 3-2. Executive and Administrative Powers and Duties

The town manager shall be the chief executive officer of the town and be directly responsible to the town council for the administration of all town affairs placed in his or her charge by or under this charter. [See Article 4.1 a & b for a clear discussion between policy and administration.]

The town manager shall have the following powers and duties. The town manager:

- (a) shall, with the assistance of the department heads, prepare and submit to the town council all annual operating budgets and capital budgets in accordance with Article __. [See 4.2(d), #3 for similar language]
- (b) shall appoint, and may suspend or remove, subject to the provisions of the civil service law where applicable and except as otherwise authorized by the charter, all department heads, members of boards, committees, commissions, and employees. The town manager shall refer to the town council, and simultaneously file with the town clerk, the name of each person the town manager desires to appoint as a department head, member of a board, committee, or commission. Appointment of a department head made by the town manager shall become effective on the 14th day after the date on which notice of the proposed appointment was filed with the town clerk unless approved or rejected by a majority of the full town council within the 14 days. Appointment of a member of board, committee, or commission made by the town manager shall become effective on the 30th day after the date on which notice of the proposed appointment was filed with the town clerk unless approved or rejected by a majority of the full town council within the 30 days. [See 4.3(a) which grants department head appointing authority to the Town Manager subject to Select Board disapproval. Also see 4.3(b) that provides limited board and committee appointing authority to the Town Manager (subject to disapproval of the Select Board). Also see 4.5 related to departmental authority for hiring personnel.]
- (c) shall supervise and direct the administration of all departments, agencies and offices, unless otherwise provided for in this charter. [See 4.2d #1 for similar language. See 4.8 and 4.9 for scope of jurisdiction.]
- (d) shall prepare or update in conjunction with department heads, boards of the town, the town council and residents a town wide long-range strategic plan at least every 5 years. [NA]
- (e) shall fix the compensation of all town employees appointed by the town manager within the limits established by appropriation and the applicable personnel management plan. [NA]
- (f) shall attend all meetings of the town council unless excused, except meetings at which the town manager's performance is being considered, and shall have a voice but no vote in all of its deliberations. [See 4.2(d) #5 for similar language.]
- (g) shall keep full and complete records of the town manager's office and shall render as often as may be required by the town council, but not less than once in each year, a full report of all operations during the period reported on, which report shall be made available to the public. [NA]
- (h) shall keep the town council fully advised as to the needs of the town and shall recommend to the town council for adoption such measures requiring action by them as the town manager may deem necessary or expedient. [See 4.2(d) #13 for similar language.]
- (i) shall have full jurisdiction over the rental and use of all town facilities that are not under the jurisdiction of the school committee. The town manager shall be responsible for the maintenance and repair of the facilities placed under the town manager's control by this charter, by bylaw, by vote of the town council or otherwise. [See 4.2(d) #6 see related language.]
- (j) shall keep a full and complete inventory of all property of the town, both real and personal. [See 4.2 (d) #6 for related language.]
- (k) may authorize any subordinate officer or employee to exercise any power or perform any function that the town manager is authorized to exercise or perform with the exception of discharge of employees; provided, however, all acts performed under any such delegation shall be deemed to be the acts of the town manager, unless otherwise limited by this charter. [NA]
- (l) shall execute contracts, unless otherwise prescribed by bylaw. Appropriations required by such contracts shall be subject to a vote of the town council. [See related language in 4.2(d) #9]

- (m) shall be responsible for the negotiation of all contracts with town employees over wages and other terms and conditions of employment. The town manager may employ special counsel to assist in the performance of these duties. Appropriations required by such contracts shall be subject to a vote of the town council. [See 4.2(d) #9 which appears to limit the negotiation and signing of union contracts.]
- (n) shall be responsible for purchasing all supplies, materials, services and equipment, for all departments and activities of the town, and for executing procurement contracts, except for the school department, unless otherwise specifically requested by the school committee. [NA]
- (o) shall assure that all of the provisions of the General Laws, of the charter and votes of the Town Council that require enforcement or action by the town manager or employees subject to the town manager's direction and supervision are faithfully carried out. [See 4.1(a) for similar language.]
- (p) shall prepare and revise as necessary, subject to civil service requirements where applicable, a personnel management plan, which shall include recruitment procedures, job descriptions, wage and salary schedules, benefits administration, workplace safety requirements, and such other features as the town manager shall determine, for all departments established by this charter, administrative code or town bylaw, except school department employees unless requested by the school committee. After submission to the town council, such plan shall become effective unless rejected by a majority of town council members within 45 days or at the next regular town council meeting, whichever is later. The town council may vote only to approve or disapprove the plan, and no vote to amend or alter it shall be deemed in order. [NA]
- (q) may at any time inquire into the conduct of any employee or department, board, committee or commission under the town manager's control. [See 4.2(d) #7 for related language.]
- (r) shall perform such other functions as may from time to time be assigned to the office of town manager by the town council, bylaw or as stipulated in any employment agreement. [See 4.2(d) #15 for similar language.]
- (s) shall advertise all vacancies on town boards and committees on the town bulletin board, on the town's website or on other official online repository of municipal information, whether on the internet or accessed through another comparable technology, and shall actively recruit candidates for all appointments to be made by either the town manager or the town council. [NA]
- (t) may, with the approval of the town council, establish, reorganize, consolidate or dissolve any department, board, committee, commission or office, as provided in Article 5. [NA]

Section 3-3. Temporary Absence or Vacancy in the Office of Town Manager [NA]

(a)*Temporary Absence.* The town manager shall, within the first 90 days of the town manager's appointment and at any time thereafter, by letter filed with the Town Council and a copy filed with the town clerk, designate a town employee or official to exercise the powers and perform the duties of the office during a temporary absence. Upon the town manager's temporary absence, the town council may not revoke such designation until at least 30 days of the temporary absence have elapsed, whereupon it may appoint another town employee or official as temporary town manager to perform the duties of the town manager until the town manager returns. In the event of failure of the town manager to make such designation, or if the person so designated is for any reason unable to serve, the town council may designate some other town employee or official temporary town manager to perform the duties of the

town manager until the town manager returns. The powers of a temporary town manager shall be limited to matters not admitting of delay. No temporary town manager shall have authority to make any permanent appointment to, or removal from, any office or position unless approved by the town council.

(b) *Vacancy.* Any vacancy in the office of town manager shall be filled as soon as possible by the town council, but pending such appointment, the town council shall designate a qualified individual to exercise the powers and perform the duties of the town manager on an acting basis. The appointment of an acting town manager shall be for a term not to exceed 4 months; provided, however, two renewals, not to exceed an additional 4 months per renewal, may be permitted.

Section 3.4. Suspension or Removal of Town Manager [NA]

The town council, by affirmative vote of a majority of the full town council, may vote to suspend or remove the town manager from office in accordance with the following procedure:

Before suspension or removal, the town council shall adopt a preliminary resolution by the affirmative vote of a majority of the full town council, including a written statement setting forth the reasons for the suspension or removal. A copy of the resolution shall be delivered to the town manager immediately. Within 5 days after the receipt of the preliminary resolution, the town manager may file a written request for a public meeting with the town council. If such a meeting is requested, the meeting shall be held not later than 20 days from the date of request. At such meeting, the town manager shall be entitled to address the town council and make comments related to the preliminary resolution. If a public meeting has not been requested by the town manager, the town council may adopt a final resolution of suspension or removal by the affirmative vote of a majority of the full town council, which may be effective immediately. If the town manager requests a public meeting, the town council may, at the conclusion of the meeting or within 5 days of the conclusion of the meeting, adopt a final resolution of suspension or removal by an affirmative vote of a majority of the full town council.

Section 1.1

Part 1

Town Charter

[CHARTER ENABLING LEGISLATION – CHAPTER 289 OF THE ACTS OF 1996]

THE COMMONWEALTH OF MASSACHUSETTS - AN ACT PROVIDING FOR A CHARTER FOR THE TOWN OF NANTUCKET - SECTION 1. Text of Charter. The following shall be the Charter of the Town of Nantucket: *Preamble* - We, the inhabitants of the Town of Nantucket, in order to provide more perfectly for a municipal government known as the Town of Nantucket, to provide for the common welfare, and to secure for ourselves and for our community all the rights, powers, privileges, duties and obligations which may now or in the future be derived from town government, do hereby establish for ourselves and for our community this instrument as the Charter of and for the Town of Nantucket.

ARTICLE I
Powers of the Town

Section 1.1. Intention of this Charter

It is the intent of this Charter to confer on the Town of Nantucket, first incorporated in 1671, all powers possible under the Constitution of the Commonwealth as fully and completely as though they were expressly enumerated in this Charter. The Town shall remain subject to the laws of the Commonwealth, its rules and regulations and to the bylaws of the Town, except to the extent they are inconsistent with the provisions of this Charter. The Charter shall not be construed as a codification of all such laws, rules, regulations and bylaws but as effecting those particular changes by which the inhabitants of Nantucket may secure a more efficient, responsive and wise government.

Section 1.2. Liberal Construction

The powers of the Town under this Charter shall be construed liberally in favor of the Town.

ARTICLE II Legislative Functions

Section 2.1. Legislative Powers [Amended by Acts of 2019, Ch. 110, approved 11-13-2019]

The legislative powers of the Town shall remain vested in the Town Meeting open to all voters.

Notwithstanding the foregoing, certain powers of Town Meeting as to real estate acquisitions shall be vested in the select board, as specified in Section 3.3., subject to the voters' right to petition, as specified in Sections 2.1(b) and 3.3, to place before Town Meeting any real estate acquisition voted by the select board under said Section 3.3.

The following additional powers may be exercised by Town Meeting:

- (a) To exercise any power which a charter for the County of Nantucket may vest in Town Meeting; and
- (b) To veto any real estate acquisition voted by the select board pursuant to Section 3.3; provided, however, that a petition proposing such veto in the form of a Town Meeting warrant article is signed by at least ten registered voters and provided that the petition is timely filed with the Town Clerk. The Town Clerk shall then present the petition to the select board within the time permitted for inclusion of the article in the next Town Meeting warrant. The select board may proceed with the real estate acquisition unless the acquisition is vetoed by the Town Meeting.

Section 2.2. Town Moderator

The Moderator shall be elected for a term of one year and shall have all the powers and duties given to moderators under the Constitution and the laws of the Commonwealth, and such additional powers and duties as are authorized by this Charter.

Section 2.3. Alternate Town Moderator

In advance of each Town Meeting, the Town Moderator shall by written notice to the Town Clerk appoint an Alternate Town Moderator who shall, during such Town Meeting, serve as acting Moderator in the event of absence or disability of the Moderator.

Section 2.4. Clerk of the Meeting

The Town Clerk shall serve as Clerk of the Town Meeting. In advance of each Town Meeting, the Town Clerk shall by written notice to the Moderator appoint an Alternate Clerk of the Meeting who shall, during such Town Meeting, serve in the event of absence or disability of the Clerk of the Meeting. If an Alternate Clerk of the Meeting is not appointed or is unable so to serve, the Moderator shall appoint a clerk.

Section 2.5. Town Meeting Warrant [Amended by Acts of 2016, Ch. 362, approved 1-5-2017; Acts of 2019, Ch. 110, approved 11-13-2019]

- (a) The select board shall include all proposed operating expenditures in a single article or in consecutive articles in the warrant and also all proposed capital improvement expenditures in

a single article or in consecutive articles.

- (b) The select board shall publish notice of the issuance of the warrant of each town meeting in a newspaper of general circulation within the town promptly after the issuance of the warrant. After such publication, the Finance Committee shall hold a public hearing on each article and vote its recommendations. For articles that do not call for the Town to raise and appropriate, transfer or borrow sums of money, the Finance Committee may choose to make no recommendation.
- (c) The select board shall publish the warrant with the recommendations of the Finance Committee by mailing a copy of such warrant to the address or postal box of each registered voter at least fourteen days prior to the Town Meeting. **[Amended 6-5-2021 ATM by Art. 96 , approved at ATE 5-20-2022]**

Section 2.6. Rights of Nonresident Property Owners

One spokesperson for the Town's nonresident property owners shall be allowed to speak at any annual or special Town Meeting on matters before the Meeting but only at such times during a Meeting as the Moderator may allow and in accordance with the rules of order.

Section 2.7. Conduct of the Town Meeting

Except to the extent other procedures have been or are adopted by Town Meeting or by the Moderator in conformity with this Charter and the laws of the Commonwealth, Town Meeting shall follow the latest revised edition of Town Meeting Times: A Handbook of Parliamentary Law, by Johnson, Trustman and Wadsworth.

ARTICLE III

Select Board

[Amended 4-11-2007 ATM by Art. 44, approved 5-21-2007 ; Acts of 2019, Ch. 110, approved 11-13-2019]

Section 3.1. Composition, Term of Office and Quorum

The select board shall be composed of five members elected for terms of three years each, so arranged that the terms of as nearly equal number of members as possible expire each year. To qualify for office, each member shall be and remain a resident of the Town. Three of the five members shall constitute a quorum. A majority of the quorum shall be sufficient to set the Board's meeting agenda and to decide any question, except as may be otherwise provided in this Charter.

Section 3.2. Board Officers

Within 30 days following each annual Town election, the select board shall choose one of its duly elected members as Chair and another as Vice-Chair, each to serve until a successor is elected. The Vice-Chair shall, during any temporary disability or absence of the Chair, serve as Acting Chair. The Chair shall:

- (a) Execute, and cause the Town Clerk to affix Town seal to, all contracts, bonds or other instruments requiring the signature and seal of the Town and having been duly approved by the select board;
- (b) Preside over all meetings of the select board with the right to vote on all questions, absent conflict of interest, and to propose the agenda prior to each such meeting;
- (c) Report annually to the people of the Town on the work of the previous year; and
- (d) Serve as representative of the select board at ceremonial and civic occasions.

Section 3.3. Power to Acquire Real Estate for the Town

Subject to applicable administrative procedures pursuant to the laws of the Commonwealth or Town bylaw, the select board may, notwithstanding any law to the contrary, vote the following:

To acquire any real estate, including any partial interest therein, by purchase or acceptance of gift; such acquisition being without the necessity of any vote of Town Meeting, but subject to the restriction that any acquisition of real estate by eminent domain may only be effected if first authorized by vote of Town Meeting pursuant to the laws of the Commonwealth and subject also to the availability of any necessary funds appropriated for such acquisition.

The select board shall publish a public notice of such vote in a newspaper having general circulation within the Town. Any such acquisition shall be subject to veto by Town Meeting if a petition as set forth in Section 2.1(b) is filed with the Town Clerk within 30 days following the date such public notice is published.

Nothing in this Section of the Charter shall affect the acceptance of gifts pursuant to c. 44, Section 53(a) of the General Laws.

Section 3.4. Appointment Powers of the Select Board.

(a) The select board may, at a public meeting, exercise the following powers:

- (1) To appoint the Town Manager for the purposes set forth in Article IV. Such appointment shall be upon appropriate terms and conditions, including provision for annual performance reviews, in conformity with this Charter and the General Laws. By a majority vote of the full count of members then in office, the Board may remove the Town Manager;
- (2) To appoint Town Counsel, and registrars of voters and other election officials (upon the recommendation of the Town Clerk), also other Town officers and employees to the extent so permitted to them by this Charter;
- (3) To appoint and, for cause, upon written charges and after a public hearing if so requested, to remove members of the following Town boards, councils, commissions and committees:

Airport Commission, Conservation Commission, Commission on Disability, Council on Aging, Council for Human Services, Finance Committee, Parks and Recreation Commission, and Zoning Board of Appeals; and any other committee for which a Town bylaw makes the select board the appointing authority; also any advisory committee established by the select board and any committee acting for both the Town and the County.

Cause for removals shall be put forward in good faith, and not arbitrary, irrational, unreasonable or irrelevant to the duties of the office, on grounds of incapacity beyond temporary illness, chronic nonattendance or violation of the oath of office.

Nothing in this Section 3.4(a)(3) mandates the continued existence of any such board or the specific number of members appointed;

- (4) To exercise the power to disapprove of appointments made by the Town Manager pursuant to Section 3.4(b) or 4.3 of this Charter. All appointments by the Town Manager to the position of Assistant Town Manager, of department head or of any other position pursuant to this Charter, are subject to a vote of disapproval by the select board; provided, however, that such appointments shall take effect unless the select board votes disapproval within a 15-day period following the day on which notice of the proposed appointment is filed with the Board Chair;
- (5) To fill by appointment any elective position on a Town board, commission or council, vacant by reason of a member's resignation, death or incapacity beyond temporary illness, but only if the laws of the Commonwealth allow for appointments in such cases, the appointee to serve, any such laws notwithstanding, only until a successor is elected at the next annual Town election; and the successor so elected then to serve for the remainder, if any, of the member's unexpired term; and
- (6) To appoint to the Planning Board three associate members to serve in zoning matters as alternates in lieu of any elected alternate, the terms of appointment being of such length and so arranged that the term of one associate member shall expire each year. Nothing

in this Charter shall affect the election of the regular Planning Board members in accordance with the laws of the Commonwealth.

- (b) Any vacancy occurring in an appointed position in Town offices, boards, councils, commissions or committees shall be filled by the select board, the Town Manager or other appointing authority, whichever is empowered to make the initial appointment to the position vacated, for the balance of the unexpired term.

Section 3.5. Further Powers of the Select Board [Amended by Ch. 97, Acts of 2022]

The select board shall have the power:

- (a) To act in the capacity of the Board of County Commissioners;
- (b) To establish general Town priorities, goals and policies;
- (c) To establish as may be advisable or needed one or more advisory committees to conduct any inquiry or investigation or to make planning, policy or other recommendations;
- (d) To adopt rules for the conduct of business and to fix times and places for meetings, to establish all five members as a committee of the whole, and to designate any number of its members as a subcommittee;
- (e) To approve or disapprove Town contracts, contract amendments, contract terminations and contract enforcement actions proposed by the Town Manager;
- (f) To identify emergency situations and to declare emergencies;
- (g) To hear and decide upon license applications as may be provided by Town bylaws or by Special or General Laws;
- (h) To hear and decide administrative appeals from the Historic District Commission or from any other Town body as may be provided by Town bylaw or by the laws of the commonwealth; and
- (i) The select board shall have the full role of and all of the powers and authority of a board of selectmen under any general or special law 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 law.

Section 3.6. Audit Committee. [Added by Ch. 97, Acts of 2022]

- (a) **Members.** In accordance with this charter, the select board shall establish a 5 member audit committee that shall consist of the chair of the select board; the chair of the finance committee; 1 appointed member from the select board; and 2 members of the Nantucket community. The public members shall be appointed by the select board. Each member shall be a voting member and shall be appointed for 1-year terms.
- (b) **Purposes, Duties and Responsibilities of the Audit Committee.** The audit committee shall represent the select board in discharging its responsibility relating to the accounting, reporting and financial practices of the town and shall have general responsibility for

surveillance of internal controls and accounting and audit activities of the town. Specifically, the audit committee shall:

- (i) evaluate and recommend to the select board a firm of independent certified public accountants as auditors of the town;
 - (ii) review with the independent auditors their audit procedures, including the scope, fees and timing of the audit, and the results of the annual audit examination and any accompanying management letters;
 - (iii) review the written statement from the outside auditor of the town concerning any relationships between the auditor and the town or any other relationships that may adversely affect the independence of the auditor and assess the independence of the outside auditor;
 - (iv) review and discuss with the finance director and the independent auditors the town's annual audited consolidated financial statements, including an analysis of the auditors' judgment as to the quality of the town's accounting principles;
 - (v) review the adequacy of the town's internal controls;
 - (vi) review significant changes in the accounting policies of the town and accounting and financial reporting rule change that may have a significant impact on the town's financial reports;
 - (vii) review material pending legal proceedings involving the town and other contingent liabilities; and
 - (viii) review the adequacy of the audit committee charter on an annual basis.
- (c) Meetings. The audit committee shall meet as often as may be deemed necessary. The audit committee shall meet in executive session without the presence of staff with the independent auditors at least annually. The audit committee shall report to the full select board with respect to its meetings. The majority of the members of the audit committee shall constitute a quorum.

ARTICLE IV
Town Administration

Section 4.1. Roles of Select Board and Town Manager [Amended 4-11-2007 ATM by Art. 44, approved 5-21-2007 ; Acts of 2019, Ch. 110, approved 11-13-2019]

- (a) The administration of the Town shall be vested in the Town Manager who shall, with the assistance of the various Town Department heads, cause this Charter, the Town's legislative actions pursuant to Articles II and III, and applicable General Laws to be enforced.
- (b) It is the intent of this Charter to confer upon the select board such limited legislative powers and general executive policy setting and investigative powers as are provided in Article III but at the same time, by virtue of this Article IV, to confer upon the Town Manager full control over Town Administration, as defined in Section 4.4(a) of this Charter, and of the administration of Town services provided for in this Article IV. Accordingly, this Charter seeks to establish clear lines between Article III powers of the select board and Article IV administrative functions as follows:
 - (1) The select board are to deal with individual Town Administration employees only through or jointly with the Town Manager responsible for the overall administrative management of the Town's affairs as specified in this Article IV; and
 - (2) All routine contact with Town employees concerning the functions of Town Administration and its provision of services shall be from the select board through or jointly with the Town Manager.
- (c) Nothing in the foregoing nor in this Charter shall be construed to prohibit informal, non-directive conversations of Town select board members with other Town officials, nor the inquiry by the select board into any act or issue concerning Town Administration.

Section 4.2. Town Manager [Amended by Acts of 2019, Ch. 110, approved 11-13-2019]

- (a) The select board shall appoint a Town Manager for an initial term of 2 years. Any successive terms shall not exceed 3 years each. The Town Manager so appointed shall, by education, experience and ability, be qualified to perform the duties established for the position. Such person need not be a resident of the Town at the time of appointment but shall be a resident during the term of office starting not later than six months following appointment.
- (b) The Town Manager shall devote full time to the duties of the office.
- (c) The Town Manager shall be responsible to the select board for the efficient operation of Town Administration, for acting in conformity with policies established by the Board with respect to budget and other matters, and for the proper implementation of legislation adopted by the Town pursuant to Article II. The Town Manager shall have all, the powers, rights and duties delegated by the select board or as are commonly associated with the office of chief administrative officer of a local government unit.
- (d) In particular, the Town Manager:
 - (1) shall supervise, direct and be responsible for the efficient administration of all officers,

boards, councils, commissions and committees appointed by the Town Manager, and all other Town functions for which the Town Manager is given responsibility by this Charter, Town bylaw, administrative code, or other legislation; and may issue administrative orders;

- (2) shall have appointment powers as provided in Section 4.3;
- (3) shall, with the assistance of the department heads, prepare and submit to the select board, all annual operating budgets and capital budgets, and any proposal for budget amendment; shall establish the schedules and procedures to be followed by all Town departments, boards, councils, commissions and committees in connection therewith and shall direct all phases of the budgetary process throughout each fiscal year;
- (4) shall prepare the Town Meeting warrant for adoption by the select board pursuant to a schedule set by the Board, by administrative code or Town bylaw.
- (5) may be present at all meetings of the select board and may participate in all deliberations, without the right to vote;
- (6) shall, with the assistance of the Town department heads, ensure adequate inventory, care, construction and maintenance of all Town properties, owned or leased, and foster centralized purchasing including, if so requested, for the School Committee;
- (7) may require reports from and may examine the records, accounts and operations of any Town department, board, council commission or committee and shall recommend whatever actions or programs are deemed necessary or desirable for the Town, the welfare of its residents and of visitors to the Islands;
- (8) shall review, analyze and forecast trends of Town services and programs of all Town departments, boards, councils, commissions and committees and make reports and recommendations thereon to the select board;
- (9) shall negotiate and sign on behalf of the Town contracts and contract amendments for the Town and initiate contract terminations and enforcement actions, subject in each case to resolution of approval or disapproval of the select board, and including any Town employment (but not union) contracts, subject to the availability of funds;
- (10) shall have the authority, subject to resolution of approval or disapproval of the select board, to prosecute, defend and compromise, all litigation to which the Town is party. In the event that a board, council, commission or committee of the Town is a party defendant to litigation and the Town a party plaintiff, that board may vote to be represented by special counsel funded from the same appropriation as Town Counsel would otherwise be;
- (11) shall assure that all terms and conditions imposed in favor of the Town or its inhabitants in any statute, franchise or contract are faithfully kept and performed;
- (12) may order any Town Administration department head to undertake tasks for any other Town Administration department, on a temporary basis if deemed necessary for proper and efficient administration;

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- (13) shall make recommendations to the select board of actions they might take for the improvement of the Town and for the welfare of its residents and Island visitors, also for provision of adequate working space and conditions of Town Administration and other Town agencies;
- (14) shall approve warrants for payment before such warrants are submitted to the select board; and
- (15) perform any other duties as may be required by this Charter, by Town bylaw or by majority vote of a quorum of the select board.

Section 4.3. Town Manager Appointments [Amended 4-11-2007 ATM by Art. 44, approved 5-21-2007 ; Acts of 2019, Ch. 110, approved 11-13-2019]

The Town Manager:

- (a) shall appoint the heads of all Town Administration departments (other than any elected heads), subject to resolution of disapproval pursuant to Section 3.4(a)(4) by the select board;
- (b) shall appoint members of Town boards, councils, commissions and committees, but only to the extent that the power of appointment of the select board under Section 3.4 of this Charter to make such appointments is delegated by the select board to the Town Manager and then subject to resolution of disapproval pursuant to Section 3.4(a)(4) by the select board;
- (c) may, at the Manager's discretion and for cause, remove, suspend or otherwise discipline any appointee of the Manager, subject, however, to any grievance procedure as may be established by Town bylaw, rule or regulation or any applicable union contract provisions; and
- (d) may, if the select board creates the office of Assistant Town Manager, appoint and, subject to the limitations set out in Section 4.3(c) above, remove, suspend or otherwise discipline the Assistant Town Manager. Such Assistant Town Manager shall serve as acting Town Manager during the temporary absence or disability of the Town Manager.

Section 4.4. Town Administration Departments [Amended 4-10-2002 ATM by Art. 46, approved 4-1-2003 ATE]

- (a) The Town Administration shall include the Building, Finance, Fire, Health, Island Home, Marine and Coastal Resources, Police, Public Works, and Visitors Services departments; provided, however, that nothing in this Charter mandates the continued existence of any such Town Administration department or continuance of a department name or function.
- (b) The Town Administration shall not include the Airport, the Park and Recreation, the School and the Water departments.

In addition to the foregoing, the following boards, commissions and agencies shall be hereby classified as town administration departments:

- Board of Appeals
- Conservation Commission

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- Council on Aging
- Council for Human Services
- Historic District Commission
- Planning Board
- Park & Recreation Commission
- Shellfish & Harbor Advisory Board

All town employees in the employ of these boards, and commissions, and agencies as staff, assistants and the like shall, on the effective date of this amendment, come under the appointment, removal or other authority of the Town Manager in accordance with section 4.3 and 4.6 of the Charter; provided, however, that the method of appointment or election of members of such boards and commissions (which boards and commissions shall be "Department Head" within the meaning of section 4.6 of the Charter of the Town for each of their respective jurisdictions) shall not be changed by this amendment. **[Amended 4-11-2007 ATM by Art. 44, approved 5-21-2007]**

Section 4.5. Department Head Responsibilities [Amended 4-11-2007 ATM by Art. 44, approved 5-21-2007]

The heads of Town Administration departments shall be responsible to the Town Manager for the efficient operation of their respective departments and for the proper implementation of the laws and regulations of the Commonwealth and of Town bylaws applicable to their departmental functions.

Section 4.6. Department Personnel [Amended 4-11-2007 ATM by Art. 44, approved 5-21-2007]

With authorization of the Town Manager and subject to availability of budgeted funds, the heads of Town Administration departments shall appoint and hire the personnel of their respective departments. With authorization of the Town Manager, the department heads may remove, suspend or otherwise discipline such personnel, subject, however, to any grievance procedures as may be established by Town bylaw, rule or regulation or any applicable union contract provisions.

Section 4.7. Town Clerk

The Town Clerk shall be elected and shall have such duties and powers as are provided by General Law, including the power to appoint an Assistant Town Clerk.

Section 4.8. Town Boards not within Town Administration [Amended 4-11-2007 ATM by Art. 44, approved 5-21-2007]

The Town Manager shall not exercise any control over the discretionary power vested by the laws of the Commonwealth in any Town board, council, commission, or committee not within Town Administration.

Section 4.9. Staff of Boards not within Town Administration [Amended 4-11-2007 ATM by

Art. 44, approved 5-21-2007]

Each Town board, council, commission or committee not within the Town Administration shall have the power to appoint its respective staff personnel, subject to availability of budgeted funds and (except staff of the School Committee) subject to prior written notification to the Town Manager. Such staff personnel shall be responsive to the Town Manager only in matters of the Town's general administrative procedures but not as to substantive decisions entrusted to such board, council, commission or committee. With prior written notification to the Town Manager, such boards may remove, suspend or otherwise discipline their staff personnel, subject, however, to any grievance procedures as may be established by Town bylaw, rule or regulation or any applicable union contract provisions.

ARTICLE V
Elections, Dismissals and Recalls

Section 5.1. Elections

The regular elections to any Town office shall be by official ballot for the annual Town election. Except as may be provided generally for town governments by the General Laws of the Commonwealth or as provided for recalls in Section 5.4, nothing in this Charter shall grant any power to remove or dismiss any elected Town official.

Section 5.2. Actions Not to be Influenced by Select Board Members [Amended 4-11-2007 ATM by Art. 44, approved 5-21-2007 ; Acts of 2019, Ch. 110, approved 11-13-2019]

No select board member shall individually or collectively seek to influence the Town Administration to dismiss any person from or to appoint or to promote any person to any position in the Town Administration. However, the select board may, pursuant to Section 3.4(a)(4), adopt a resolution of disapproval as to appointments which the Town Manager is empowered to make in accordance with Section 3.4(b) or 4.3 of this Charter.

Section 5.3. Indemnification of Town Officials

The Town shall indemnify and hold harmless all Town officers pursuant to Chapter 258, Section 13 of the General Laws.

Section 5.4. Recall of Elected Officials

- (a) Any holder of elective Town office may be recalled by the voters of the Town. Any two-hundred registered voters may file with the Town Clerk an affidavit identifying the name of the officer sought to be recalled and stating in full the specific grounds for the recall. The affidavit shall be signed by each voter under pains and penalty of perjury and shall include the street address of each voter.
- (b) Within ten days, the Town Clerk shall certify the signatures and, if sufficient, shall deliver upon request to any of the certified voters a blank recall petition form naming such voter. Each such petition form shall carry the Clerk's signature and seal and date of the certification, shall be addressed to the select board, shall identify the officer's name and the stated grounds for recall, and shall demand election of a successor to the office. **[Amended by Acts of 2019, Ch. 110, approved 11-13-2019]**
- (c) If, within 21 days after the certification date, such recall petition forms signed by at least 20% of registered voters with Town residence address shown are returned to the Town Clerk, the Clerk shall, within 14 days, certify the signatures of registered voters, to determine sufficiency of the petition.
- (d) If sufficient the Town Clerk shall thereupon submit the petition with date of its certification to the select board which shall forthwith give written notice thereof to the officer sought to be recalled. If the officer does not resign within 7 days, the select board shall order a recall election to be held concurrently with the next annual election for Town officers not less than 75 days after such certification date. The recall election, once ordered, shall proceed, even if

the office becomes vacant, in the same manner as for an annual Town election. **[Amended by Acts of 2019, Ch. 110, approved 11-13-2019]**

- (e) The officer sought to be removed may seek renomination, may serve until expiration of the current term of office unless and until a successor is sooner elected, and may not be put twice to the recall process in the same term.
- (f) Recall election ballots shall first submit the question:

For the recall of (name of officer)

☐

Against the recall of (name of officer)

☐

and then the heading "Candidates" followed by a listing of the names of candidates nominated for the office. Only if the majority of votes counted upon the question of recall is in the affirmative shall the votes upon the candidates be effective to elect the one receiving the highest number.

ARTICLE VI General Provisions

Section 6.1. Application of Laws of the Commonwealth

The provisions of this Charter shall govern notwithstanding any General or Special Law of the Commonwealth to the contrary. Where not contrary to or inconsistent with the provisions of this Charter, the Town shall remain subject to the laws of the Commonwealth.

Section 6.2. Code of the Town of Nantucket

Unless expressly altered or superseded by the provisions of this Charter, the Code of the Town of Nantucket shall remain in force and effect notwithstanding ratification of this Charter unless and until amended, added to or repealed in accordance with this Charter and the laws of the Commonwealth.

Section 6.3. Town Clerk to have Custody of Charter

The Town Clerk shall have custody of the original of this Charter and any amendments thereto.

Section 6.4. Charter Interpretation

- (a) To the extent any specific provision of this Charter shall conflict with any provision expressed in general terms, the specific provision shall prevail. The provisions are severable, the remaining provisions being unaffected if a Charter provision is held to be invalid.
- (b) To facilitate bringing Town governmental organization and operations into conformity with this Charter, the members of the Town and County Charter Commission elected April 4, 1995 shall serve ex officio as members of a Committee on Charter Conformance, but only during the continuance of the Charter Commission and, in any event, not later than April 4, 2000. Such Committee shall serve in an advisory capacity to the select board, the Town Manager and to such boards, councils, commissions and committees as may request advice. [Amended 4-11-2007 ATM by Art. 44, approved 5-21-2007 ; Acts of 2019, Ch. 110, approved 11-13-2019]

Section 6.5. Amendment of Charter

- (a) This Charter may be replaced, revised or amended in accordance with the procedure set forth in either Chapter 43B of the General Laws of the Commonwealth or in c. 328 of the Acts of 1992.
- (b) As permitted by Article II, Sec. 4, of the Articles of Amendment of the Constitution of the Commonwealth, this Charter may also be amended as follows:

The Town Meeting may, by a two-thirds vote, propose amendments of this Charter. All proposed Charter amendments so voted shall be published and submitted for approval at the next annual Town election in the same manner as provided for the adoption or revision of a charter upon the recommendation of a charter commission. Notwithstanding the foregoing, any change in the Charter relating in any way to the composition, mode of election or

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appointment, or terms of office of the Town Meeting or the select board or a town manager shall be made only by the procedure of charter revision set forth in Section 3 of Article II of the Articles of Amendment of the Constitution of the Commonwealth. **[Amended Acts of 2019, Ch. 110, approved 11-13-2019]**

Section 6.6. Time of Taking Effect

This Charter shall take effect on July first next following ratification by the voters of the Town. All Town officers, boards, councils, commissions and committees shall continue to perform their duties until re-appointed or re-elected or until successors to their respective positions are fully appointed or elected or until their duties have been transferred and assumed by another.

Any person holding a Town office or employment under the Town shall continue to retain such office or such employment and shall continue to perform the duties of the office or of the employment until such time as provisions shall have been made in accordance with this Charter for the performance of such duties by another person or agency. No person in the permanent, full time service or employment of the Town shall forfeit pay grade or time in service by reason solely of the adoption of this Charter. All such persons, unless removed in accordance with this Charter, shall be retained in an employment capacity as similar to their former employment capacity as is feasible.

SECTION 2. Continuance of the Charter Commission.

The Town and County Charter Commission elected April 4, 1995 pursuant to Chapter 328 of the Acts of 1992 shall continue to exist until thirty days after the enactment of this Act and any act that it may recommend in furtherance of a merger of the Town and County of Nantucket, provided that it shall submit a final report of its recommendations as to such a merger by December 31, 1998 and provided further that in no event shall such Commission continue beyond April 4, 2000.

SECTION 3. Ratification by the Voters.

On the official ballot to be used by the Town of Nantucket at the next annual election for Town officers at least two months after enactment of this Act by the General Court, the question shall be placed substantially as follows:

"Shall an act passed, by the General Court in the year 1996 entitled 'An Act providing for a Charter for the Town of Nantucket' be accepted?"

A summary of the Charter to be prepared by the Town and County Charter Commission shall accompany the ballot question described herein.

If the majority of the votes cast in answer to such question is in the affirmative, this Act shall take full effect but not otherwise.

Ratified April 8, 1997

Part 2
County Charter

[ENABLING LEGISLATION - CHAPTER 290 OF THE ACTS OF 1996]

AN ACT ESTABLISHING A CHARTER FOR THE COUNTY OF NANTUCKET - 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.** We, the inhabitants of Nantucket County, in order to provide more perfectly for a regional government known as Nantucket County, to provide for the common welfare and to secure for ourselves and for our community all the rights, powers, privileges, duties and obligations which may now or hereafter be derived from county government, do hereby establish for ourselves and for our community this instrument to be known as the Charter of and for Nantucket County within the Commonwealth. **SECTION 1A. Establishment of Charter.** The Charter of and for Nantucket County shall be, and is hereby declared to be, as set forth in Section 4, provided, however, that the same is adopted by the voters of the Town as set forth in Section 3. **SECTION 2. Grant of Authority.** The intent of this Act is to confer certain powers upon Nantucket County in addition to those granted in the General Laws applicable to counties generally and, accordingly, the Charter and the powers set forth therein are granted to Nantucket County, notwithstanding the provisions of any general or special law to the contrary. **SECTION 3. Ratification by the Voters.** On the official ballot, to be used in Nantucket County at the next annual election for Town officers at least two months after such enactment, the question shall be placed substantially as follows: "Shall an act passed by the General Court in the year 1996 entitled 'An Act establishing a charter for Nantucket County' be accepted?" A summary of the Charter, which summary is to be prepared and approved by the Attorney General, shall accompany the ballot question described herein. If the majority of the votes cast in answer to said question is in the affirmative, the Charter set forth herein shall take full effect but not otherwise. **SECTION 4. Text of Charter.** The text of the Charter of and for Nantucket County is as follows:

ARTICLE I County Incorporation and Powers

Section 1.1. Incorporation

The Nantucket County shall hereby continue to be a body politic and corporate and a public instrumentality providing regional governmental services within the geographical bounds fixed by law, including the Islands of Nantucket, Tuckernuck and Muskeget. The exercise of the powers herein conferred upon the County shall be deemed the performance of an essential governmental function.

Section 1.2. General Grant of Powers

It is the intent of this Charter to confer on the County all powers permitted under the Constitution of the Commonwealth and the General Laws and special acts relating to county governments; this Charter is intended to be liberally construed so to empower the County.

Section 1.3. Enumerated Powers

Without intending to limit the generality of County powers as stated in Section 1.2 and notwithstanding the provisions of any general or special law to the contrary, the following enumerated powers are granted to the County government:

- (a) To establish, subject to such approvals by the Commonwealth as may from time to time be required by the general laws, the annual operating and capital budgets for operation and maintenance of the various County offices, departments and functions and for County purposes, including the establishment of grants to the Town of Nantucket;
- (b) Through the adoption, amendment or repeal of ordinances, or the provisions of an administrative code, to organize and regulate County internal affairs; to create, alter and abolish County agencies, offices, positions and employments, to provide for the manner of appointment and removal and the salary or other compensation to be paid for such offices, positions and employments. Nothing in this Charter shall be deemed to grant the power to effect any alteration, amendment or abolition of (i) the existence of Nantucket County as a county, (ii) the offices of the County Sheriff, Register of Probate, Clerk of the Courts or the Register of Deeds; or (iii) the composition, mode of election or term of office of the legislative body or of the County Chair or Vice-Chair.
- (c) Notwithstanding any limitation on county purposes as may be contained in Chapter 34 or Chapter 35 of the General Laws, to adopt, amend, enforce and repeal resolutions and ordinances, with fines and penalties not to exceed \$300 for a violation thereof, in furtherance of, or not inconsistent with, the bylaws, regulations and resolutions of the Town of Nantucket, in order to provide for the general health, welfare and safety of the inhabitants of, and visitors to, the Islands; provided, however, that this Charter shall not in any way infringe upon or diminish the paramount powers and duties of the Town of Nantucket under the General Laws, pursuant to which the Town of Nantucket shall retain the right, by exercise of the local police power, to provide for the general health, safety and welfare of its citizens;
- (d) To construct, acquire, operate and maintain public improvements, projects or enterprises for

any public purpose, notwithstanding any limitation upon county purposes as may be contained in c. 34 or c. 35 of the General Laws, and specifically including roads, bike paths, public works, recreation, open space, sewage collection and disposal facilities, solid waste disposal facilities, law enforcement facilities such as regional lockups and corrections and police stations, and other such purposes, and to exercise the power of eminent domain in furtherance of any such purpose, subject to such procedures as are provided for county governments by the General Laws;

- (e) To exercise powers of eminent domain, borrowing and taxation to the extent authorized for county governments by the laws of the Commonwealth;
- (f) To sue and be sued; to establish, maintain and use the corporate seal of the County; to enter contracts; to buy, sell, lease, hold, encumber, impose easements upon, and dispose of real and personal property; and to appropriate and expend funds for County purposes;
- (g) To contract with or sign agreements with other governmental entities for the provision of a joint, coordinated or cooperative service or functions; and
- (h) To apply for, to accept and to obtain federal and state grants, loans and other funds and in-kind grants, as if the County were a district, a city, a town, a region, an authority, a state or a state agency within the meaning of legislation authorizing any contract or grant consistent with the purposes of Nantucket County.

ARTICLE II Legislative Functions

Section 2.1. Repository of Legislative Functions

The legislative powers of the County shall be vested generally in the five members who are to perform the functions of County Commissioners, except those specific legislative powers later identified in this Charter as being vested in the Town Meeting of the Town of Nantucket.

Section 2.2. Composition and Compensation

The five persons who have been elected and are serving as Town of Nantucket Selectmen shall constitute ex officio the members of the Board of County Commissioners and shall perform the functions of County Commissioners; provided, however, that the five Select Board Members acting as the County Commissioners may fix by ordinance an additional compensation for the County Chair that is reasonable and commensurate with special duties of that office.

Section 2.3. Organization

Within 30 days following each annual election of the Board of Selectmen of the Town of Nantucket, the five members acting as the Board of County Commissioners shall choose one of its duly elected members as County Chair and another as County Vice-Chair to serve until a successor is elected. Neither the County Chair nor the County Vice-Chair shall concurrently serve respectively as Chair or Vice Chair of the Nantucket Board of Selectmen. The County Vice-Chair shall, during any temporary absence or temporary disability of the County Chair, serve as Acting County Chair.

Three of the five members of the Board of County Commissioners shall constitute a quorum.

The County Chair shall

- (a) execute and cause the County Clerk to affix the County seal to all contracts, bonds or other instruments requiring the signature and seal of the County and having been duly approved by the five members performing the functions of County Commissioners;
- (b) shall preside over all meetings of the five members who perform the functions of County Commissioners with the right to vote on all questions, absent conflict of interest, and shall serve as representative of the five members at ceremonial and civic occasions;
- (c) serve as an ex-officio nonvoting member of all appointed bodies in County government; and
- (d) report annually to the people of the County on the work of the previous year.

Section 2.4. Exercise of five-member Legislative Powers

The County's Article I powers may be exercised by the adoption, by vote of the five members who act as County Commissioners, of ordinances or otherwise by the adoption of resolutions.

Section 2.5. Legislative Ordinances

After public advertisement in a newspaper of general circulation within the County at least seven days in advance and after holding a public hearing, the five members who perform the functions of County Commissioners may vote to adopt legislative ordinances, having an effective date 7 days after enactment, unless prior to such effective date a petition as set forth in Section 2.8(d) is filed with the County Clerk, and having permanent force and effect until amended or repealed by the five members, or amended or repealed by Town Meeting of the Town of Nantucket as set forth in Section 2.8 for the purposes specified below notwithstanding any law to the contrary:

- (a) To establish, alter or abolish any County department, office or agency except as prohibited in Article I or V;
- (b) To provide for a fine or other penalty or establish a rule or regulation as authorized in Article I, for violation of which a fine or other penalty not to exceed \$300 is imposed;
- (c) Notwithstanding any limitation as may be contained in Chapter 34 or Chapter 35 of the General Laws, to appropriate funds for the operation and maintenance of County government and for the furtherance of County purposes and to authorize the transfer of funds between County departments and agencies; or to grant funds to the Town of Nantucket; provided however that such appropriation, transfer or grant is approved as described in Section 2.7 or Section 2.8 of Article II and provided further that the amount of the County's assessment upon the Town of Nantucket shall be fixed by a Nantucket Town Meeting pursuant to Section 2.8 of Article II; and provided, further, that Chapter 59, Section 20A of the General Laws shall not apply to County assessments applicable to the Town of Nantucket;
- (d) To grant, renew or extend a franchise, license, lease, permit or other authorization;
- (e) To regulate the rate charged for services provided to any other governmental unit or authorize a contract with such unit for services;
- (f) To implement the borrowing of money as may be authorized pursuant to Section 2.8 of Article II of this Charter;
- (g) To initiate petitions to the General Court for special legislation applicable to Nantucket County, subject to the limitation contained in Section 2.8 of this Charter;
- (h) To acquire any property, whether real or personal, including any partial interest therein, by purchase, acceptance of gift or eminent domain and to convey, lease or give by grant any such property, for any purpose permitted by this Charter and its enabling Act, Chapter 290 of the Acts of 1996, provided, however, that the procedures for such acquisition or disposition of real property shall comply with the General Laws and the Constitution of the Commonwealth; and
- (i) Amend or repeal any ordinance previously adopted.

Section 2.6. Legislative Resolutions

The five members acting as the Board of County Commissioners may act informally at a public meeting without a public hearing to exercise Article I powers by the adoption of resolutions to be

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immediately effective:

- (a) To establish an advisory council or committee on any subject and to conduct any inquiry or investigation;
- (b) To elect, appoint and remove County officers and employees, to the extent permitted by this Charter or otherwise, and to establish general County personnel policies;
- (c) To exercise the power of advice and consent to actions of the County Administrator and to approve contracts presented by the County Administrator;
- (d) To adopt rules for the conduct of business and to fix times and places for meetings; to establish all five members as a committee of the whole, and to designate any number of its members as a subcommittee.
- (e) To identify emergency situations and to declare emergencies;
- (f) To designate newspapers for required advertisements or notices; and
- (g) To take any other actions specified as resolutions.

Section 2.7. Nantucket County Review Committee

The Nantucket County Review Committee shall consist of those persons then serving as the Finance Committee of the Town of Nantucket.

It shall be the duty and responsibility of the Nantucket County Review Committee.

- (a) to review every article applicable to County matters presented to any Annual or Special Town Meeting of the Town of Nantucket in accordance with Section 2.8 of this Charter and to provide to such Town Meeting the Committee's guidance and recommendations; and
- (b) to approve every appropriation and transfer of money;

No appropriation of County funds nor transfer of money nor issuance of a grant pursuant to Article II shall be effective unless and until the same has been approved by the Nantucket County Review Committee or the denial of approval by the Nantucket County Review Committee has been overturned as provided in Section 2.8(c).

Section 2.8. Legislative Powers granted to Nantucket Town Meeting

Notwithstanding any other provision of this Charter, the following Article I legislative powers may be exercised exclusively by a Town Meeting of the Town of Nantucket

- (a) To authorize by a two-thirds vote the issuance of County bonds or other County borrowing;
- (b) To ratify or confirm by majority vote any petitions to the General Court for special legislation applicable to Nantucket County; provided, however, that such petitions may be submitted to the General Court in advance of and pending a vote of the next regularly scheduled Town Meeting, or may be submitted with the proviso that any legislation enacted as a result shall not take effect unless accepted by such Town Meeting;

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- (c) To fix by majority vote the amount of the County assessment to be imposed upon the Town of Nantucket without regard to any limit contained in Chapter 59, Section 20A of the General Laws; to vote to approve any County appropriation, transfer or grant for which approval has been denied by the Nantucket County Review Committee pursuant to section 2.7(b), provided that an appropriate article has been placed upon the warrant in accordance with the General Laws of the Commonwealth; and
- (d) To vote, by two-thirds vote, to repeal, amend, or veto any County ordinance adopted pursuant to Section 2.5; provided, however, that a petition proposing such repeal or veto at the next Annual or Special Town Meeting shall have been signed by the number of voters required by the General Laws for inclusion of an article upon the warrant and is presented to the Board of Selectmen of the Town of Nantucket within the time permitted for inclusion in the Warrant for such meeting; and provided, further, that if such petition is filed by the proponents thereof with the County Clerk prior to the effective date as described in Section 2.5, the ordinance shall not take effect, and the same shall be stayed, until after the vote of the Town Meeting.

Section 2.9. Appointment Powers

The five members performing the functions of the County Commissioners shall appoint, on such terms and conditions of employment as deemed appropriate, and shall have the power to remove, a County Administrator by a majority vote of those present and voting, and may create the office of, appoint and remove, an Assistant County Administrator by such a majority vote, such Assistant to serve as Acting County Administrator during the temporary absence or disability of the County Administrator.

All Article III appointments by the County Administrator for which County Commissioner confirmation is specified in this Charter or in an administrative code which may be adopted hereunder shall not take effect without the advice and consent of the five members who serve as County Commissioners.

ARTICLE III Executive Functions

Section 3.1. Executive Powers

The executive powers of the County shall be vested in the County Administrator who shall, with the assistance of the various County Department heads, be responsible for the enforcement of this Charter, the County's legislative actions pursuant to Article II, and any General Laws applicable thereto.

It is the intent of Article II of this Charter to confer on the five members who perform the legislative functions of County Commissioners broad general legislative and investigative powers as are germane to the exercise of their legislative powers, but at the same time, by virtue of Article III, to retain to the Executive Branch of County government full control over County administration and of the administration of County services provided for in this Charter. Accordingly, this Charter seeks to establish clear lines between Article II legislative and Article III executive functions as follows: the five members who perform the legislative functions are to deal with individual Article III County employees only through the executive officials responsible for the overall executive management of the County's affairs as specified in this Article III. All routine contact with Article III County employees, all actions and communications concerning the administration of the County's government and provisions of services shall be from the legislative branch to and through the County's executive officials.

Nothing in the foregoing nor in this Charter shall be construed to prohibit informal, non-directive conversations of County Commissioners with County officials, nor the inquiry by the legislative branch into any act or problem of County administration. Any of the five members who perform the functions of County Commissioners may require a report on any aspect of the government of the County at any time by making a request therefor to the County Administrator. The five members may, by majority vote, require the County Administrator to appear before them sitting as a committee of the whole and to bring before them such records and reports and such officials and employees of the County as the five members shall deem necessary to insure clarification of any legislative matter under study. The five may further vote to establish any number of its members as an ad hoc committee to consult with the executive branch to study any matter and to report thereon.

Section 3.2. County Administrator

Unless the five members who perform the functions of County Commissioners vote to appoint another; the County Administrator shall be the person then serving as Nantucket Town Administrator or Executive Secretary. The person so appointed shall, by education, experience and ability, be qualified to perform the duties established for the position. Such person need not be a resident of the County at the time of appointment but shall become a resident during the period of service to the County.

The County Administrator shall be responsible to the five members who perform the functions of County Commissioners, for the efficient administration of the County government and the proper implementation of legislation adopted pursuant to Article II. The County Administrator shall have all the powers, rights and duties designated by the five members performing the functions of

County Commissioners or as commonly associated with the office of chief administrative officer of a local government unit; and, in particular, in exercising the County's Article III powers, the County Administrator:

- (a) may require reports from and may examine the records, accounts and operations of any agency of County government and shall recommend whatever actions or programs are deemed necessary or desirable for the County, the welfare of its residents and of visitors to the Islands;
- (b) shall appoint the heads of all county administrative departments (other than those who are elected) with the advice and consent of the five members who perform the functions of County Commissioners, and shall appoint all members of County committees and other County administrative personnel whose appointment is not prescribed elsewhere in this Charter; and may, except as may be provided by the General Laws or any applicable civil service regulations, at the Administrator's discretion remove, suspend or otherwise discipline any such appointee subject to the provisions of Article IV of this Charter; and may, subject to any applicable provisions of the General Laws, delegate to any department head the County Administrator's powers of appointment and removal of departmental employees;
- (c) shall coordinate, with the Director of County Finance, the preparation, for submission to the five members performing the functions of County Commissioners, of a proposed annual operating budget and a capital budget, and any proposal for budget amendment; and shall establish the schedules and procedures to be followed by all County departments and agencies in connection therewith and shall coordinate, with the Director of County Finance, all phases of the budgetary process throughout each fiscal year;
- (d) may be present at all meetings of the five members who perform the functions of County Commissioners and may participate in all deliberations, without the right to vote;
- (e) shall insure through the office of the various County department heads adequate supervision, direction and control of all County administrative departments and the care and maintenance of all County properties, institutions and agencies;
- (f) shall organize the work of the County departments, subject to this Charter, the General Laws, and any administrative code adopted by the five members performing the functions of County Commissioners, and make any recommendations pertaining thereto;
- (g) shall review, analyze and forecast trends of County services and programs of all County departments and other agencies and make reports and recommendations thereon;
- (h) shall negotiate contracts for the County with the approval of the five members performing the functions of County Commissioners, including any County employment and union contracts;
- (i) shall assure that all terms and conditions imposed in favor of the County or its inhabitants in any statute, franchise or contract are faithfully kept and performed;
- (j) may order any County agency or department head to undertake tasks for any other County agency, on a temporary basis, if deemed necessary for proper and efficient administration;

Section 3.2

Section 3.4

- (k) shall make recommendations to the five members who perform the functions of County Commissioners for actions they might take for the improvement of the County and for the welfare of its residents and visitors to the Islands; and
- (l) shall perform any other duties as may be required by this Charter, by County ordinance or by majority vote of the five members performing the functions of County Commissioners.

Section 3.3. Executive: Department Heads

The following administrative positions and offices, all holders of which shall be charged with the implementation of County legislation adopted pursuant to Article II and with the enforcement of the laws of the Commonwealth, shall be included in the Executive Branch:

- (a) County Sheriff, Register of Probate, Clerk of the Courts & Register of Deeds.

Nothing in this Charter shall alter, change or affect the positions of Sheriff, Register of Probate, Clerk of the Courts or Register of Deeds, who shall continue to remain elected County officials and shall perform their duties in accordance with the general laws of the Commonwealth. Such officials shall provide such reports to the five members who perform the functions of County Commissioners or the County Administrator and shall coordinate through the County Administrator with other county departments as necessary or desirable for the County to exercise the powers and perform the duties given by this Charter.

- (b) Clerk to the Five members performing the functions of County Commissioners.

The Clerk to the five members performing the functions of County Commissioners shall be the Clerk of the Nantucket Superior Court.

- (c) Other County Officials.

Nantucket County offices which have counterpart Town offices as part of the Town of Nantucket shall be deemed to be filled ex officio by the person holding the counterpart Town office, including:

The Director of County Finance who shall be that person duly appointed and serving as Director of Municipal Finance for the Town of Nantucket.

The County Treasurer who shall be that person duly appointed and serving as the Town Treasurer of the Town of Nantucket.

The County Clerk created and established in Section 3.5 of this Charter shall be that person duly elected or appointed and serving as the Town Clerk of the Town of Nantucket. The Assistant County Clerk shall be that person duly elected or appointed and serving as the Assistant Town Clerk of the Town of Nantucket.

County Counsel shall be that person duly appointed and serving as Town Counsel for the Town of Nantucket.

Section 3.4. Executive: Department of County Finance

The Department of County Finance shall be headed by the Director of County Finance. The Director may draw upon as needed the personnel and equipment of the office of Municipal Finance of the Town of Nantucket, and shall be responsible for the management of all financial aspects of County government, including:

- (a) the preparation of financial statements and reports, including periodic reporting to appropriate agencies on the status of accounts;
- (b) the receipt of all funds due the County or to be held by the County for other agencies;
- (c) the management, investment and control of County funds;
- (d) the expenditure of all such funds;
- (e) the preparation of budgets for all County departments;
- (f) the assistance to all other County departments and officials in any matter related to financial affairs;
- (g) the supervision of all purchases of goods, materials, supplies and equipment and of contract administration, and to the extent that the Director deems necessary, maintenance of inventory controls;
- (h) supervision of all data processing facilities; and
- (i) such other matters as may be determined necessary by the five members performing the functions of County Commissioners.

Section 3.5. Executive: County Clerk

There is hereby established the position and office of County Clerk, separate and distinct from the Clerk of the Courts and Clerk to the five members performing the function of County Commissioners, with the duties set forth in this Charter. The County Clerk shall have jurisdiction over all County records and, unless otherwise provided by law not to be a public record, shall assure that the same are available to the general public to the same extent as records of the Town of Nantucket. The County Clerk shall have jurisdiction over and may impress the County seal.

Section 3.6. Executive: County Personnel Board

The Personnel Board of the County of Nantucket shall consist of those persons then serving as the Personnel Board of the Town of Nantucket in accordance with Chapter 264 of the Acts of 1979, which the General Laws of the Commonwealth; provided, however, that notwithstanding such law or any law to the contrary, the employees of the Sheriff's department shall be served by such statewide sheriffs' personnel board as may hereafter be designated by the General Court for sheriffs' employees statewide. Until such agency is designated, the five members serving the functions of County Commissioners shall act as the sheriff's personnel board for the employees of the County Sheriff's department.

ARTICLE IV
Personnel: Elections, Appointments and Dismissals

Section 4.1. Elections

The regular elections of those County officers who are elected to their positions shall be held in conjunction with Town elections except to the extent State law requires they be held in conjunction with biennial State elections. Nothing in this Charter, except as may be provided generally for county governments by the General Laws, shall grant any power to remove or dismiss any elected County official.

Section 4.2. Dismissal or Removal of Appointed Executive Branch Officials and Employees

- (a) No member who performs the function of County Commissioner shall individually or collectively seek to influence the executive branch to dismiss any person from or to appoint or to promote any person to any position in the executive branch of County government, except that the five members may, by a resolution of disapproval adopted by a majority vote of those present and voting, prevent the dismissal or suspension or other discipline of County officials and employees as set forth in Section 4.2(b).
- (b) Nantucket County, by legislative ordinance, may adopt an employee personnel grievance procedure providing for progressive discipline and a hearing on dismissals, suspensions or other discipline. Unless and until so adopted, the procedures set forth as follows shall apply:
 - (i) Suspensions, dismissals and other discipline will take effect immediately upon personal service of notice setting forth the order of suspension, dismissal or other discipline. However, if within seven days of such service the officer or employee in writing requests a public hearing on his dismissal, suspension, or discipline, the action taken shall be deemed to be a temporary suspension with pay until the individual to be suspended, disciplined or dismissed is given a public hearing before the five members who perform the functions of County Commissioners.
 - (ii) If, within thirty-five days of receiving such written request, the five members shall pass a resolution of disapproval by a majority vote of those present and voting, all proceedings, and any suspension, discipline or dismissal of the individual, shall be voided, and for purposes of pay, seniority and civil service standing, the action shall be deemed never to have transpired. If no resolution of disapproval is passed, the suspension, discipline or dismissal shall take final effect.

Section 4.3. Indemnification of County Officials

The County shall indemnify and hold harmless all County officers, elected or appointed, from personal financial loss and expense including reasonable legal fees and costs, if any, to the same extent as municipal officials of the Town of Nantucket are indemnified and held harmless by the Town of Nantucket pursuant to Chapter 258, Section 13 of the General Laws. More particularly, the County shall indemnify and hold harmless all such County officers from personal financial loss and expense including reasonable legal fees and costs, if any, in an amount not to exceed one million dollars, arising out of any claim, demand, suit or judgment by reason of any act or omission, except for an intentional violation of the civil rights of any person, if the official at the

time of such act or omission was acting within the scope of his official duties or employment.

ARTICLE V General Provisions

Section 5.1. Application of General Laws of the Commonwealth

The provisions of this Charter shall govern notwithstanding any law to the contrary; where not contrary to or inconsistent with the provisions of this Charter, Nantucket County shall remain subject to the General Laws.

Section 5.2. Fiscal Procedures

Unless otherwise required by General Law of the Commonwealth, the fiscal year of the County shall begin on July 1 of the prior calendar year and end one year later on June 30.

For each fiscal year the financial statements of the County shall be prepared and shall be annually audited by independent certified public accountants who shall be engaged for that purpose upon recommendation of the County Administrator and approved by the five members who perform the functions of County Commissioners. Such accountants may, but are not required to be, the same accountants engaged by the Town of Nantucket.

Section 5.3. Repeal of special laws pertaining to the County

Chapter 71 of the Acts of 1838 and Section 33 of Chapter 20 of the 1902 Revised Laws of Massachusetts, shall be repealed and Chapter 264 of the Acts 1979 shall be modified, to the extent inconsistent with the provisions of this Charter.

Section 5.4. Transfers of records and property

All records, property and equipment whatsoever of any agency or part thereof, the powers and duties of which are assigned in whole or in part to another county agency, shall be transferred forthwith to such agency. All public County records under the jurisdiction of the County Clerk shall, upon written request, be transferred to and thereafter maintained in the office of the County Clerk, which records shall include the original of this Charter and any amendments thereto.

Section 5.5. Specific prevails over general

To the extent any specific provision of this Charter shall conflict with any provision expressed in general terms, the specific provision shall prevail.

Section 5.6. Amendment of charter

This Charter may be revised or amended in accordance with the procedure set forth in either Chapter 34A of the General Laws or in Chapter 328 of the Acts of 1992, and may also be amended in accordance with the provisions of this Section.

The five members who perform the functions of County Commissioners may, by a two-thirds vote, provide for the submission of any proposed amendment of this Charter to the voters. Amendments proposed by the five members shall become effective if approved by a majority of the voters voting thereon at the next regular annual Town election held more than one hundred

and fifty days following the date of the vote of the five members.

Nothing in this Section or in Section 1.3(b) or in this Charter taken as a whole shall be deemed to grant the power to effect any alteration, amendment or abolition of (i) the existence of Nantucket County as a county, (ii) the offices of the County Sheriff, Register of Probate, Clerk of Courts or the County Register of Deeds, or (iii) the composition, mode of election or terms of office of the legislative body or of the County Chair or Vice-Chair.

Section 5.7. Time of taking effect

This Charter shall become effective on the first day of January or of July, whichever next follows ratification of this charter by the voters of Nantucket County. All County agencies shall continue to perform their duties until re-appointed or re-elected or until successors to their respective positions are fully appointed or elected or until their duties have been transferred and assumed by another; provisions of this Charter which differ materially from the present administrative practices affecting elected County department heads and their employees shall come into effect upon the respective end of the current term of the elected incumbent department head.

Any person holding a County office or employment under the County shall continue to retain such office or such employment and shall continue to perform the duties of the office or of the employment until such time as provisions shall have been made in accordance with this Charter for the performance of such duties by another person or agency. No person in the permanent, full time service or employment of the County shall forfeit pay grade or time in service by reason solely of the adoption of this Charter. All such persons, unless removed in accordance with this Charter, shall be retained in an employment capacity as similar to their former employment capacity as is feasible.

SECTION 5. Chapter 7 of the Acts of 1838 is hereby repealed.

SECTION 6. Chapter 20, Section 33, of the 1902 Revised Laws of Massachusetts is hereby repealed.

SECTION 7. To the extent that any provision of this Act is inconsistent with any of the provisions of Chapter 264 of the Acts of 1979, the provisions of this Act shall apply.

Ratified April 8, 1997