



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: September 8, 2023
Submitted by: Town Manager Paul T. Micali
Department:
Speakers: Paul T. Micali

Date of Meeting: September 14, 2023
Time Required: 15 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"/>
Public Hearing:	<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

Heritage Commission Membership Discussion

DESCRIPTION OF ITEM

The Town Manager to provide an update to the Town Council on Heritage Commission membership requirements as requested at the Town Council Retreat / Work Session.

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>Paul T. Micali</u>	Address	<u>6 Baboosic Lake Road</u>
Phone Number		Email Address	<u>pmicali@merrimacknh.gov</u>

APPROVAL

Town Manager: Yes No: Chair/Vice Chair: Yes No:

Hold for Meeting Date: _____

Memo



TO: Town Council
FROM: Town Manager Paul T. Micali
DATE: August 21, 2023
RE: **Heritage Commission**

At the Town Council Retreat I was asked to get a legal opinion if the Town could disband the Heritage Commission.

Background:

In 2000 the residents of Merrimack approved the formation of the Heritage commission.

Article 26. Shall the Town vote to establish a Heritage Commission under the provisions of New Hampshire RSA 673 for the proper recognition, use and protection of resources, tangible or intangible primarily man-made, that are valued for their historic, cultural, aesthetic, or community significance within their natural, built, or cultural contexts. The commission may acquire, in the name of the town or city, subject to the approval of the local governing body, by gift, purchase, grant, bequest, devise, lease, or lesser interest, development rights, covenant, or other contractual right, including conveyances with conditions, limitations or reversions, as may be necessary to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve and properly use the cultural resources of the town, and shall manage and control same; provided, however, neither the town nor commission shall have the right to condemn property for these purposes. Pursuant to RSA 673:4-a, the Heritage Commission shall consist of five (5) members, and three (3) alternate members who shall be appointed by the Board of Selectmen. Each member shall be a resident of Merrimack. One (1) member shall be a member of the Board of Selectmen, who shall be subject to annual appointment. One (1) member shall be a member of the Planning Board, who shall be subject to annual appointment. Other members shall be appointed for terms of three (3) years. The initial terms of public members first appointed shall be staggered so that no more than one (1) appointment occurs annually, except when required to fill vacancies. In determining each member's qualifications, the Board of Selectmen shall take into consideration the appointee's demonstrated interest and ability to understand, appreciate and promote the purpose of the Heritage Commission. (Recommended by the Board of Selectmen 4-0-0)

3044 Yes

1257 No

Article 27. Provided that Warrant Article 26 to establish a Heritage Commission is passed, to see if the Town will vote to establish a Heritage Fund under the provisions of New Hampshire RSA 674:44(d) and to raise and appropriate the sum of Five Hundred Dollars (\$500.00) for this purpose. The whole or part of money so appropriated in any year and any gifts of money received shall be placed in said Heritage Fund and allowed to accumulate from year to year. Money may be expended from such fund by the Heritage Commission for its purposes without further approval of the local legislative body. The Town Treasurer, pursuant to RSA 41:29, shall have custody of all

moneys in the Heritage Fund and shall pay out the same only upon order of the Heritage Commission. The disbursement of Heritage Funds shall be authorized by a majority of the Heritage Commission. Prior to the use of such funds for the purchase of any interest in real property, the Heritage Commission shall hold a public hearing with notice in accordance with RSA 675:7. (Recommended by the Board of Selectmen 4-0-0) (Recommended by the Budget Committee 14-0-0)

2959 Yes

1339 No

I have attached RSA 674:44-a through d – Heritage Commissions as well as 673:4-a (membership)

Legal Opinion:

The Charter actually requires (“there shall be...”) the town to have a Heritage Commission (Charter Sect. 6-1(D)) {see below}, so I don’t know if deactivation is a good option. The Council could nonetheless stop appointing members and let it languish, but that would likely result in public scrutiny and could eventually lead to a lawsuit where someone is asking a court to force the Town to appoint members and abide by the Charter.

There is a provision in state law (RSA 674:44-b, III){below} where the Council as the legislative body could have the Heritage Comm assume the composition and duties of the historic district commission (*which we do not have*). That would result in more work for the members as they would be responsible for both duties: heritage commission and historic.

Steven

Current Membership:

Currently we only have two (2) full-time positions, one (1) Alternate position and Town Council representative filled:

Full: Term Expires 6/30/2024

Full: Term Expires 6/30/2026

Alternate: Term Expires 6/30/2026

Town Council Representative

Currently we have one (1) full-time, two (2) alternates plus the Planning Board representative for a total of four (4) vacancies:

Full: Term Expires 6/30/2025

Alternate: Term Expires 6/30/2025

Alternate: Term Expires 6/30/2024

Planning Board Representative

Conclusion:

The Town could disband the Heritage Commission only by Charter Amendment.

Back-up information:

6-1 D. Heritage Commission. **There shall be** a Heritage Commission consisting of five members. **Three** of these members shall be appointed by the Town Council for terms of three years, such terms to be staggered. **One Town Council** member shall be appointed annually to serve as an ex officio member. **One member** shall be recommended by the **Planning Board** and approved by the Town Council. This member shall be appointed annually to serve as an ex officio member. There shall also be three alternate members appointed in the same manner as regular appointed members, except no more than one alternate appointed member's term shall expire in a single year. The Town Council shall fill any vacancy for the period of the unexpired term, seeking the recommendation of the Planning Board if a vacancy in the Planning Board member should occur. The Heritage Commission shall have all the powers granted to heritage commissions by New Hampshire state law.

RSA 674:44-b, III Historic District Commission. Heritage commissions also may assume, if authorized by the local legislative body, the composition and duties of historic district commissions.

Additional Information:

If the Town Council does not want to propose a Charter Amendment than the Heritage Commission's Membership by-laws (next page) need to be amended to mirror the Town Charter and state RSA 673:4-a for membership.

III. MEMBERSHIP AND TERMS OF OFFICE

- A. Appointment of Members: The Commission shall consist of **five members** (*needs to read three members*) to be appointed by the **Board of Selectmen (Town Council)**, and shall include **one Selectman (Town Council)** to act as an ex-officio member with power to vote. (*One member shall be recommended by the Planning Board and approved by the Town Council. This member shall be appointed annually to serve as an ex officio member*) The appointment of members shall conform to terms and requirements of **RSA 673:4a** and **RSA:673:5**.

8. Alternates: The **Board of Selectmen (Town Council)** may appoint, in addition to regular members, not more than three alternate members who may serve, upon designation by the Chairperson, in place of a regular member in the event of absence or disqualification. The terms and multiple membership requirements for alternates shall be the same as for regular members per RSA 673:6.

Attachments:

2000 Town Vote Establishing the Heritage Commission

RSA 674:44-a through d – Heritage Commission

RSA 673:4-a – Appointment and Terms of Local Land Use Board Members

RSA 673:1 – Establishment of Local Land Use Boards Boards

Charter Article 6-1 D

Heritage Commission By-Laws

Article 23. Shall the Town vote to establish, in accordance with RSA 35, an Athletic Fields Capital Reserve Fund for the purpose of designing, developing, equipping, and improvement of athletic fields; to raise and appropriate the sum of \$25,000 to be placed in said fund; and to designate the Board of Selectmen as agents to expend. This is a Special Warrant Article per RSA 32:3, VI. (Recommended by the Board of Selectmen 4-0-0) (Recommended by the Budget Committee 11-3-0)

2895 Yes

1546 No

Article 24. Shall the Town vote to raise and appropriate the sum of \$5,000 for the design, development, equipping, and improvement of athletic fields on Town-owned property located on Joppa Road and Atherton Road and at other suitable sites. This is a Special Warrant Article per RSA 32:3, VI, reflecting an appropriation that will not lapse until the earlier of the completion of the related project or June 30, 2002 per RSA 32:7, VI. (Recommended by the Board of Selectmen 5-0-0) (Recommended by the Budget Committee 10-3-0)

2914 Yes

1515 No

Article 25. Shall the Town transfer \$25,000 or 100% of the surplus, whichever amount is less, to the Library Construction Capital Reserve Fund, with such amount to be funded from the June 30, 2000 undesignated fund balance in an equal amount to all unencumbered funds remaining on hand in the Library operating budget at the end of fiscal year 1999-2000? (By Petition) (Recommended by the Board of Selectmen 4-0-0) (Recommended by the Budget Committee (11-0-0)

2798 Yes

1595 No

Article 26. Shall the Town vote to establish a Heritage Commission under the provisions of New Hampshire RSA 673 for the proper recognition, use and protection of resources, tangible or intangible primarily man-made, that are valued for their historic, cultural, aesthetic, or community significance within their natural, built, or cultural contexts. The commission may acquire, in the name of the town or city, subject to the approval of the local governing body, by gift, purchase, grant, bequest, devise, lease, or lesser interest, development rights, covenant, or other contractual right, including conveyances with conditions, limitations or reversions, as may be necessary to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve and properly use the cultural resources of the town, and shall manage and control same; provided, however, neither the town nor commission shall have the right to condemn property for these purposes. Pursuant to RSA 673:4-a, the Heritage Commission

shall consist of five (5) members, and three (3) alternate members who shall be appointed by the Board of Selectmen. Each member shall be a resident of Merrimack. One (1) member shall be a member of the Board of Selectmen, who shall be subject to annual appointment. One (1) member shall be a member of the Planning Board, who shall be subject to annual appointment. Other members shall be appointed for terms of three (3) years. The initial terms of public members first appointed shall be staggered so that no more than one (1) appointment occurs annually, except when required to fill vacancies. In determining each member's qualifications, the Board of Selectmen shall take into consideration the appointee's demonstrated interest and ability to understand, appreciate and promote the purpose of the Heritage Commission. (Recommended by the Board of Selectmen 4-0-0)

3044 Yes

1257 No

Article 27. Provided that Warrant Article 26 to establish a Heritage Commission is passed, to see if the Town will vote to establish a Heritage Fund under the provisions of New Hampshire RSA 674:44(d) and to raise and appropriate the sum of Five Hundred Dollars (\$500.00) for this purpose. The whole or part of money so appropriated in any year and any gifts of money received shall be placed in said Heritage Fund and allowed to accumulate from year to year. Money may be expended from such fund by the Heritage Commission for its purposes without further approval of the local legislative body. The Town Treasurer, pursuant to RSA 41:29, shall have custody of all moneys in the Heritage Fund and shall pay out the same only upon order of the Heritage Commission. The disbursement of Heritage Funds shall be authorized by a majority of the Heritage Commission. Prior to the use of such funds for the purchase of any interest in real property, the Heritage Commission shall hold a public hearing with notice in accordance with RSA 675:7. (Recommended by the Board of Selectmen 4-0-0) (Recommended by the Budget Committee 14-0-0)

2959 Yes

1339 No

Article 28. Shall the Town vote to rescind Article 20 adopted at the May 16, 1996 Annual Town Meeting and Article 25 adopted at the March 12, 1997 Annual Town Meeting, which allowed the Town to deposit twenty-five (25%) percent of the revenues of all future payments collected pursuant to RSA 79-A (The Land Use Change Tax) in the Conservation Fund in accordance with RSA 36-A:5, II as authorized by RSA 79-A:25, II, and which was limited to \$50,000 during any fiscal year; and to adopt the following in lieu thereof: To see if the Town will vote to deposit 100% (One Hundred Percent), but in no instance more than \$250,000, of all payments collected by the Town during the fiscal year 2000-2001

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Heritage Commission

Section 674:44-a

674:44-a Heritage Commission. – A heritage commission may be established in accordance with RSA 673 for the proper recognition, use, and protection of resources, tangible or intangible, primarily man-made, that are valued for their historic, cultural, aesthetic, or community significance within their natural, built, or cultural contexts.

Source. 1992, 64:2, eff. June 19, 1992.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Heritage Commission

Section 674:44-b

674:44-b Powers. –

I. Generally. Heritage commissions shall have advisory and review authority, specifically, as follows:

- (a) Survey and inventory all cultural resources.
- (b) Conduct research and publish findings, including reports to establish the legal basis for a district and preparation of historic district ordinances within the municipality prior to its adoption or amendment as provided in RSA 675:6.
- (c) Assist the planning board, as requested, in the development and review of those sections of the master plan which address cultural and historic resources.
- (d) Advise, upon request, local agencies and other local boards in their review of requests on matters affecting or potentially affecting cultural and historic resources.
- (e) Coordinate activities with appropriate service organizations and nonprofit groups.
- (f) Publicize its activities.
- (g) Hire consultants and contractors as needed.
- (h) Receive gifts of money and property, both real and personal, in the name of the city or town, subject to the approval of the city council in a city or the board of selectmen in a town, such gifts to be managed and controlled by the commission for its proper purposes.
- (i) Hold meetings and hearings necessary to carry out its duties.

II. Property. The commission may acquire, in the name of the town or city, subject to the approval of the local governing body, by gift, purchase, grant, bequest, devise, lease, or otherwise, a fee or lesser interest, development rights, covenant, or other contractual right, including conveyances with conditions, limitations, or reversions, as may be necessary to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve and properly use the cultural resources of the city or town, and shall manage and control the same; provided, however, that the city, town, or commission shall not have the right to condemn property for these purposes.

III. Historic District Commission. Heritage commissions also may assume, if authorized by the local legislative body, the composition and duties of historic district commissions.

Source. 1992, 64:2. 1993, 32:1. 1995, 138:5, eff. July 23, 1995.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Heritage Commission

Section 674:44-c

674:44-c Separate Commissions. – A municipality may choose to maintain a separate and distinct heritage commission and historic district commission. In such cases, the heritage commission shall serve in an advisory capacity to the historic district commission as well as to the planning board and other local boards and residents.

Source. 1992, 64:2, eff. June 19, 1992.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Heritage Commission

Section 674:44-d

674:44-d Appropriations Authorized. –

I. A town or city, having established a heritage commission under this subdivision, may appropriate money as deemed necessary to carry out its purposes. The whole or any part of money so appropriated in any year and any gifts of money received pursuant to RSA 674:44-b shall be placed in a heritage fund and allowed to accumulate from year to year. Money may be expended from such fund by the heritage commission for its purposes without further approval of the local legislative body.

II. The town treasurer, pursuant to RSA 41:29, shall have custody of all moneys in the heritage fund and shall pay out the same only upon order of the heritage commission. The disbursement of heritage funds shall be authorized by a majority of the heritage commission. Prior to the use of such funds for the purchase of any interest in real property, the heritage commission shall hold a public hearing with notice in accordance with RSA 675:7.

Source. 1992, 64:2. 1993, 32:3, eff. June 7, 1993.

TITLE LXIV PLANNING AND ZONING

CHAPTER 673 LOCAL LAND USE BOARDS

Appointment and Terms of Local Land Use Board Members

Section 673:4-a

673:4-a Heritage Commissions. –

- I. The heritage commission shall consist of not less than 3 members and no more than 7 members who shall be appointed in a manner as prescribed by the local legislative body.
- II. Each heritage commission member shall be a resident of the city or town which establishes the commission. One commission member shall be a member of the local governing body. One commission member may be a member of the planning board. Not more than 5 alternate members may be appointed. When an alternate sits in absence or disqualification of a regular member, the alternate shall have full voting powers. If there is a historic district commission, one member of this commission shall be an ex officio member of the heritage commission. In determining each member's qualifications, the appointing authority shall take into consideration the appointee's demonstrated interest and ability to understand, appreciate and promote the purpose of the heritage commission.
- III. Members of a heritage commission also may serve on other municipal boards and commissions, including but not limited to a conservation commission established under RSA 36-A, and a historic district commission established under RSA 673:4.

Source. 1992, 64:6. 1995, 138:4, eff. July 23, 1995.

TITLE LXIV

PLANNING AND ZONING

CHAPTER 673

LOCAL LAND USE BOARDS

Establishment of Boards

Section 673:1

673:1 Establishment of Local Land Use Boards. –

- I. Any local legislative body may establish a planning board, the members of which shall be residents of the municipality.
- II. Any local legislative body may establish any or all of the following: a heritage commission, a historic district commission, an agricultural commission, and a housing commission.
- III. Any local legislative body may provide for the appointment of an inspector of buildings. The local legislative body may fix the compensation for any inspector who is so appointed.
- IV. Every zoning ordinance adopted by a local legislative body shall include provisions for the establishment of a zoning board of adjustment. Members of the zoning board of adjustment shall be either elected or appointed, subject to the provisions of RSA 673:3.
- V. Every building code adopted by a local legislative body shall include provisions for the establishment of the position of a building inspector, who shall issue building permits, and for the establishment of a building code board of appeals. If no provision is made to establish a separate building code board of appeals, the ordinance shall designate the zoning board of adjustment to act as the building code board of appeals. If there is no zoning board of adjustment, the board of selectmen shall serve as the building code board of appeals.

Source. 1983, 447:1. 1992, 64:5. 2007, 266:2. 2008, 391:2. 2009, 286:1, eff. Jan. 1, 2010.

- D. Heritage Commission.** There shall be a Heritage Commission consisting of five members. Three of these members shall be appointed by the Town Council for terms of three years, such terms to be staggered. One Town Council member shall be appointed annually to serve as an ex officio member. One member shall be recommended by the Planning Board and approved by the Town Council. This member shall be appointed annually to serve as an ex officio member. There shall also be three alternate members appointed in the same manner as regular appointed members, except no more than one alternate appointed member's term shall expire in a single year. The Town Council shall fill any vacancy for the period of the unexpired term, seeking the recommendation of the Planning Board if a vacancy in the Planning Board member should occur. The Heritage Commission shall have all the powers granted to heritage commissions by New Hampshire state law.
- E. Other administrative committees. Other administrative committees may be established as necessary by the Town Council.

Final Version adopted 4/3/2002

BY-LAWS

MERRIMACK HERITAGE COMMISSION

I. PURPOSE AND AUTHORIZATION

The Merrimack Heritage Commission (hereinafter, the Commission) duly established by the Merrimack Town Meeting on March 14, 2000 in accordance with **RSA 673:1** hereby establishes the following rules of procedure for the conduct of its business.

II. NAME

The name of the Commission shall be the "Merrimack Heritage Commission".

III. MEMBERSHIP AND TERMS OF OFFICE

A. Appointment of Members: The Commission shall consist of five members to be appointed by the Board of Selectmen, and shall include one Selectman to act as an ex-officio member with power to vote. The appointment of members shall conform to terms and requirements of **RSA 673:4a** and **RSA:673:5**.

B. Alternates: The Board of Selectmen may appoint, in addition to regular members, not more than three alternate members who may serve, upon designation by the Chairperson, in place of a regular member in the event of absence or disqualification. The terms and multiple membership requirements for alternates shall be the same as for regular members per **RSA 673:6**.

IV. OFFICERS AND THEIR DUTIES

A. Election of Officers:

B. The Commission shall elect, by a majority vote at its annual meeting, the following officers from among its membership. The term of each officer shall be limited to one year, however, any officer shall be eligible for re-election.

1. Chairperson: The Chairperson shall preside at all meetings and hearings of the Commission and shall have the duties normally conferred on such officers.
2. Chairperson: The Chairperson shall appoint such Committees as directed by the Commission including one member of the Commission, who shall act as Chairperson of such Committees. As directed by the Commission, the Chairperson shall affix his signature in the name of the Commission on all correspondence from the Commission. The Chairperson shall approve the agenda, all regular and special meetings of the Commission. In the absence of administrative staff, the Chairperson or his designee shall be responsible for the records of the meeting.