



Town Council Meeting Minutes

Thursday January 11, 2018, at 7:00 PM, in the Matthew Thornton Room

Chairman Harrington called the meeting of the Town Council to order at 7:00 p.m. Present at the meeting were Vice Chairman Rothhaus, Councilor Albert, Councilor Boyd, Councilor Flood, Councilor Koenig, Councilor Thornton, Town Manager Eileen Cabanel, and Assistant Town Manager/Finance Director Paul Micali.

Pledge of Allegiance

Chairman Harrington led in the Pledge of Allegiance.

Announcements

Town Hall Offices will be closed on Monday, January 15th in observance of the Martin Luther King Jr. holiday.

Budget meetings will be conducted by the Town Council on Thursday, January 18th, Monday, January 22nd, and Monday, January 29th at 6:00 p.m. in the Matthew Thornton Room.

A regular meeting of the Town Council will be conducted on Thursday, January 25th at 7:00 p.m. in the Matthew Thornton Room.

Chairman Harrington acknowledged the recent publicity regarding the Police Department, and Chief Roy's presentation to the Council during Monday night's budget meeting. The discussion was of the community's need to support the continued reassignment of a Sergeant and Patrolman to a Special Investigative Unit. Chairman Harrington thanked Chief Roy and the department for bringing this matter to the attention of the Council quickly, and the Council for taking quick action to support the efforts. Chairman Harrington remarked we are not immune; this is a problem of every community.

Chief Roy will be before the Council at its meeting on January 25th, and will provide an update at that time.

Perfluorooctanoic Acid (PFOA) Information Update

Councilor Boyd noted the citizens' task force will meet on January 23rd.

House Bill 485 regarding air emissions, which caused this problem due to unregulated contaminants being propelled into the atmosphere by Saint-Gobain, passed the House on a voice vote. It now goes to the House Finance Committee, which meets on Wednesday, January 24th at 3:00 p.m. Those wishing to provide input can contact the Chairman of the House Finance Committee, Neal Kurk.

The Drinking Water Commission will meet on Thursday January 18th.

Chairman Harrington commented HB485 not only allows the NH Department of Environmental Services (NHDES) to monitor and analyze air emissions, which it currently does not have the ability to do, it also helps NHDES to set groundwater standards based upon any future research, and establishes two new positions; Toxicologist and Human Health Risk Assessor.

1 **Highway Garage Project Update**

2
3 Councilor Flood stated, at its recent meeting, the committee discussed siting of the building. The
4 existing slope and the planned location for the building would have required installation of a rather
5 expensive retaining wall, which would have caused the project to exceed the budget. The committee
6 discussed the possibility of moving the building location back slightly or forward and tipping it in
7 another direction (either would work and come within budget).

8
9 Also discussed were issues of runoff (small area of parcel within Aquifer Protection District).

10
11 Assistant Town Manager/Finance Director Micali informed the Council of a call he received from the
12 bond bank informing him the sale was conducted, and the 20-year bond came in at 2.86% interest (for
13 the life of the bond).

14
15 **Comments from the Press and Public** - None

16
17 **Recognitions, Resignations and Retirements**

18
19 **1. Recognition of Full-time Years of Service of Town Employees**

20 *Submitted by Human Resources Coordinator Sharon Marunicz*

21 The Town Council will present recognition awards to the following Town employees:

22
23 Becky L. Sullivan, received a gift card in recognition of her 45 years of service to the Town of
24 Merrimack.

25
26 James Taylor, Assistant Director, Public Works/Wastewater, stated Ms. Sullivan grew up in
27 Merrimack. Prior to graduating from Merrimack High School, she took a part-time position at the
28 wastewater treatment facility. Upon graduating, she accepted a full-time position as Secretary. After a
29 few years she was asked to temporarily cover for a position at the Public Works office, which lasted 25
30 years. She returned to the treatment plant in 2006, where her talents have been very much appreciated.
31 He spoke of some of her many duties, and thanked her for her service.

32
33 David B. Blaine was unable to be in attendance. He will receive a clock in recognition of his 30 years
34 of service to the community as an employee of Public Works/Wastewater.

35
36 Louis A. Lapointe and Wayne C. Lombard were unable to be in attendance. They will each receive a
37 plaque in recognition of their 20 years of service to the community as employees of Public
38 Works/Highway.

39
40 **Appointments** - None

41
42 **Public Hearing**

43
44 **1. Public Hearing - Consideration of Changes to Chapters of the Merrimack Town Code**

45 *Submitted by Town Council Chair Nancy Harrington and Vice Chair Finlay Rothhaus*

46 The Town Council will hold a public hearing to consider the acceptance of recommended changes
47 to Chapters 34 (Library), 66 (Miscellaneous Duties of the Town Council), 92 (Amusement

1 Devices), 145 (Peddling and Soliciting) and 180 (Temporary Sales Locations and Vendors), of the
2 Merrimack Town Code, pursuant to Charter Article V.

3
4 Chapter 34; Library

5
6 *Chairman Harrington declared the Public Hearing open at 7:12 p.m.*

7
8 No public comment was offered.

9
10 *Chairman Harrington declared the Public Hearing closed at 7:13 p.m.*

11
12 **MOTION made by Councilor Boyd and seconded by Councilor Albert to move Chapter 34 to the**
13 **Consent Agenda. MOTION CARRIED 7-0-0**

14
15 Chapter 66; Miscellaneous Duties of the Town Council

16
17 *Chairman Harrington declared the Public Hearing open at 7:13 p.m.*

18
19 No public comment was offered.

20
21 *Chairman Harrington declared the Public Hearing closed at 7:14 p.m.*

22
23 **MOTION made by Councilor Boyd and seconded by Councilor Thornton to move Chapter 66 to**
24 **the Consent Agenda. MOTION CARRIED 7-0-0**

25
26 Chapter 92; Amusement Devices

27
28 *Chairman Harrington declared the Public Hearing open at 7:14 p.m.*

29
30 No public comment was offered.

31
32 *Chairman Harrington declared the Public Hearing closed at 7:15 p.m.*

33
34 Assistant Town Manager/Finance Director Micali noted the language in § 92-9 - Location Restrictions,
35 was put back in, as requested. New language was added to § 92-10, which addresses the age of a
36 person to operate one of the games of chance. The language was vetted by legal counsel.

37
38 Councilor Boyd questioned where amusement games of chance are defined. It was suggested the term
39 “games of chance” be amended to “amusement devices”, which is addressed under definitions. It was
40 noted that would result in precluding a 16-year-old from playing a pinball machine.

41
42 Vice Chairman Rothhaus suggested the language mirror that of State law.

43
44 When asked if there have been any issues with the language in the past, Vice Chairman Rothhaus and
45 Town Manager Cabanel both indicated they were unaware of any. Town Manager Cabanel requested
46 the changes be approved, and the opportunity provided to address the question with legal counsel. As
47 the proposed changes are descriptive in nature, it was not believed necessary to repeat the public
48 hearing.

1 Councilor Flood commented the definitions are too precise. All the items listed appear to be ones
2 where money is deposited to play a game whether of chance or skill. She would not object to either if
3 it was not gambling.

4
5 Councilor Albert suggested tabling the chapter given the subject of Keno would be before the Council
6 at its next meeting. Vice Chairman Rothhaus noted the discussion of Keno would be informational.
7 Assistant Town Manager/Finance Director Micali noted Keno would not be voted on until April 11th.

8
9 **MOTION made by Councilor Boyd and seconded by Councilor Thornton to place Chapter 92 on**
10 **the Council’s January 25, 2018 agenda under Old Business. MOTION CARRIED 7-0-0**

11
12 Chapter 145; Peddling and Soliciting

13
14 Assistant Town Manager/Finance Director Micali stated legal counsel has opined it should be
15 rescinded due to courts in other states having ruled requiring a permit places an unconstitutional
16 burden on speech based on its content.

17
18 Chapter 180, which addresses itinerant vendors, would address the issue.

19
20 ***Chairman Harrington declared the Public Hearing open at 7:27 p.m.***

21
22 Yvette Couser, Library Director

23
24 Stated the Library has a policy of “no solicitation”, and questioned if that would be allowed. Assistant
25 Town Manager/Finance Director Micali responded if you do not allow 1 person to solicit, if that is the
26 policy, it can continue. You cannot pick and choose; it is all or nothing.

27
28 ***Chairman Harrington declared the Public Hearing closed at 7:28 p.m.***

29
30 **MOTION made by Councilor Albert and seconded by Councilor Boyd that, based upon the**
31 **recommendation of legal counsel, Chapter 145 - Peddling and Soliciting, be rescinded. MOTION**
32 **CARRIED 6-01-0**

33 *Councilor Koenig voted in opposition*

34
35 **MOTION made by Councilor Boyd and seconded by Councilor Thornton to move Chapter 145**
36 **to the Consent Agenda. MOTION CARRIED 6-1-0**

37 *Councilor Koenig voted in opposition*

38
39 Chapter 180; Temporary Sales Locations and Vendors

40
41 ***Chairman Harrington declared the Public Hearing open at 7:30 p.m.***

42
43 No public comment was offered.

44
45 ***Chairman Harrington declared the Public Hearing closed at 7:31 p.m.***

46
47 **MOTION made by Councilor Boyd and seconded by Councilor Albert to move Chapter 180 to**
48 **the Consent Agenda**

1 ON THE QUESTION

2
3 Councilor Boyd thanked Kristin Wardner for the work she did on this chapter.

4 **MOTION CARRIED 7-0-0**

5
6 **Legislative Updates from State Representatives** - None

7
8 **Town Manager's Report**

9
10 The Planning Board will have an initial public hearing for the site plan of the mixed-use development
11 (Merrimack Park Place) at the base of the Merrimack Premium Outlets, on January 16th. The site plan
12 calls for 372,800 square feet of development including retail, hotel/event center, restaurant, office, and
13 multi-family residential uses, in accordance with the mixed-use development conditional use permit
14 approved by the Planning Board 1 year ago on January 17, 2017.

15
16 The initial public hearing for the site plan for the multi-family development on Executive Park Drive
17 took place on January 2nd. The Board heard presentations and testimony for about 2 hours, and has
18 continued the application to February 6th, when the applicant is expected to present revised plans and
19 information to address the Board and residents' concerns.

20
21 **Consent Agenda**

22
23 **1. Consideration of Changes to Chapters of the Merrimack Town Code [Final Reading]**

24 *Submitted by Town Council Chair Nancy Harrington and Vice Chair Finlay Rothhaus*

25 The Town Council to consider the acceptance of recommended changes to Chapter 81, Waterlines,
26 of the Merrimack Town Code, pursuant to Charter Article V.

27
28 **MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to move the consent**
29 **agenda. MOTION CARRIED 7-0-0**

30
31 **Old Business** - None

32
33 **New Business**

34
35 **1. Consideration of Changes to Chapters of the Merrimack Town Code [First Reading]**

36 *Submitted by Town Council Chair Nancy Harrington and Vice Chair Finlay Rothhaus*

37 The Town Council to consider the acceptance of recommended changes to Chapter A198,
38 Administrative Code, of the Merrimack Town Code, pursuant to Charter Article V.

39
40 Assistant Town Manager/Finance Director Micali stated there to have been no substantive changes
41 proposed to Chapter 198. Formatting changes such as replacing the word "and" with "&" can be seen
42 throughout. On pages 11-12, reference to the GIS Division was removed as it is non-existent. The
43 associated duties were added to those of the Planning & Zoning Administrator. "& Engineering" was
44 added to the Public Works Department. In that same area, the Capital Improvement Plan (CIP) duty
45 was added.

46
47 Under Fire Department, the duties were re-arranged to align with those doing the job.

1 The Library had some changes, which ensured alignment with current job titles and duties.
2
3 Councilor Albert commented on the discussion around the re-creation of the position of Deputy Chief
4 and the elimination of Administrative Services Lieutenant. Chairman Harrington stated the language
5 would remain until a formal action is taken on those positions by the Town. It was noted the Town
6 votes on the bottom line budget, and the hiring decision is that of the Council. Councilor Koenig
7 commented if this is the structure the Council wishes, if waiting until after the budget is approved, it
8 would be putting the cart before the horse as the request would be for money for something that
9 technically does not exist (on paper). He suggested the Code be amended to reflect the desire of the
10 Council, and then move forward with funding it.
11
12 Town Manager Cabanel stated they would work with the Police Chief to ensure the proposed language
13 aligns with the Chief’s intent. That language would be available in time for the Public Hearing.
14
15 Councilor Boyd questioned if the Special Investigative Unit would be under the Division of Criminal
16 Investigations or its own division.
17
18 Councilor Boyd requested the language in Article IV, B, be amended to clearly articulate department
19 heads may submit recommendations to the Town Manager who will recommend/not recommend to the
20 Town Council.
21
22 Article IV, D; replace “insuring” with “ensuring”
23
24 Article VII, C, 1; insert a comma after “budget”, and a period at the end of the sentence
25
26 Article VIII, I, A, 5; replace “assure” with “ensure”
27
28 Article XI, B, 3; replace “carryout” with “carry out” and “assure” with “ensure”
29
30 Article XI, C, 6; replace “Coordination of” with “Coordinate”
31
32 Article XI, D, 2; insert a comma after “records”
33
34 Article XI, D, 6; replace “carryout” with “carry out”
35
36 Article XI, E, 8; replace “user” with “users”
37
38 Article XI, F, 1, h; insert a comma after “investigate”
39
40 Article XIII, 4; refer to “a regional consortium” as opposed to “the GMILCS Consortium”
41
42 Councilor Flood commented on the formatting utilized under Article II, C.
43
44 Councilor Koenig noted instances where Finance Director/Assistant Town Manager is identified, and
45 remarked there are instances where it is one of the positions that applies and not both.
46
47 **MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to move Chapter A198**
48 **to a Public Hearing. MOTION CARRIED 7-0-0**

1 **2. Primex Contribution Assurance Program (CAP) for FY2020 – FY 2022**

2 *Submitted by Finance Director Paul T. Micali*

3 Town Council to consider the option of participating in the Contribution Assurance Program
4 (CAP) for the next three coverage period years (FY 2020 - FY 2022) for Primex’s Property &
5 Liability Program.
6

7 Town Manager Cabanel noted the Town has participated in this program previously (2013-2018).
8 There are two different contracts/programs under Primex; Workers’ Compensation and Property &
9 Liability. Proposed is for the Town to participate in these programs for the next three years. Through
10 participation, a cap would be established limiting the percent of increase the insurance would be
11 subject to over the coverage period.
12

13 Examples of interest charged for Workers’ Compensation insurance during the last program
14 participation period were provided: in 2013, with a cap of 8%, the actual interest charged was 0.1%, in
15 2014 and 2015, actual was -8.6%, with a cap of 10%, in 2016, the actual interest charged was -7.7%,
16 and 2017 actual was 9.5%. Actual cost for 2018 is not yet known.
17

18 When asked what resulted in the high increases, Town Manager Cabanel noted it could be both the
19 number and cost of claims. There are privacy issues involved, and specifics are not necessarily
20 provided. She spoke of the Joint Loss Committee, which reviews every claim to determine if the
21 injury was preventable, and puts measures in place to avoid future injuries.
22

23 When asked, Assistant Town Manager/Finance Director Micali stated the Workers’ Compensation is
24 in the State consortium. Were the Town interested in looking elsewhere for coverage, it would have to
25 go to a private vendor, and would lose some of the rights gained by being in a pool.
26

27 *The paperwork provided by Primex was specific to Property & Liability insurance alone.*
28

29 **MOTION made by Councilor Koenig and seconded by Councilor Boyd to table until January 25,**
30 **2018. MOTION CARRIED 7-0-0**
31

32 **Minutes**

33
34 December 21, 2017
35

36 *The following amendments were offered:*
37

38 Page 5, Line 47; replace “Muscles” with “Mussels”
39

40 **MOTION made by Councilor Boyd and seconded by Councilor Koenig to accept the meeting**
41 **minutes of the Town Council of December 21, 2017, as amended. MOTION CARRIED 6-0-1**
42 *Councilor Flood Abstained*
43

44 **Comments from the Press** - None
45

46 **Comments from the Public** – None

1 **Comments from the Council**

2
3 Councilor Boyd spoke of learning of the passing of Alastair Millns' Mother, and expressed his
4 condolences to Mr. Millns and his family.

5
6 **Adjourn**

7
8 **MOTION made by Councilor Boyd and seconded by Councilor Thornton to adjourn the**
9 **meeting. MOTION CARRIED 7-0-0**

10
11 *The January 11, 2018 meeting of the Town Council was adjourned at 8:21 p.m.*

12
13
14
15 Submitted by Dawn MacMillan

