



Town Council Meeting Minutes

Thursday, April 14, 2022, at 7:00 PM, in the Matthew Thornton Room



Call to Order

Chairman Koenig called the meeting to order at 7:01 pm. Present at the meeting were Chairman Koenig, Vice Chair Rothhaus, Councilor Healey, Councilor Hunter, Councilor Murphy, Councilor Woods, and Town Manager Paul Micali. Councilor Harrington was excused.

Pledge of Allegiance

Chairman Koenig led the Pledge of Allegiance.

Announcements

Upcoming Town Council Meetings:

- Thursday, April 28, 2022, 7:00 PM Regular meeting
- Thursday, May 12, 2022, 7:00 PM Regular meeting
- Thursday, May 26, 2022, 7:00 PM Regular meeting

A Virtual Workshop on Green Grass & Clear Water will be held on April 18th at 6:30 PM. Registration is required. Please see the homepage on the Town website for more information on how to register. The Town of Merrimack has joined forces with NH Sea Grant Extension, NH DES, NH UNH Extension, the Town of Pelham and others to put on this workshop. Under the Towns Municipal Separate Storm Sewer System (MS4) Permit one of the requirements for the program is that we provide education and outreach to the residents, commercial and Industrial business owners of the Town. This workshop will explain to the residents and the lawn care professionals alike, the dos and don'ts for taking care of your lawn. Proper lawn maintenance will help to keep our rivers, lakes and ponds healthy and clean. Thank you for doing your part in keeping Merrimack Clean.

The late Thursday hours at the Transfer Station for the summer season have begun and continue through September 8. During that period, the operating hours at the Transfer Station will be 8:00 am to 4:00 pm on Tuesday, Wednesday, Friday and Saturday. Thursday hours are 8:00 am to 7:00 pm.

The schedule for the Household Hazardous Waste program has been announced. The first event of the year is on Saturday, April 23 from 8:00 am to noon at the Nashua City Park and Ride at 25 Crown Street. More information can be found on the Solid Waste page of the Town of Merrimack website.

Comments from the Press and Public

None.

Recognitions, Resignations and Retirements

None.

Appointments

None.

Public Hearing

1. Public Hearing - Consideration of Changes to Chapter A198 of the Merrimack Town Code

Submitted by Town Manager Paul T. Micali

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

Town Manager Paul Micali stated that as per Charter, within the first nine months of a new Town Manager taking office, a public hearing must be held if the new Town Manager intends to make changes to the A198 Administrative Code, which is for the town departments. He then stated that he is not making any changes to the structure of departments, but rather he cleaned up information from the past 10 years and updated some language and titles, as discussed at the previous meeting.

The public hearing was opened at 7:09pm and closed at 7:10pm.

MOTION made by Vice Chair Rothhaus and seconded by Councilor Healey to advance the changes to Chapter A198 of the Merrimack Town Code to a final meeting and put on the Consent Agenda.

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Legislative Updates from State Representatives

None.

Town Manager's Report

- The 2022 paving program began today on Amherst Road. The full paving program and schedule of work can be found by clicking the Roads Update link on the Town website
- The annual street sweeping program is underway and progressing well. The contractor has completed the first two zones and are currently in zone three. Updates for the program can be found on the Highway Division page of the Town website.
- Stowell Road Bridge work is complete. The road is back open to traffic and the bridge looks terrific!!
- Mr. Micali asked the Council to reschedule the Town Council meeting scheduled for May 12th to May 5th as he has a scheduling conflict.

MOTION made by Councilor Murphy and seconded by Councilor Hunter to reschedule the Town Council meeting scheduled for May 12th to May 5th.

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- Mr. Micali would like to wish Assistant Chief Brechtel the best of luck in his retirement, as he has tendered his resignation effective May 1st.
- Dean Stearns from the Highway Department is also retiring, effective at the end of May.

Consent Agenda

None.

Old Business

None.

New Business

1. Committee Appointments

Submitted by Town Council Chairman Tom Koenig and Vice Chair Finlay Rothhaus

The Town Council to consider appointing the following individuals to Town committees, pursuant to Charter Article 4-8:

➤ **Michael Redding** – Town Center Committee (*Full member*)

MOTION made by Vice Chair Rothhaus and seconded by Councilor Woods to appoint Michael Redding to the Town Center Committee as a full member.

MOTION CARRIES 6-0-0

2. Change of Independent Auditors

Submitted by Finance Director Tom Boland

The Town Charter requires that the Town's independent auditors be changed at least once every five years.

Town Manager Paul Micali began by stating that this is more so that there can be a fresh pair of eyes every few years and people don't get complacent. Finance Director Tom Boland then stated that they typically bid for a three-year contract so there is flexibility in case they are not satisfied with the auditors. He then stated that the firm they went with was smaller than what they'd typically go with and they mostly specialize in fraud and forensic accounting, so they have decided to go out to bid. After receiving two bids, he is recommending they go with Plodzik and Sanderson, who they have used in the past.

MOTION made by Vice Chair Rothhaus and seconded by Councilor Murphy to approve the auditor for the Town of Merrimack to Plodzik and Sanderson per the recommendation by the Finance Director and Town Manager.

MOTION CARRIES 6-0-0

3. Highway Equipment Capital Reserve Fund Withdrawal Request

Submitted by Highway Operations Manager Lori Barrett

The Town Council to consider the Highway Division's request to withdraw up to \$143,250 from the Highway Equipment Capital Reserve Fund for the purpose of purchasing a used 2019 Volvo EWR150E wheeled excavator.

Highway Operations Manager Lori Barrett was present to discuss her request to withdraw from the CRF to purchase a used 2019 Volvo EWR150E wheeled excavator. Mr. Micali stated that he has worked with Ms. Barrett regarding this purchase and is in agreement with her that they need to purchase this due to the large amount of ditch line work and clearing of catch basins that the Highway Division does. Ms. Barrett shared that this excavator provides a tighter turning radius on busy roads, allows for safer traffic patterns, has a smaller work area, and will give them more capabilities with its multi-twist wrist. Additionally, it provides over-the-road transport, has more diversities in its capabilities, and will be more efficient in their operations. She further stated that this vehicle is lightly used, having previously been a long-term rental with the DOT and only has 1,440 hours on it. Ms. Barrett then stated that it has been difficult to find used vehicles, and this company is going to take the 2000 Case backhoe as a trade-in for \$26,000. The total cost for the Volvo will be \$143,250. Vice Chair Rothhaus asked how many hours are on the Case backhoe, in which Ms. Barrett stated it's at about 6,500 and has significant issues, such as an oil leak. Council Hunter asked if they have looked into auctioning the backhoe instead of trading it in, specifically if there would be a premium for auction due to the vehicle shortage. Mr. Micali responded by saying that they do sometimes auction vehicles,

but since they are getting \$26,000 for the backhoe it is a better value as he has never seen a piece of equipment go for that much at an auction. Chairman Koenig asked how this would pan out with the CRF since they were originally going to buy another backhoe with the money, in which Mr. Micali stated that they will actually save \$6,750 from what they were budgeting for the backhoe.

MOTION made by Vice Chair Rothhaus and seconded by Councilor Healey to allow the withdrawal up to \$143,250 from the Highway Equipment Capital Reserve Fund for the purpose of purchasing a used 2019 Volvo EWR150E wheeled excavator as described by the Highway Operations Manager.
MOTION CARRIES 6-0-0

4. Consideration of Changes to Chapter 158, Sewer Use, of the Merrimack Town Code [First Reading]

Submitted by Town Council Chair Tom Koenig and Vice Chair Finlay Rothhaus

The Town Council to consider the acceptance of recommended changes to Chapter 158, Sewer Use, of the Merrimack Town Code, pursuant to Charter Article V.

Town Manager Paul Micali began by stating that these changes are being made due to an EPA audit, where there were findings that stated that they have to revise the ordinance. Assistant DPW Director/Wastewater Assistant Director Sarita Croce was present to discuss this further with a PowerPoint presentation. She shared a history of the sewer use ordinance (SUO), information about the EPA audit of the Pretreatment Program and SUO revision requirements, NHDES regulatory changes, and additional changes to the SUO. Highlights from the PowerPoint include:

- The National Pretreatment Program requires industrial and commercial dischargers to obtain permits or other control mechanisms to discharge wastewater to a municipal Wastewater Treatment Plant.
- These permits specify the discharge wastewater quality that is required to ensure that the WWTP can meet federal regulations.
- General Pretreatment regulations were established in 1983.
- Communities with NPDES permits for their wastewater treatment plants were required to establish a sewer use ordinance which complied with the pretreatment regulations.
- The Town of Merrimack's sewer use ordinance was initially approved in 1985.
- The program is required to be audited by USEPA to ensure the Town is in compliance with federal regulations.
- The most recent USEPA audit was conducted in April 2021 and provided revision requirements of the SUO.

Ms. Croce then went over the redline version of these documents with the Council, which included the following changes:

- Definition of POTW- Section 158-6.
 - The Town's definition of POTW does not include the sewers, pipes and other conveyances that convey wastewater to the WWTP. Currently, this definition is less stringent than the federal definition at 40 CFR 403.3(q).
 - Revise the definition to specify that the term "POTW" also includes sewers, pipes and conveyances that convey wastewater to the WWTP.
 - Revised as presented in the definition section- Redline pages 8 and 9.
- Definition of SIU- Part B of the SIU definition in Section 158-6
 - This section needs to be consistent with the definition of Non-Significant Categorical Industrial User (NSCIU) in the federal pretreatment regulations, the word "categorical" must be included in this term, as the NSCIU classification is specific to categorical

industries in the federal regulations.

- Revise the definition of SIU to mirror the federal classification of NSCIU, found at 40 CFR 403.2(v)(2).
 - Revised as presented in the definition section- Redline page 11
- General Prohibitions- Section 158-38(A) of the SUO prohibits pollutants introduced by an “industrial or commercial user” that cause interference or pass through does not expand this prohibition to all users. The general prohibitions at 40 CFR 403s(a) apply to all users, not only industrial or commercial users.
 - Revise the SUO to apply the general prohibitions to all users.
 - Revised as presented in the definition section- Redline page 22.
- Certification of pollutant not present- Section 158-44(C)(3) of the SUO includes this provision; however, the SUO does not include the certification requirement or statement from this provision.
 - Revise the SUO to include the requirement that an industrial user who is granted a monitoring waiver must certify that there has been no increase in the pollutant in its waste stream due to activities of the industrial user in each report and include the certification statement.
 - Revised as presented in the definition section- Redline pages 33 and 34.
- Periodic reports on continued compliance: Categorical Industrial Users (CIU)- Section 158-45.
 - The SUO does not specify that where the pretreatment standard requires compliance with a BMP or pollution prevention alternatives, the user must submit documentation to determine compliance in period reports on continued compliance.
 - Revise the SUO to indicate that documentation of compliance with BMPs is required to be included in periodic reports on continued compliance.
 - Revised as presented in the definition section- Redline page 34.
- Baseline Monitoring Report Contents:
 - Measurement of pollutants- The SUO does not specify that “...where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation required by the Control Authority or the applicable Standards to determine compliance with the Standard;” nor does the SUO include the BMR requirements found at 40 CFR 403.12(b)(5)(iii)-(vii). Section 158-60(G)(8).
 - Revise the SUO to include language regarding BMP documentation and all required BMR documentation.
 - Revised as presented in the definition section- Redline pages 48, 49, and 50.
- NHDES no longer requires industrial users served by a WWTP that have an EPA approved pretreatment program, file an Industrial Wastewater Indirect Discharge Request (IDR) under Env-Wq 305.10 and obtain DES approval prior to issuance of a permit by the WWTP.
 - The Town has revised the SUO to include the IDR requirements previously included in ENV-WQ 305.10.
 - Revisions are presented in Redline page 43-44.
 - Added section 158-56(I).
- Authorized Agent definition- Town changed language to match most recent USEPA Model Ordinance (Redline Version page 2 &3).
- Best Management Practices (BMP)- Added to Abbreviation and Section Reference (Redline Version page 3 and 13).
- Commercial definition added Faculty/User for clarity (Redline Version page 4).
- Industrial user definition changed to add “or entity” for clarity (Redline Version page 5).
- Revised definitions of local limit, pH, and slug load, to match model ordinance (Redline Version page 6, 8, and 11 respectively).

- Added to the Definition of Superintendent the position title of Assistant Director of Public Works (Redline Version page 12).
- Screening levels were updated to reference the USEPA's most recent Local Limits Development Guidance Appendices (Redline Version pages 28 & 28).
- Increased the reporting time limit to provide semi-annual reports to 30 days after the close of the reporting period (Redline Version pages 36 & 39).
- Wastewater discharge permit reconsideration- Town added for clarity, reconsideration of a permit will be led by the Town Manager (Redline Version pages 44 & 45).
 - This Industrial Pretreatment portion of the Ordinance was originally enacted to fulfill the Town's pretreatment obligation under the Clean Water Act. EPA is the ultimate authority for the pretreatment program. Therefore, any appeals should be directed to the US 1st Circuit Court of Appeals.
- Measurement of pollutants. Town added language to match most recent USEPA Model Pretreatment Ordinance and language in 40 CFR 403 Regulations (Redline Version pages 48 & 49).
- USEPA approved the SUO on February 16, 2022.
- NHDES approved SUO on December 9, 2021.
- Currently executing a study to develop a local limit for abrasive filter media.
- The draft local limits report which will recommend the limits must be approved by USEPA.
- Once approved, USEPA completes a 30-day public notice period.
- The local limit will be added to the SUO after final approval.

After the presentation, the Council discussed some of the language with Ms. Croce, specifically whether the language should say "may" or "shall" submit to NHDES. Mr. Micali stated that they will think about this and see if they can come up with some alternative language that both EPA and NHDES would agree on.

MOTION made by Councilor Hunter and seconded by Councilor Healey to move the Sewer Use Ordinance with slight modifications discussed tonight to the Public Hearing on May 5th.

MOTION CARRIES 6-0-0

Minutes

Approve the minutes from the following Town Council meeting:

- ◆ March 24, 2022

MOTION made by Councilor Healey and seconded by Councilor Murphy to approve the minutes from March 24, 2022 as amended.

MOTION CARRIES 6-0-0

Amendments:

Page 1 Line 30: "to view to timeslot" strike second "to"

Page 2 Line 18: "Newman" should be "Neumann"

Page 6 Line 39: "Compromise" should be "comprise"

Comments from the Press

None.

Comments from the Public

None.

Comments from the Council

Vice Chair Rothhaus wanted to discuss the requests for the use of funds for Abbie Griffin trust account, stating that he has concerns over the choice of the weapons that were approved that night. He does not want the police department to become militarized and does not want them to resemble a SWAT team or tactical unit as opposed to a community team.

Chairman Koenig agreed with his concern but does not believe there needs to be a motion to reconsider as these items are important for them to do their job, although it can be difficult to draw the line between community police and tactical unit. Council Hunter stated that what the Council approved for the police department isn't anything that a regular citizen couldn't buy at a gun store, and he wants the police department to be appropriately armed for any potential scenario.

Councilor Woods wished everyone who celebrates a Happy Easter.

Chairman Koenig wanted to thank the town for supporting their efforts on how they are moving forward with the Council.

Mr. Micali wanted the Council to think about possible retreat dates for the annual retreat this summer, most likely around the end of May or early June.

Adjourn

MOTION made by Councilor Woods and seconded by Councilor Healey to adjourn the meeting.

MOTION CARRIES 6-0-0

The meeting adjourned at 8:32pm.

Respectfully submitted by Jennifer Steagald