

Approved: January 25, 2018

Posted: January 26, 2018



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

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two new positions; Toxicologist and Human Health Risk Assessor.

Highway Garage Project Update

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

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

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

Comments from the Press and Public - None

Recognitions, Resignations and Retirements

1. Recognition of Full-time Years of Service of Town Employees

Submitted by Human Resources Coordinator Sharon Marunicz

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

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

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

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

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

Appointments - None

Public Hearing

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

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

The Town Council will hold a public hearing to consider the acceptance of recommended changes to Chapters 34 (Library), 66 (Miscellaneous Duties of the Town Council), 92 (Amusement Devices), 145 (Peddling and Soliciting) and 180 (Temporary Sales Locations and Vendors), of the Merrimack Town Code, pursuant to Charter Article V.

Chapter 34; Library

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

No public comment was offered.

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

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

Chapter 66; Miscellaneous Duties of the Town Council

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

No public comment was offered.

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

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

Chapter 92; Amusement Devices

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

No public comment was offered.

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

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

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

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

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

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

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

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

Chapter 145; Peddling and Soliciting

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

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

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

Yvette Couser, Library Director

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

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

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

Councilor Koenig voted in opposition

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

Councilor Koenig voted in opposition

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Chapter 180; Temporary Sales Locations and Vendors

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

No public comment was offered.

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

MOTION made by Councilor Boyd and seconded by Councilor Albert to move Chapter 180 to the Consent Agenda
ON THE QUESTION

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

MOTION CARRIED 7-0-0

Legislative Updates from State Representatives - None

Town Manager's Report

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

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

Consent Agenda

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

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

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

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

Old Business - None

New Business

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

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

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

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

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

The Library had some changes, which ensured alignment with current job titles and duties.

Councilor Albert commented on the discussion around the re-creation of the position of Deputy Chief and the elimination of Administrative Services Lieutenant. Chairman Harrington stated the language would remain until a formal action is taken on those positions by the Town. It was noted the Town votes on the bottom line budget, and the hiring decision is that of the Council. Councilor Koenig commented if this is the structure the Council wishes, if waiting until after the budget is approved, it would be putting the cart before the horse as the request would be for money for something that technically does not exist (on paper). He suggested the Code be amended to reflect the desire of the Council, and then move forward with funding it.

Town Manager Cabanel stated they would work with the Police Chief to ensure the proposed language aligns with the Chief’s intent. That language would be available in time for the Public Hearing.

Councilor Boyd questioned if the Special Investigative Unit would be under the Division of Criminal Investigations or its own division.

Councilor Boyd requested the language in Article IV, B, be amended to clearly articulate department heads may submit recommendations to the Town Manager who will recommend/not recommend to the Town Council.

Article IV, D; replace “insuring” with “ensuring”

Article VII, C, 1; insert a comma after “budget”, and a period at the end of the sentence

Article VIII, I, A, 5; replace “assure” with “ensure”

Article XI, B, 3; replace “carryout” with “carry out” and “assure” with “ensure”

Article XI, C, 6; replace “Coordination of” with “Coordinate”

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Article XI, D, 2; insert a comma after “records”

Article XI, D, 6; replace “carryout” with “carry out”

Article XI, E, 8; replace “user” with “users”

Article XI, F, 1, h; insert a comma after “investigate”

Article XIII, 4; refer to “a regional consortium” as opposed to “the GMILCS Consortium”

Councilor Flood commented on the formatting utilized under Article II, C.

Councilor Koenig noted instances where Finance Director/Assistant Town Manager is identified, and remarked there are instances where it is one of the positions that applies and not both.

MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to move Chapter A198 to a Public Hearing. MOTION CARRIED 7-0-0

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

Submitted by Finance Director Paul T. Micali

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

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

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

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

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

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

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

Minutes

December 21, 2017

The following amendments were offered:

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

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

Comments from the Press - None

Comments from the Public – None

Comments from the Council

Councilor Boyd spoke of learning of the passing of Alastair Millns’ Mother, and expressed his condolences to Mr. Millns and his family.

Adjourn

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

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

Submitted by Dawn MacMillan