





# 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: August 29, 2022  
 Submitted by: Health Officer Erin Olson & Fire Chief Mark DiFronzo  
 Department: Health Division  
 Speakers: Erin Olson

Date of Meeting: **September 8, 2022**  
 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

Health License Fee Schedule - Proposed Amended Fees

## DESCRIPTION OF ITEM

The Town Council to consider the proposed amendments to the Health Division's fee schedule for food service establishment licenses.

## 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:	<u>Erin Olson</u>	Address	<u>432 DW Highway</u>
Phone Number	<u>603-420-1730</u>	Email Address	<u>eolson@merrimacknh.gov</u>

## APPROVAL

Town Manager:	Yes <input type="checkbox"/>	No: <input type="checkbox"/>	Chair/Vice Chair:	Yes <input type="checkbox"/>	No: <input type="checkbox"/>
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# MERRIMACK FIRE RESCUE

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## HEALTH DIVISION

Public Health  
Prevent. Promote. Protect.



Merrimack Health Division

### Memorandum

**Date:** August 30<sup>th</sup>, 2022

**To:** Paul Micali – Town Manager, Town Council

**From:** Erin Olson, MBA, CP-FS, Health Officer

**Subject:** **Food Service Establishment License Fee Schedule – Review proposed amended fee schedule for food service establishment licenses for consideration of approval**

### Proposed Amendments to the Health Division Food Establishment License Fee Schedule

#### **Purpose:**

As of August 30<sup>th</sup>, 2022 the Merrimack Health Division food service establishment license fees do not reflect the most current version to the State of New Hampshire *Sanitary Production and Distribution of Food Code He-P 2300*. In December of 2019, The New Hampshire Department of Health and Human Services (DHHS), Division of Public Health Services Food Protection Section announced the release of revisions to He-P 2300, the NH rules for the Sanitary Production and Distribution of Food to incorporate the US Food and Drug Administration 2017 Food Code by reference.

#### **Summary**

With the 2019 revisions of He-P 2300, the fee schedule of Food Service Establishment Licenses was amended. Currently, the 143 licensed food establishments in the town of Merrimack are still paying food service license fees defined in He-P 2300 prior to the 2019 amendment. According to the [Town of Merrimack Code Chapter 136 Food Service Establishments - § 136-4: Issuance of license \(A\)](#); “License fees and fee schedule shall be as stated in the New Hampshire Sanitary Production and Distribution of Food Code He-P 2300 as amended from time to time by the State of New Hampshire.”

Attached is a full summary of the Merrimack Health Divisions current food service license fee schedule, the He-P 2300 amended food service license fee schedule, and a complete list of all food service establishments licensed as of August 30<sup>th</sup>, 2022.

#### **Recommendation:**

The Merrimack Health Division recommends the Town Council review accept amendments to the Food Service Establishment License fee schedule to be in compliance with both The Town of Merrimack Code *Chapter 136 Food Service Establishments* and the State of New Hampshire *Sanitary Production and Distribution of Food Code He-P 2300*.

Respectfully,

Erin Olson, MBS, CP-FS  
Health Officer

**Food Service Establishment License Fees (As of 8/2022)**

<b>License Class</b>	<b>Current Merrimack Fee</b>	<b>NH State Fee</b>
Class A	\$500.00	\$875.00
Class B	\$250.00	\$450.00
Class C	\$200.00	\$350.00
Class D	\$125.00	\$225.00
Class E	\$100.00	\$175.00
Class F	\$75.00	\$150.00
Class G	\$50.00	\$100.00
Class O	No Charge \$0	No Charge \$0
Late Fee	\$50.00	\$50.00
Plan Review	\$75.00	\$75.00
Temporary Food	\$50.00	-

**Sanitary Production and Distribution of Food He-P 2304.04 License Classes**

**(a) For the purpose of licensure, food establishments shall be divided into the following classes:**

**(1) Class A which shall include:**

- Category A-1, food processing plants which process 100,000 packages of food or more, per year;
- Category A-2, food service establishments with 200 or more indoor seats; or
- Category A-3, retail food stores with 4 or more food preparation areas;

**(2) Class B which shall include:**

- Category B-1, retail food stores with 2 to 3 food preparation areas; or
- Category B-2, food service establishments with 100 to 199 indoor seats;

**(3) Class C which shall include:**

- Category C-1, retail food stores with one food preparation area, including, an area for cutting cheese or fudge;
- Category C-2, caterers serving food off-site;
- Category C-3, food service establishments with 25 to 99 indoor seats;
- Category C-4, bars or lounges with a food preparation area, excluding areas used for preparing garnish;
- Category C-5, food processing plants which commercially process less than 100,000 packages of TCS food per year; or
- Category C-6, cold storage or refrigerating warehouse;

**(4) Class D, which shall include:**

- Category D-1, food service establishments with 0 to 24 indoor seats;
- Category D-2, fraternities and sororities, except those where the members prepare all their own food;
- Category D-3, mobile food units which cook or prepare food;
- Category D-4, retail food stores that allow self-service of food, including coffee, hot dogs, or soft drinks;
- Category D-6, servicing areas; or
- Category D-7, arena or theater concessions serving TCS food;

**(5) Class E which shall include:**

- Category E-1, bed and breakfasts; or
- Category E-3, lodging facilities serving continental breakfasts;

**(6) Class F which shall include:**

- Category F-1, home delivery services of packaged frozen food;
- Category F-2, pushcarts & mobile food units, including, those serving packaged food/ non-TCS unwrapped foods only;
- Category F-3, retail food stores with no food preparation areas;
- Category F-4, wholesalers or distributors of TCS food;
- Category F-5, on-site vending machines, which serve TCS food; or
- Category F-6, bakeries which do not serve TCS food and have no seats;

**(7) Class G shall include:**

- Category G-1, bars or lounges without a food preparation area;
- Category G-2, arena or theater concessions serving non-TCS food;
- Category G-3, retail food stores serving pre-packaged ice cream;
- Category G-4, institutions including state, county, and municipal institutions;
- Category G-5, schools, private schools, and schools whose food service is operated by a caterer;
- Category G-6, senior meal sites;
- Category G-7, sellers of pre-packaged frozen meat or poultry that is processed in a USDA-inspected plant; or
- Category G-8, food processing plants that manufacturer or package non-TCS food;

**(8) Class H shall include:**

Category H-1, shall include non-exempt homestead food operations; and

**(9) Class O shall include:**

Category O-1, shall include municipality-run school cafeterias.

**(b) When a food establishment operates more than one type of business, the higher class shall determine the class of license, with Class A being the highest.**

**(c) When a food establishment has an additional food processing business, each shall be licensed separately, requiring separate applications and separate fees.**

**(d) When a hospital or school offers food to the general public in addition to its population, then the license class shall be determined by the number of seats the food service establishment has.**

## **Fees and Establishments**

Food Service Establishment License Fees (compared) <small>current as of 8/2022</small>						
License Class	Merrimack	State Fee	Bedford	Exeter	Concord	Salem
Class A	\$500.00	\$875.00	\$875.00	\$875.00	\$534.00	\$500.00
Class B	\$250.00	\$450.00	\$450.00	\$450.00	\$346.00	\$350.00
Class C	\$200.00	\$350.00	\$350.00	\$350.00	\$223.00	\$250.00
Class D	\$125.00	\$225.00	\$225.00	\$225.00	\$165.00	\$150.00
Class E	\$100.00	\$175.00	\$175.00	\$175.00	\$112.00	\$125.00
Class F	\$75.00	\$150.00	\$150.00	\$150.00	\$95.60	\$100.00
Class G	\$50.00	\$100.00	\$100.00	\$100.00	\$74.00	as set
Class H	n/a	\$150.00	\$50.00	\$50.00	n/a	\$50.00
Class O	No Charge	No Charge	No Charge	n/a	No Charge	n/a
Late Fee	\$50.00	\$50.00				
Plan Review (New Establishment)	\$75.00	\$75.00	\$75.00			
Temporary Food License (PROPOSED)	\$50					
Total # of Food Establishments	141		111			



# MERRIMACK FIRE RESCUE

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## HEALTH DIVISION

Public Health  
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Merrimack Health Division

August 10<sup>th</sup>, 2021  
Updated January 31<sup>st</sup>, 2022  
Updated August 24<sup>th</sup>, 2022

**RE: Health License Fee Schedule – Proposed Amended Fees  
Food Service Establishment Licenses**

As of January 31<sup>st</sup>, 2022 the Merrimack Health Division food service establishment license fees do not reflect the most current update to the State of New Hampshire *Sanitary Production and Distribution of Food Code He-P 2300*. In December of 2019, The New Hampshire Department of Health and Human Services (DHHS), Division of Public Health Services Food Protection Section announced the release of revisions to He-P 2300, the NH Rules for the Sanitary Production and Distribution of Food to incorporate the US Food and Drug Administration 2017 Food Code by reference. With these revisions, the fee schedule of Food Service Establishment Licenses was also amended.

**The Town of Merrimack Code Chapter 136 Food Service Establishments states in part that;**

**§ 136-4: Issuance of license.**

Any person desiring to operate a restaurant or other food service establishment shall make written application for a license on forms provided by the Health Officer. Upon receipt of such an application and the designated license administrative fee, and after the inspection confirms that the applicable requirements of the regulations have been met, a license shall be issued to the applicant by the Health Officer.

**A. License fees and fee schedule shall be as stated in the New Hampshire Sanitary Production and Distribution of Food Code He-P 2300 as amended from time to time by the State of New Hampshire.**

Food Service Establishment License Fees (As of 8/2022)		
License Class	Current Merrimack Fee	NH State Fee
Class A	\$500.00	\$875.00
Class B	\$250.00	\$450.00
Class C	\$200.00	\$350.00
Class D	\$125.00	\$225.00
Class E	\$100.00	\$175.00
Class F	\$75.00	\$150.00
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Plan Review	\$75.00	\$75.00
Temporary Food	\$50.00	-

## **Sanitary Production and Distribution of Food He-P 2304.04 License Classes**

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**(a) For the purpose of licensure, food establishments shall be divided into the following classes:**

**(1) Class A which shall include:**

- Category A-1, food processing plants which process 100,000 packages of food or more, per year;
- Category A-2, food service establishments with 200 or more indoor seats; or
- Category A-3, retail food stores with 4 or more food preparation areas;

**(2) Class B which shall include:**

- Category B-1, retail food stores with 2 to 3 food preparation areas; or
- Category B-2, food service establishments with 100 to 199 indoor seats;

**(3) Class C which shall include:**

- Category C-1, retail food stores with one food preparation area, including, an area for cutting cheese or fudge;
- Category C-2, caterers serving food off-site;
- Category C-3, food service establishments with 25 to 99 indoor seats;
- Category C-4, bars or lounges with a food preparation area, excluding areas used for preparing garnish
- Category C-5, food processing plants which commercially process less than 100,000 packages of TCS food per year; or
- Category C-6, cold storage or refrigerating warehouse;

**(4) Class D, which shall include:**

- Category D-1, food service establishments with 0 to 24 indoor seats;
- Category D-2, fraternities and sororities, except those where the members prepare all their own food;
- Category D-3, mobile food units which cook or prepare food;
- Category D-4, retail food stores that allow self-service of food, including coffee, hot dogs, or soft drinks;
- Category D-6, servicing areas; or
- Category D-7, arena or theater concessions serving TCS food;

**(5) Class E which shall include:**

- Category E-1, bed and breakfasts; or
- Category E-3, lodging facilities serving continental breakfasts;

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- Category F-1, home delivery services of packaged frozen food;
- Category F-2, pushcarts & mobile food units, including, those serving packaged food/ non-TCS unwrapped foods only;
- Category F-3, retail food stores with no food preparation areas;
- Category F-4, wholesalers or distributors of TCS food;
- Category F-5, on-site vending machines, which serve TCS food; or
- Category F-6, bakeries which do not serve TCS food and have no seats;

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- Category G-2, arena or theater concessions serving non-TCS food;
- Category G-3, retail food stores serving pre-packaged ice cream;
- Category G-4, institutions including state, county, and municipal institutions;
- Category G-5, schools, private schools, and schools whose food service is operated by a caterer;
- Category G-6, senior meal sites;
- Category G-7, sellers of pre-packaged frozen meat or poultry that is processed in a USDA-inspected plant; or
- Category G-8, food processing plants that manufacturer or package non-TCS food;

**(8) Class H shall include:**

- Category H-1, shall include non-exempt homestead food operations; and

**(9) Class O shall include:**

- Category O-1, shall include municipality-run school cafeterias.

- (b)** When a food establishment operates more than one type of business, the higher class shall determine the class of license, with Class A being the highest.
- (c)** When a food establishment has an additional food processing business, each shall be licensed separately, requiring separate applications and separate fees.
- (d)** When a hospital or school offers food to the general public in addition to its population, then the license class shall be determined by the number of seats the food service establishment has.

[HISTORY: Issued by the Health Authority; approved by the Board of Selectmen of the Town of Merrimack 12-3-1981;<sup>[1]</sup> authorized 5-14-1982 ATM by Arts. 25 and 26; last amended by Town Council 12-7-2017. Subsequent amendments noted where applicable.]

[1] *These provisions were approved by the State Division of Public Health Services 1-11-1982.*

## § 136-1 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

### BOARD OF HEALTH

The Town Council of the Town of Merrimack and the Health Officer, in accordance with RSA 128:3.

### HEALTH OFFICER

The Health Officer of the Town of Merrimack, New Hampshire, or his or her designated representatives. He or she shall have such police powers as may be designated by the New Hampshire Revised Statutes Annotated.

### RESTAURANT and FOOD SERVICE ESTABLISHMENT

Includes all such establishments defined as such by the State of New Hampshire, Department of Health and Human Services, Sanitary Production and Distribution of Food He-P 2300.

### SANITARY FOOD CODE

The Sanitary Food Code, as adopted and amended, from time to time, by the State of New Hampshire, Department of Health and Human Services, Sanitary Production and Distribution of Food He-P 2300.

## § 136-2 Compliance required; adoption of standards.

Every restaurant and food service establishment within the Town of Merrimack shall comply with the provisions of the Sanitary Production and Distribution of Food He-P 2300, which is herein incorporated by reference and made a part of this chapter.

## § 136-3 License required; nontransferability; posting.

- A. It shall be unlawful for any person, entity or corporation to operate a food service establishment within the Town of Merrimack without a valid license issued by the Health Officer.
- B. No license shall be issued to or retained by any applicant who shall fail to comply with the requirements of the regulations herein set forth.
- C. No license shall be transferable to any other person, entity or corporation, nor from one location to another.
- D. A valid license shall be posted in every restaurant and food service establishment.
- E. A license for temporary food service establishments shall be issued for a period of time not to exceed 14 days.

## § 136-4 Issuance of license.

Any person desiring to operate a restaurant or other food service establishment shall make written application for a license on forms provided by the Health Officer. Upon receipt of such an application and the designated license administrative fee, and after the inspection confirms that the applicable requirements of the regulations have been met, a license shall be issued to the applicant by the Health Officer.

- A. License fees and fee schedule shall be as stated in the New Hampshire Sanitary Production and Distribution of Food Code He-P 2300 as amended from time to time by the State of New Hampshire.

## § 136-5 Expiration of license.

Licenses expire 12 months after the issue date of license and must be renewed.

## § 136-6 Notice of violation and procedure for administrative fines.

- A. Whenever the Health Officer shall make an inspection of a restaurant or food service establishment and discover that any of the requirements of the Sanitary Food Code have been violated, the Health Officer shall notify the license holder or operator of such violations by means of an inspection report form or other written notice. In such notification, the Health Officer shall:
  - (1) Identify each violation;
  - (2) Inform the license holder of the amount of the proposed fine under He-P 2302.29;
  - (3) Inform the license holder of the right to appeal the Health Officer's decision to assess a fine by submitting a written request for a hearing to the Board of Health no later than 10 calendar days from the date of receipt of the notice;
  - (4) Inform the license holder of the opportunity to waive the right to a hearing by paying the fine within 10 days of the receipt of the Health Officer's notice of administrative fine; and
  - (5) Inform the license holder that if he or she does not request an appeal as specified in Subsection A(3) above, the Health Officer's decision to assess a fine shall



become final after the ten-day period specified in Subsection A(3) above and the fine shall be paid to the Town no later than 10 days from that date.

### **§ 136-7 Suspension of license and closure.**

- A. Any restaurant or other food service establishment within this Town which shall fail to comply with the requirements of this chapter may be closed by the Health Officer without a hearing for a ten-day period or until the violation is corrected and the sanitary condition is approved by the Health Officer as per He-P 2300 2302.32.
- B. Whenever a licensee has failed to comply with any notice or order of the Health Officer under the provisions of this chapter, the licensee shall be notified, in writing, that the license is immediately suspended. Any licensee may apply for a hearing before the Board of Health, which shall be scheduled within 10 days after its receipt.

### **§ 136-8 Reinstatement of suspended license.**

Any person whose license has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the license. Within five days following receipt of a written request, including a statement signed by the applicant that, in his opinion, the conditions causing suspension of the license have been corrected, the Health Officer shall make a reinspection. If the establishment is in compliance with the requirements of this chapter, the license shall be reinstated.

### **§ 136-9 (Reserved)**

### **§ 136-10 Hearings.**

The hearings provided for in § 136-6 and § 136-7 shall be conducted by the Board of Health at a time and place designated by it. Based upon the record of such hearing, the Board of Health shall make a finding and shall sustain, modify or rescind any official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the license holder by the Board of Health within five days of decision.

### **§ 136-11 Inspections.**

- A. At least twice per year, the Merrimack Health Officer shall inspect each restaurant and food service establishment located in the Town of Merrimack and shall make as many additional inspections and reinspections as are necessary for the enforcement of this chapter.
- B. The Health Officer shall prepare a written form as a guideline for all inspections, and such form shall be incorporated herein by reference and made a part of this chapter.
- C. The Health Officer after proper identification shall be permitted to enter, at any reasonable time, any restaurant or food service establishment within the Town of Merrimack for the purpose of making inspections to determine compliance with this chapter. The Health Officer shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received or used and persons employed.

### **§ 136-12 (Reserved)**

### **§ 136-13 Applicability to establishments beyond Town's jurisdiction.**

Food from food service establishments outside the jurisdiction of the Town of Merrimack may be sold within the Town of Merrimack if such food service establishments conform to the provisions of this chapter. To determine the extent of compliance with such provisions, the Health Officer may accept reports from responsible authorities in other jurisdictions where such food service establishments are located.

### **§ 136-14 Approval of plans for new establishments.**

When a restaurant or food service establishment is hereafter constructed or extensively remodeled or when an existing structure is converted for use as a food service establishment, properly prepared plans and specifications for such construction, remodeling or alteration, showing layout, arrangement and construction materials of work areas and the location, size and type of fixed equipment and facilities shall be submitted to the Health Officer for approval before such work is begun. No building permit shall be issued by the Building Inspector until such approval has been given by the Health Officer.

### **§ 136-15 (Reserved)**

### **§ 136-16 Severability.**

Should any section, paragraph, sentence, clause or phrase of this chapter be declared unconstitutional or invalid for any reason, the remainder of said chapter shall not be affected thereby.

- Emergency preparedness/management

Ms. Olsen also spoke about the community boards she is a member of, which include the Greater Nashua Public Health Network and the Public Health Advisory Council (PHAC) Executive Committee. She also discussed public health emergency preparedness priorities, which include improving regional communication structure, increasing public health planning, exercising, and training among various sectors, and strengthening working relationships between GNPHN and the state of NH.

Councilor Murphy asked Ms. Olsen what her top public health priorities are, in which Ms. Olsen stated that healthy homes (hoarding, lead prevention, elderly population resources, etc.) and water contamination are the two top categories, along with emergency preparedness. Councilor Murphy and Ms. Olsen then discussed improvement plans for a healthier community regarding polluted water, air, and soil, and what the community can do to help achieve this goal. The Council then discussed ways to utilize and disperse information into the community.

## **2. Health License Fee Schedule – Proposed Amended Fees**

*Submitted by Health Officer Erin Olson & Fire Chief Mark DiFronzo*

The Town Council to consider the proposed amendments to the Health Division's fee schedule for food service establishment licenses.

**MOTION made by Vice Chair Harrington and seconded by Councilor Hunter to table this agenda item until the September 22, 2022 meeting.**

**MOTION CARRIES 6-0-0**

## **3. Southern New Hampshire Special Operations Unit**

*Submitted by Police Chief Brian Levesque*

The Town Council to consider a request for the Town of Merrimack's Police Department to join the Southern New Hampshire Special Operations Unit (SNHSOU), which deals with high-risk or unusual incidents such as active shooter response, hostage situations, barricaded subjects, etc.

Police Chief Brian Levesque was present to discuss joining the Southern New Hampshire Special Operations Unit, stating that the police department as a whole reviewed their current special response team and believe they could benefit from joining this unit, which is comprised of 13 communities. He shared that in a critical environment, they would call over to these departments and they would respond with their members (up to 60) to retain control of the scene, similar to a SWAT team. This unit can also be used to look for a missing person or search a large area as they have special equipment such as a vehicle, command post, and drones to aide in quick recoveries. Chief Levesque then shared that this unit receives an average of 12-15 calls per year, with an average time of 3 hours due to de-escalation techniques to resolve situations. He then stated that he plans to sign up 6 officers for this unit, which will cut down on training expenses and overtime costs. The cost to join is \$5,000 per year which includes any equipment replacement.

Councilor Hunter asked how the call out works, specifically if the calls come in through dispatch, in which Chief Levesque stated that the calls come in through a messaging system that disperses to all members. Councilor Hunter asked if this would impact the police's response time for local issues, in which Chief Levesque stated that the responses would not affect response times for the community. Councilor Murphy asked if the town would receive mutual aid in a large crisis if they were not part of this special operations unit, in which Chief Levesque stated that the town would receive help from the closest communities, but not the entire SNHSOU if they are not members. Vice Chair Harrington asked if there would be any liability for officers or equipment used in another town, in which Mr. Micali stated that this program was thoroughly vetted by the town legal department, and it was determined that the insurance would cover any costs associated during a situation. Councilor Harrington then asked what would happen if the unit responded and was not acting in agreement with the town police department, in which Chief Levesque stated that the town