



# TOWN COUNCIL – AGENDA REQUEST FORM

THIS FORM WILL BECOME PART OF THE BACKGROUND INFORMATION USED BY THE COUNCIL AND PUBLIC

Please submit Agenda Request Form, **including back up information, 8 days prior** to the requested meeting date. **Public Hearing requests must be submitted 20 days prior to requested meeting date to meet publication deadlines** (exceptions may be authorized by the Town Manager, Chairman/Vice Chair).

## MEETING INFORMATION

Date Submitted: December 12, 2018  
Submitted by: Town Council Chairman Finlay  
Rothhaus  
Department:  
Speakers:

Date of Meeting: December 20, 2018  
Time Required: 20 minutes  
Background Info. Supplied: Yes:  No:

## CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Appointment:	<input type="checkbox"/>	Recognition/Resignation/Retirement:	<input type="checkbox"/>
<b>Public Hearing:</b>	<input type="checkbox"/>	Old Business:	<input type="checkbox"/>
New Business:	<input checked="" type="checkbox"/>	Consent Agenda:	<input type="checkbox"/>
Nonpublic:	<input type="checkbox"/>	Other:	<input type="checkbox"/>

## TITLE OF ITEM

Discussion and Consideration of Charter Change

## DESCRIPTION OF ITEM

The Town Council will discuss the recommended change to the Charter in reference to Capital Reserve Fund (CRF) deposits.

## REFERENCE (IF KNOWN)

RSA:	Warrant Article:	
Charter Article:	Town Meeting:	
Other:	N/A	

## EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Projector:	<input type="checkbox"/>	Grant Requirements:	<input type="checkbox"/>
Easel:	<input type="checkbox"/>	Joint Meeting:	<input type="checkbox"/>
Special Seating:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Laptop:	<input type="checkbox"/>	None:	<input type="checkbox"/>

## CONTACT INFORMATION

Name:	<b>Finlay Rothhaus</b>	Address	<b>6 Baboosic Lake Road</b>
Phone Number		Email Address	<b>frothhaus@merrimacknh.gov</b>

## APPROVAL

Town Manager:	Yes <input checked="" type="checkbox"/> No: <input type="checkbox"/>	Chair/Vice Chair:	Yes <input checked="" type="checkbox"/> No: <input type="checkbox"/>
---------------	--	-------------------	--

# Memo



TO: Town Council  
ATTN: Town Manager Eileen Cabanel  
FROM: Finance Director Paul T. Micali  
DATE: December 13, 2018

**RE: Charter Change**

As many may recall last year at the end of Budget season the Town was informed by the Department of Revenue that beginning with the 2019-20 budget Capital Reserve Deposits (CRF) had to be placed on a separate warrant article due to the change to RSA 35-5 (see below).

## Section 35:5

**35:5 Payments Into Fund.** – There may be paid into any such capital reserve fund, except as provided in RSA 35:7, such amounts as may from time to time be raised and appropriated therefor under a special warrant article, from any source other than money given to the town, district, or county for charitable purposes. Such amounts shall be within the limits as provided in RSA 35:8, and any such town, district, or county may also vote to transfer to said fund, under a special warrant article in the case of a town or district, any of its unencumbered surplus funds remaining on hand at the end of any fiscal year.

**Source.** 1943, 160:4, eff. May 5, 1943. 2000, 224:4, eff. July 31, 2000. 2017, 127:1, eff. Aug. 15, 2017.

The Town has presented the CRF Deposits within the operating budget for the last 20+ years however due to the amendment to RSA 35:5 the Town has two options going forward unless a charter change occurs.

1. Combined all CRF Deposits into one warrant article
2. or Individual CRF Deposit warrant articles.

As such the Town Council asked me to investigate the possibility of changing the Town Charter to allow for the CRF Deposits to be included in the operating budget.

I have been in touch with the Department of Revenue and the Town's Legal Counsel to review the language below.

### Article 8-4

H. "Operating Budget" as used in this Section means a statement of recommended appropriations and anticipated revenues submitted to the Annual Meeting as an attachment to, and as part of the warrant for, an annual or special meeting, exclusive of "special warrant articles", as defined in RSA 32:3, VI. [ **With the exception of RSA 32:3, VI (c) All Capital Reserve Fund deposits (RSA 35:5) will be included in the Operating budget for the town and be voted as part of the operating budget warrant article**]

Below please find a brief outline as to the steps to follow in order to be able to place this Charter Amendment on the town warrant if the council should choose to do so. I have attached a more detail outline with dates for your review as well.

1. Town Council to hold a public hearing
2. Town Council submits the request of charter change to the Town Clerk
3. Town Clerk submits charter change to the state
  - a. Attorney General
  - b. Secretary of State
  - c. Department of Revenue
4. Town Receives word from the State as to the validity of the request

## 2019-20 Town Meeting & Budget Schedule

Date	Description of Activity
<b>November 2018</b>	
November 1 7:00 PM	<b>Regular Council Meeting</b>
November 15 7:00 PM	<b>Regular Council Meeting</b>
<b>December 2018</b>	
December 6	Budget to Council
December 6 7:00 PM	<b>Regular Council Meeting</b>
December 20 7:00 PM	<b>Regular Council Meeting</b>
<b>January 2019</b>	
<b>January 2</b>	<b>Post Public hear for any Charter Amendments (7 clear Days)</b>
January 7 6:00 PM	<b>Budget Meeting</b> – Welfare, Communications, Police, Police Detail, Fire, Code Enforcement
<b>January 10</b>	<b>Town Council to hold a Public hearing on any Charter changes</b>
January 10 7:00 PM	<b>Regular Council Meeting</b>
January 14 - 6:00 PM	<b>Budget Meeting</b> – Library, Solid Waste Disposal, Highway, Equipment Maintenance, Wastewater Treatment Fund, Buildings and Grounds, Public Works Administration
January 17 - 6:00 PM	<b>Budget Meeting</b> - Assessing, Town Clerk/Tax Collector, Parks and Recreation, Summer Day Camp, Community Development, Media, General Government, Proposed Issuance of Debt, Revenues ( <i>Town Council to Discuss the Next Steps in the Budget Process</i> )
<b>January 17</b>	<b>Last day for Town Council to submit any Charter Amendments to Town Clerk in accordance with RSA 49-B:5</b>
January 24 7:00 PM	<b>Regular Council Meeting</b>
<b>January 27</b>	<b>Last day for Town Clerk to file Charter Amendments with the State per RSA 49-B:4-a</b>
January 28- 6:00 PM	Finalize recommended Operating Budget and Special Warrant Articles (if necessary) Snow Date
January 31- 6:00 PM	Finalize recommended Operating Budget and Special Warrant Articles (if necessary) Snow Date
<b>February 2019</b>	
February 1	Submit Following Public Notices to newspaper(s) of general circulation to be published on February 4 <sup>th</sup> for February 14 <sup>th</sup> Council Meeting ( <b>RSA 33:8-a, I / RSA 32:5, I / RSA 21:35</b> ) <ul style="list-style-type: none"> <li>• Budget Hearing</li> <li>• Collective Bargaining Agreement</li> <li>• Proposed Issuance of Debt</li> <li>• Petitioned Bonds</li> <li>• Other Petitioned Warrant Articles</li> </ul>
February 6	Post notice of February 14th Public Hearings at Post Office, Library, and Town Hall. ( <b>RSA 32:5, I / RSA 40:13, II-b (a)</b> )

## 2019-20 Town Meeting & Budget Schedule

Date	Description of Activity
February 6	Publish notice of 1 <sup>st</sup> & 2 <sup>nd</sup> Session of Annual Meeting in a newspaper of general circulation.
February 8	Last date to file Petitioned Bonds (over \$100,000) governed by RSA 33:8-a (RSA 40:13, II-b (b))
February 12	Last date to file petitioned Warrant Articles, Petitioned Bonds (under \$100,000) (RSA 40:13, II-b (b)) Last day to file petition warrant articles provided that if a petitioned article proposes a bond governed by RSA 33:8-a, the deadline is the preceding Friday, February 8 {RSA 39:3; and 40:13, II b(b)) and finalize and submit Collective Bargaining Agreements “cost items” [RSA 40:13, II-c(b) and RSA 273-A:1, III]
February 14 7:00 PM	<b>Regular Council Meeting</b>
February 14 <sup>th</sup> 7:00 PM	Public Hearings will be held for the following items: <ul style="list-style-type: none"> <li>• 2019-20 Proposed Operating Budget</li> <li>• Collective Bargaining Agreement(s)</li> <li>• Proposed Issuance of Debt</li> <li>• Petitioned Bonds</li> </ul> Review of Default Budget
February 15	Finalized Operating Budget and Town Warrant left at Town Council Chambers for Council signature.
February 15	Completed Form MS-636 and Default Budget left at Town Council Chambers for Council signature.
February 19	Last day to hold at least one public hearing on annual budget (RSA 32:5, I and V; 40:13, II-b(c))
February 19	Last day to hold public hearing on bond or note issue over \$100,000 – No earlier than 60 days before first session. RSA 33:8 (a), I; RSA 40:13, II-b (c)
February 28- 7:00 PM	<b>Regular Council Meeting</b>
February 23	Town Warrant/Budget booklet printed.
February 23	Town Warrant, Form MS-636, and Default Budget originals delivered to Town Clerk and emailed to DRA.
February 25	Town Warrant, Form MS-636, and Default Budget posted at place of Annual Meeting and at least one other public place (RSA 39:5 / RSA 32:5 / RSA 40:13, II-b (d))
February 25	Deadline for posting Warrant and Budget
February 21- March 2 at 5:00PM	Filing period for Candidates running for Town Offices (RSA 669:19 / RSA 652:20 / RSA 40:13, VII)
<b>March 2019</b>	
March 5	Post Agenda for Town Council’s Special Session immediately following

## 2019-20 Town Meeting & Budget Schedule

Date	Description of Activity
	Deliberative
March 6	Annual Report documents submitted to the printer.
March 6	Town Warrant, Budget Booklet must be available to the public (RSA 31:95, 41:14, 40:13, II-b (d))
March 6	School Deliberative Session
March 7	School Deliberative Session IF NEEDED (Snow Date)
March 14 – 7:00 PM	<b>Regular Council Meeting</b>
March 13 7:00 PM	<b>Annual Meeting (1 of 2) – Deliberative Session (RSA 40:13, III) (Charter 8-4, C)</b>
March 14 7:00 PM	Continuation of Deliberative Session – IF NEEDED (Snow Date)
March 28 – 7:00 PM	<b>Regular Council Meeting</b>
<b>March 25</b>	<b>Last day for the town to receive word the Charter Amendment was accepted</b>
March 26	Last day to hold public hearing on question of establishing a special revenue fund. Hearing must be held at least 15 but not more than 30 days prior to meeting where question will be voted on. [RSA 31:95-d, I (b)]
Town Clerk	Post Sample Ballot at all polling places and at the Town Clerk's Office
<b>April 2019</b>	
April 2	Annual Report (including Town Warrant and budget information) must be printed and available to the public no later than 7 days prior to the Annual Meeting. [RSA 32:5, VII]
April 9	<b>Annual Meeting (2 of 2) – Official Ballot Vote (RSA 40:13 VII) (Charter 8-4, C)</b>
April 13	Final date of Candidates for Town Offices to apply to the Town Clerk for recount of election results (RSA 669:30)
April 17	Final date for voters to apply to Town Clerk for recount of ballot questions (RSA 40:4-c and RSA 40:13, VII.
April 19	Council considers Default Budget or special Town meeting (if necessary)
April 20	Town Clerk – copy to Treasurer and Council of vote to transfer surplus to capital reserve funds.
April 20	Final day for Candidates to remove all political advertising (RSA 664:1, 17 and RSA 40:13, VII) 2 <sup>nd</sup> Friday after election
April 30	TC/TC and Finance to mail Town Meeting minutes, Annual Report, and Form MS-232 to DRA RSA 21-J:34 w/in 20 days

Reviewed by:

\_\_\_\_\_ Diane Trippett, Town Clerk/Tax Collector  
 \_\_\_\_\_ Paul Micali, Finance Director  
 \_\_\_\_\_ Eileen Cabanel, Town Manager  
 \_\_\_\_\_ Finlay Rothhaus, Town Council Chairman  
 \_\_\_\_\_ Matt Upton, Esq., Town Legal Counsel

## **Section 49-B:4-a**

### **49-B:4-a Review and Approval by State Departments. –**

I. The chairman of the charter commission, if any, and otherwise the municipal clerk shall file a report, which shall include the name and address of the clerk and the chairman of the charter commission, with the secretary of state, the attorney general, and the commissioner of the department of revenue administration as follows:

- (a) The chairman of the charter commission shall file a copy of the preliminary report relative to any new municipal charter or charter revision at the same time the preliminary report is filed with the municipal clerk pursuant to RSA 49-B:4, VI.
- (b) Within 10 days after the filing of the report relative to any charter amendment, if initiated by the municipal officers, the municipal clerk shall file a certified copy of the report.
- (c) Promptly after the filing of the petitioners' affidavit relative to a charter amendment, the municipal clerk shall file a certified report consisting of a copy of said affidavit.
- (d) Within 14 days of receipt of such report, the secretary of state, the attorney general, and the commissioner of the department of revenue administration shall notify in writing the municipal clerk and the chairman of the charter commission, if any, of his or her receipt. Within 45 days after the receipt of the report the secretary of state, attorney general, and commissioner of the department of revenue administration shall review the proposed charter, charter revision, or charter amendment to insure that it is consistent with the general laws of this state, and shall give notice to the municipal clerk approving or disapproving the proposed charter.

II. If the secretary of state, the attorney general, or the commissioner of the department of revenue administration does not approve, the proposed charter question shall not be placed on the municipal ballot unless the objections to the proposed charter are resolved as provided in this section. If the proposed charter amendment was initiated by a petition, official petition forms shall not be provided. The secretary of state, attorney general, and commissioner of the department of revenue administration shall specify their objections in writing to the municipal clerk, and to the petitioners' committee if relative to a charter amendment initiated by such petitioners' committee, within the period of time allowed for review and shall offer recommendations for changes in language which would correct any inconsistencies they may find in the proposed charter to be voted upon. Failure to specify objections to a proposed charter within 45 days shall constitute approval by the secretary of state, attorney general, or the commissioner of the department of revenue administration.

III. Upon receiving notice of such objections, the charter commission may make such changes as appear necessary and resubmit the proposed charter within 30 days to the official or officials who raised the objections. Such officials shall thereafter make reasonable efforts to review the changes and provide notice of approval or disapproval to the municipal clerk in time to enable the charter commission to file its final report by the deadline stated in RSA 49-B:4-b.

IV. The governing body of the municipality may seek judicial review of a decision of the secretary of state, attorney general, or the commissioner of the department of revenue administration by appeal in superior court, pursuant to RSA 49-B:10, IV.

## **Section 49-B:5**

### **49-B:5 Charter Amendments, Procedure. –**

I. The municipal officers may determine that one or more amendments to the municipal charter are necessary and shall, by order, provide for notice and hearing on them. The notice of the hearing shall be published in a newspaper having general circulation in the municipality at least 7 days prior to the hearing, and shall contain the text of the proposed amendment and a brief explanation. The hearing shall be conducted by the municipal officers or a committee appointed by them. If substantive changes are made to the proposed amendment, a hearing on the modified amendment shall be held. Notice of the hearing and the conduct thereof shall be as provided in this paragraph.

- (a) Within 7 days after the last public hearing, the municipal officers or the committee appointed by them shall file with the municipal clerk a report containing the proposed amendment. In the case of a report of an appointed committee, a copy shall be filed with the municipal officers.
- (b) Within 7 days after receiving approval from the secretary of state, the attorney general, and the commissioner of the department of revenue administration under RSA 49-B:4-a, the municipal officers may order the proposed amendment to be placed on a ballot at the next regular municipal election. In the case of municipalities with biennial elections, the municipal officers may order amendments to be placed on the ballot at either the next regular municipal election or at a special municipal election that occurs not less than 60 days after the order.
- (c) Each amendment shall be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject.
- (d) Alternative statements of a single amendment are prohibited.

II. On the written petition of a number of voters equal to at least 15 percent of the number of ballots cast in a municipality at the last regular municipal election, but in no case fewer than 10 voters, the municipal officers shall, by order, provide that proposed amendments to the municipal charter be placed on a ballot in accordance with the procedures set out in paragraphs II-a through V:

(a) Each amendment shall be limited to a single subject but more than one section of the charter may be amended as long as it is germane to that subject.

(b) Alternative statements of a single amendment are prohibited.

II-a. The following procedure shall be used in the alternative method set out in paragraph II:

(a) Any 5 voters of the municipality may file with the municipal clerk an affidavit stating that they shall constitute a petitioners' committee. Such affidavit shall be signed by the members of such committee and an additional 20 voters of the municipality and shall include:

(1) The language of each proposed amendment.

(2) The names and addresses of the committee members.

(3) The address to which all notices to the committee are to be sent.

(b) Each signature on the affidavit required by subparagraph II-a(a) shall be included in the clerk's count of the number of signatures required by paragraph II unless a signatory has signed both the affidavit and the petition, in which case the signature shall be counted only once.

(c) Promptly after the affidavit is filed by the petitioners' committee, the clerk shall file a certified copy of the affidavit, including the proposed amendment, for review of the proposed amendment in accordance with RSA 49-B:4-a. Promptly after receiving approval of the proposed amendment from the state officials under RSA 49-B:4-a, the clerk shall issue petition form blanks to the committee. The petition forms shall read substantially as follows: "Each of the undersigned voters respectfully requests the municipal officers to provide for the amendment(s) of the municipal charter as set out below. If more than one subject is included in a petition, each subject shall be addressed in a separate amendment".

III. (a) The petitioners' committee, or voters of the municipality designated by the committee, may circulate the petition and file it in proper form. Each signature affixed to a petition shall be in ink or other indelible instrument and shall be followed by the place of domicile of the voter with street and number, if any. No petition shall contain any party or political designation.

(b) The clerk shall note the date of each petition form issued and all petitions, unless sooner filed, shall become null and void for every purpose on the 120th day after the date of issue.

(c) Each petition form shall have printed on its back an affidavit to be executed by the circulator, stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be genuine signatures of the persons whose names they purport to be, that each signer has signed no more than one petition, and that each signer had an opportunity before signing to read the petition.

(d) Petition forms shall be assembled as one instrument and filed at one time with the clerk. The clerk shall note thereon the date of filing.

IV. Within 20 days after the petition is filed, the clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective, shall promptly send a copy of the certificate to the petitioners' committee by mail, and shall file a copy with the municipal officers.

(a) A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within 2 days after receiving the copy of his certificate. Within 10 days after the date of filing of the notice of intention, the committee may file a supplementary petition to correct the deficiencies in the original petition. Such supplementary petition shall in form and content comply with the requirements for an original petition under paragraph III.

(b) Within 5 days after the filing of a supplementary petition the clerk shall complete and file a certificate as to its sufficiency in the manner provided for in an original petition.

(c) When an original or supplementary petition has been certified insufficient, the committee may, within 2 days after receiving the copy of the clerk's certificate, file a request with the municipal officers for review. The municipal officers shall inspect the petitions and shall make due certificate thereof, copies of which shall be filed with the municipal clerk and mailed to the committee. The certificate of the municipal officers shall be a final determination of the sufficiency of the petitions.

(d) Any petitions finally determined to be insufficient shall be void. Such petitions shall be stamped void by the clerk and shall be sealed and retained by the clerk in the manner required for secret ballots.

V. (a) Within 10 days of receipt of a report that a petition is sufficient, the municipal officers shall by order provide for and issue notice of a public hearing on the proposed amendment. The notice of the hearing shall be published in a newspaper having general circulation in the municipality at least 7 days prior to the hearing, and shall contain the text of the proposed amendment and a brief explanation. The hearing shall be conducted by the municipal officers and no substantive changes may be made to the amendment.

(b) Within 7 days after the public hearing, the municipal officers shall file with the municipal clerk a report containing the proposed petitioned amendment and shall order the proposed amendment to be placed on the ballot at the next regular municipal election. In the case of municipalities with biennial elections, the municipal officers shall order the amendments to be placed on the ballot at either the next regular municipal election or at a special municipal election that occurs not less than 60 days after the date of the order.

**Source.** 1979, 241:1. 1988, 223:4, 5. 1991, 304:13. 1992, 96:2, 3. 1995, 53:2. 2005, 38:1. 2008, 230:1, 2, eff. Aug. 19, 2008. 2014, 292:2, eff. Sept. 30, 2014. 2016, 224:1-5, eff. Aug. 8, 2016.