

Chapter C

CHARTER

[HISTORY: Adopted by the Town of Merrimack 4-11-2006. Amendments noted where applicable.]

ARTICLE I

Incorporation; Town Form of Government; Power**§ 1-1. Incorporation.**

The inhabitants of the Town of Merrimack in the County of Hillsborough shall continue to be a body politic and corporate under the name of the "Town of Merrimack" as incorporated on April 2, 1746, and as such to enjoy all the rights, immunities, powers, and privileges and be subject to all the duties and liabilities now appertaining to or incumbent upon them as a municipal corporation. All existing property of the Town shall remain vested in it, and all its existing debts and obligations shall remain obligatory upon it under this Charter.

§ 1-2. Town form of government.

The administration of all the fiscal, prudential, municipal, and other affairs of the Town with the governance thereof shall be vested in a Town Council except as otherwise provided for in this Charter.

§ 1-3. Construction.

The powers of the municipality under this Charter are to be construed liberally in favor of the Town, and the specific mention of particular powers is not intended to limit in any way the general powers of the municipality as stated in § 1-1.

§ 1-4. Intergovernmental relations.

Subject only to express limitations in the provisions of New Hampshire state law, the Town may exercise any of its powers or perform any of its functions under this Charter and may participate in the financing thereof jointly or in cooperation, by contract or otherwise, with the State of New Hampshire, or any political subdivision or agency thereof, or the United States of America or any agency thereof.

ARTICLE II
Glossary of Terms

§ 2-1. Definitions.

- A. Apparent meaning. Unless another meaning is clearly apparent from the manner in which the word is used, the words used in this Charter shall have the meaning as defined in § 2-1B.
- B. Specific meaning.
- (1) Certified: The word "certified" shall mean the completing of the election procedure by the Town Moderator and the Town Clerk as defined but not limited by RSA 669, including any provisions for recount.
 - (2) Charter: The word "Charter" shall mean this Charter and any amendments to it made through any of the methods provided under RSA 49-B.
 - (3) Council: The word "Council" shall mean the Town Council as promulgated in Article IV of this Charter.
 - (4) Days: The word "days" shall refer to calendar days.
 - (5) Deadline/due date: When a deadline or due date falls on a Saturday, Sunday, legal holiday, or other day or date when no business is transacted due to a closure occasioned by a federal, state or Council declaration, the deadline or due date shall be the next regular business day of the Town.
 - (6) Emergency: The word "emergency" shall mean a sudden, unexpected, unforeseen happening, occurrence or condition which necessitates immediate action.
 - (7) Ex officio: The words "ex officio" shall mean a Town official serving as a member of a board, committee, or commission. This member shall have all the rights of regular members of such board, committee, or commission, except the right to hold an office (Chair, Vice Chair, Secretary, etc.) on such board, committee, or commission.
 - (8) Initiative measure: The words "initiative measure" shall mean a measure proposed by initiative procedures under this Charter, but excluding:
 - a. Matters relative to the organization or operation of the Town Council;
 - b. An emergency measure passed in conformity with this Charter;
 - c. The Town budget;
 - d. Tax anticipation notes;
 - e. Any appropriation for the payment of the Town debts or obligations;
 - f. Any appropriation of funds necessary to implement a duly adopted collective bargaining agreement;
 - g. Any proceeding, or part thereof, relating to the election, employment,

appointment, suspension, transfer, demotion, removal or discharge of any Town officer or employee;

- h. Any proceeding repealing or rescinding a measure, or a part thereof, which is protested by referendum procedures.
- (9) Measure: The word "measure" refers to a specific act or proposal. The specific act or proposal may be a resolution, an ordinance, a referendum vote to be taken, or other proposed action, depending on the matter to be acted on.
- (10) Multiple member body: The words "multiple member body" shall mean any body consisting of two or more persons, whether elected, appointed, or otherwise constituted.
- (11) Number and gender: The singular number may be extended and applied to several persons or things; words imparting the plural number may include the singular; words imparting the masculine gender shall include the feminine gender; and words imparting the feminine gender shall include the masculine gender.
- (12) Referendum measure: The words "referendum measure" shall mean:
- a. A measure protested by referendum procedures under this Charter, including a specific item in the Town budget, but excluding items a through g listed in the definition (8) Initiative measure; or
 - b. Any proceeding of the Town Council providing for the submission or referral of a matter to the voters at an election.
- (13) RSA: The acronym "RSA" refers to the New Hampshire Revised Statutes Annotated.
- (14) State law: The words "state law" shall mean New Hampshire state law as embodied in the Revised Statutes Annotated (RSA) and rules adopted under law.
- (15) Town: The word "Town" shall mean the Town of Merrimack.
- (16) Town agency: The words "Town agency" shall mean any board, commission, committee, department, or office of the Town government.
- (17) Voters: The word "voters" shall mean registered voters of the Town of Merrimack.

ARTICLE III
Elections; Election Officials; Conduct of Elections

§ 3-1. Composition of Board of Election Officers.

The Supervisors of the Checklist, the Moderator, and the Town Clerk shall constitute the Board of Election Officers. The Moderator shall be Chairman. The Town Clerk shall serve as the Clerk of the Board.

§ 3-2. Moderator.

There shall be a Moderator of the Town who shall have all the powers and duties granted by this Charter and New Hampshire state law. The Moderator shall be elected at large at the regular Town election for a term of two years. The Moderator shall have the power to appoint all election officials except those which this Charter or New Hampshire state law requires to be elected or otherwise appointed. The Moderator shall be governed by New Hampshire state law when determining whether all ballots from all polling places are to be counted in one or more locations. A vacancy in the office of Moderator shall be filled pursuant to New Hampshire state law.

§ 3-3. Supervisors of the Checklist.

- A. Number of Supervisors and length of term. There shall be three Supervisors of the Checklist who shall hold office for six years (and until their successors are elected and certified) on a staggered basis so that one Supervisor is elected at each even-year regular Town election. At their first meeting after each election, the Supervisors shall elect their own Chairperson for a term of two years.
- B. Vacancies. Vacancies in the Board of Supervisors shall be filled by appointment made by the remaining Supervisors. If there is only one member of the Board, or if the whole Board shall be vacant, the Moderator shall make the appointments (RSA 669:64). A person appointed shall hold office until the vacancy or the unexpired term(s) is filled at the next Town election.
- C. Powers and duties. The Supervisors of the Checklist shall have such powers and duties as are specified under New Hampshire state law.

§ 3-4. Conduct of elections.

- A. Date of elections. The election officers shall conduct regular and special elections on the dates specified by New Hampshire State Law. The election officers shall use a nonpartisan official ballot system as detailed in the election laws of the State of New Hampshire, on the second Tuesday in April to choose Town Councilors and such other officials as specified by this Charter, each of whom shall be elected by the voters of the entire Town. **[Amended 4-10-2007]**
- B. Time and place of elections. The election laws of the State of New Hampshire shall govern the hours of polling. The Town Council shall specify the polling place(s) of the Town and determine the hours the polls shall open and close at least 30 days prior to any election.
- C. Qualifications for office. To be eligible for election to office in Merrimack, any

candidate must meet the requirements of applicable New Hampshire state law and constitutional provisions concerning such qualifications. In accordance with RSA 669:6, no person shall hold elected office unless the person has a domicile in the Town. In addition to other requirements, a candidate for Town Council must be a registered voter as well as having been a resident for a minimum of one year prior to the first day of the filing period for candidacy.

§ 3-5. Preparation of ballots. [Amended 4-10-2007]

The Town Clerk shall prepare separate ballots to be used at all local referenda and elections at which Town officers are chosen. The ballots shall contain in appropriate sections the names of all candidates, listed as prescribed by New Hampshire State Law, without party designation. Below the list of names of the candidates of each office, there shall be as many blank spaces as there are offices to be filled at the election. No titles, military, professional, or otherwise, shall accompany the name of any candidate on the ballot.

§ 3-6. Preservation of ballots.

All the ballots cast at each election shall be preserved, maintained, and sealed as required by New Hampshire state law.

§ 3-7. Certification of election and appointment.

Except as otherwise provided by New Hampshire state law, before performing any act under this election or appointment, each person elected or appointed shall take and subscribe to an oath to qualify him or her to enter upon the duties of office within 30 days of the receipt of an official notice by certified mail. A record of the taking of such oath shall be made by the Town Clerk. Any oath required by this section may be administered by any officer authorized by New Hampshire state law to administer oaths. If, within 30 days from the date of such election or appointment, such person shall not take, subscribe to, and file with the Town Clerk an oath of office, such neglect shall be deemed a refusal to serve and the office shall be deemed vacant, unless the Town Council shall extend the time in which such person may qualify.

§ 3-8. Contested elections.

The election laws of the State of New Hampshire shall govern the resolution of any contested election.

ARTICLE IV
Governing Board

§ 4-1. Membership; term of office.

- A. Membership. Except as otherwise provided in this Charter, all of the powers of the Town as authorized by New Hampshire state law shall be vested in a Town Council, hereinafter referred to as the "Council," of seven Councilors.
- B. Term of office. The Councilors shall be elected from the Town at large for three-year staggered terms. All members shall take office following certification of their election and after being duly sworn in and shall hold office until successors are duly elected and certified.

§ 4-2. Organizational meeting.

The Councilors so chosen shall meet in their capacity as the Council at the first regularly scheduled meeting after certification of their election for the purpose of taking their respective oaths of office, adopting rules, and for the transaction of business required by law or ordinance to be transacted in such meeting.

§ 4-3. Selection of Chair and Vice Chair. [Amended 4-10-2007]

The Council shall, by the affirmative vote of at least four of its members, at its Organizational Meeting, chose one of its members Chair, who shall hold office until their successor is duly elect by the Council. The Council shall choose one of its members as Vice Chair, who shall hold office until their successor is duly elected by the Council, who shall act in the absence or disability of the Chair. In the event of a vacancy occurring in the office of the Chair, the Vice Chair shall serve out the unexpired term. The Chair shall be the official head of the Town for all ceremonial purposes, shall preside at all meetings of the Council, and may speak and vote at such meetings.

§ 4-4. Qualifications of Councilors.

- A. Requirements. To be eligible for election as Councilor, a candidate must be a registered voter, must have been a resident domiciled in Merrimack for at least one year prior to the first day of the filing period for candidacy, and after election must remain a domiciled resident or relinquish the office, as provided for in § 3-4C.
- B. Removal of Councilor. By a vote of five Councilors, the Council may, on specific charges and after due notice and hearing, remove one of its own members for cause and declare a vacancy. Cause for purposes of this section shall mean one or more of the following: the member has missed three regular scheduled meetings in sequence without leave of the Council; the member has missed 1/3 of all meetings within a calendar year without leave of the Council; the member has falsified records; the member has misapplied Town funds or property; or the member has interfered with administration as defined by § 7-9.
- C. Incompatible positions. No Councilor shall, while serving a term, be eligible to hold any other Town position of remuneration. No Councilor, while serving a term, nor former Councilor, who has been out of office less than one year, shall be appointed

as Acting Town Manager.

- D. Incompatible offices. Except as otherwise provided in this Charter, members of the Council shall not hold any office or employment with the Town. Former members of the Council shall not be eligible for appointment as a compensated Town officer or employee until one year after the expiration of the term of office for which the Councilor was elected.

§ 4-5. Vacancies.

In case a vacancy occurs in the Town Council for any reason, the remaining Town Councilors shall, by majority vote, appoint an acting Town Councilor, from among persons eligible to hold the vacant office, to serve until the next regular Town election, at which point the vacancy shall be filled by election for the remainder of the unexpired term; provided, however, that if the vacancy occurs fewer than 90 days prior to the next regular Town election, the vacancy shall not be filled by appointment but shall be filled at the next regular Town election.

The Town Council shall act to fill a vacancy no later than 21 days after the vacancy has been officially declared. The person so appointed shall be sworn and commence to serve forthwith.

§ 4-6. Compensation and expenses.

The Town Council shall establish an annual salary and expense allowance for its members, subject to the following:

No increase in such salary or expense allowance shall be effective unless it shall have been adopted by a vote of five Town Councilors.

The new salary and expense schedule shall be included in the next Town budget process and shall take effect in the fiscal period to which that budget applies.

No Councilor in office at the time the new schedule is adopted shall receive any benefit of the new schedule during the remainder of the Councilor's then-current term of office.

Notwithstanding the foregoing, any decrease in such salary and expenses shall be adopted by a majority vote and take effect immediately and apply to all Councilors holding office at the time the decrease is adopted.

§ 4-7. Exercise of powers; meetings; rules of procedure.

- A. Exercise of powers. Except as otherwise prohibited by New Hampshire state law or this Charter, the powers of the Council may be exercised in a manner it so determines.
- B. Quorum. A quorum of the Council for the transaction of any business shall be four of the members currently in office. However, a smaller number may adjourn the meeting to another time or date.
- C. Meetings. All meetings of the Council shall be public to the extent required by New Hampshire state law.

- (1) Regular meetings. Regular meetings shall be held at such time, date, and place as the Council shall by ordinance or resolution direct. Agendas shall be prepared and posted at least 72 hours in advance of each regular meeting.
 - (2) Special meetings. Special meetings may be called by the Chair. Special meetings may also be called at the written request of the Manager or at least three Councilors, and upon such request the Chair of the Council shall call such special meeting. Written notice of said meeting shall be given to the public and to each Councilor at least 24 hours prior to the call of the meeting, excluding Saturdays, Sundays, and legal holidays.
 - (3) Emergency meetings. An emergency meeting may be called by the Chair when immediate, undelayed action is deemed to be imperative by the Chair, who shall employ whatever means are reasonably available to inform the public and all Council members that an emergency meeting is to be held.
- D. Rules of procedure. The Council shall establish rules for its proceedings, including but not limited to recording of votes, posting and amending of agendas, and such parliamentary and other meeting procedures not inconsistent with this Charter. Every matter coming before the Council for action shall be put to a vote and all members shall vote "aye," "nay," or abstain. A roll call vote shall be taken upon the request of a single member of the Council. The results of such voting shall be duly recorded.

§ 4-8. Powers and duties.

Except as herein otherwise provided, the Council shall have all the powers conferred upon and discharge all the duties imposed upon town councils, town meetings, boards of mayor and aldermen, and selectmen of towns by law except the adoption of a Town budget. The Town Council shall set policies for Town government and shall bear full responsibility for the implementation of said policies through the hiring and supervision of the Town Manager.

All officers and members of all boards, commissions and committees, and vacancies thereto, shall be appointed by the Council from among Town residents unless otherwise provided by this Charter.

§ 4-9. Delegation of powers.

The Council may delegate to one or more Town agencies the powers vested in the Council by this Charter and federal and New Hampshire state law to grant and issue licenses and permits, and may regulate the granting and issuing of licenses and permits by any such Town agency, and may, in its discretion, rescind any such delegation without prejudice to any prior action which has been taken.

ARTICLE V
Ordinances

§ 5-1. Introduction.

An ordinance may be introduced by any Town Councilor at any regular or special meeting of the Town Council. Upon introduction of any ordinance, the Town Manager shall distribute a copy to each Town Councilor and the Town Clerk, shall file a reasonable number of copies in the office of the Town Manager, and shall post a copy in at least two other public venues as the Town Council may designate.

§ 5-2. Form. [Amended 4-10-2007]

Every proposed ordinance of the Town Council shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject. Each ordinance shall be identified by a number and a title. The enacting clause shall be "The Town of Merrimack ordains..."

Any ordinance which repeals or amends an existing ordinance shall set out in full the ordinance, sections, or subsections to be repealed or amended, and shall indicate matter to be omitted by strikethrough type, and shall indicate new matter by enclosing it in brackets and using bold type.

§ 5-3. Public notice.

After passage of the ordinance's first reading, it shall be published at least once together with a notice of the time and place when and where it will be given a public hearing and be considered for final passage. The first such publication shall precede the date of said hearing by at least seven calendar days.

Publication for purposes of this section shall mean the publication of a notice in any paper distributed in the Town of Merrimack as well as the posting of the notice in at least two other public venues as the Town Council may designate, stating the number and title of the ordinance and either the text of the ordinance in full or, if the full text is not published, then a brief explanation of the purpose of the ordinance and information as to where and when any interested person may obtain a copy of the complete ordinance.

Final action on said ordinance shall not be taken by the Town Council until at least seven calendar days after the public hearing on it.

§ 5-4. Adoption.

No ordinance shall be passed finally on the date on which it is introduced, except in cases of emergency involving the health or safety of the people or their property. Every adopted ordinance, except as otherwise provided by this Charter, shall become effective upon passage or at any later date specified therein.

No ordinance shall be amended or repealed except by another ordinance adopted in accordance with this Charter, or as provided in the initiative and referendum procedures of this Charter.

§ 5-5. Emergency ordinances.

- A. Legal subject matter. Notwithstanding other provisions of this Charter, to meet a public emergency affecting life, health, property, or the public peace, the Council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by a public utility for its services, or authorize the borrowing of money, except as provided in § 8-4P of this Charter.
- B. Introduction. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms.
- C. Adoption. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced but an affirmative vote of five Councilors shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances.
- D. Enactment. An emergency ordinance shall become effective upon adoption. Every emergency ordinance, except one made pursuant to § 8-4P of this Charter, shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists.
- E. Repeal of emergency ordinances. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

§ 5-6. Recording.

- A. Recording. All ordinances, including any amendments thereto, shall be recorded in full, uniformly and permanently, by the Town Clerk. Each ordinance so recorded shall be authenticated by affixing the signatures of the Town Council Chair and the Town Clerk and the Town Seal and kept on file in the office of the Town Clerk.
- B. Indexing, printing, publication and maintenance. The Town Clerk shall be responsible for the systematic indexing, printing, publication, and maintenance of the ordinances of the Town. Copies of all ordinances shall be available to the public, and the Town Clerk may charge a fee to defray the printing costs.
- C. Revision or codification. The Town Council, not later than 18 months after taking office under this Charter, and at least every fifth year thereafter, shall have prepared a revision or codification of the ordinances of the Town which are appropriate for continuation as local laws of the Town.

ARTICLE VI
Administrative and Judicial Boards

§ 6-1. Administrative boards/committees/commissions.

- A. Planning Board. There shall be a Planning Board consisting of seven members as provided by New Hampshire state law. Six 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. 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. The Planning Board shall have all the powers granted to planning boards by New Hampshire state law.
- B. Conservation Commission. There shall be a Conservation Commission consisting of seven members. Six 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. 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. The Conservation Commission shall have all the powers granted to conservation commissions by New Hampshire state law.
- C. Parks and Recreation Committee. **[Amended 4-13-2010]**
1. There shall be a Parks and Recreation Committee consisting of 12 residents of the Town of Merrimack. The Town Council shall appoint seven members of the Committee for three-year terms and two alternates who will serve for a period of three years each. One Town Council member shall be appointed annually to serve as an ex officio member.
 2. In addition, four regular members shall be recommended from Merrimack organizations. There shall be one voting member from each of the following organizations: the Merrimack Youth Association (MYA), the Senior Citizen Club, the School Board, and a representative from the Merrimack High School student body. Such organization members shall be recommended by their organization and, if approved by the Town Council, they shall be appointed for a one-year term. Four alternate members, one from the each named Merrimack organization, may be recommended and appointed in the same manner as their regular appointed members.
 3. Vacancies of Town Council appointed members shall be filled by appointment of the Town Council for the unexpired term. Vacancies of the other members shall be filled by recommendation of their respective organizations and approved by the Town Council for the unexpired term.
 4. The Parks and Recreation Committee shall have all the powers granted to Parks and Recreation Committees by New Hampshire State Law.

There shall also be three alternate members appointed in the same manner as regular appointed members.

- 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.

§ 6-2. Elected boards/committees/commissions.

- A. Trustees of Trust Funds. There shall be a board of three Trustees of Trust Funds whose powers and duties are provided by New Hampshire state law. Trustees of Trust Funds shall be elected at the regular Town election for terms of three years, one Trustee each year. Vacancies shall be filled by appointment by the Town Council for the unexpired term.
- B. Library Trustees. There shall be a board of five Trustees of the Library whose powers and duties are provided by New Hampshire state law. Library Trustees shall be elected at the regular Town election for terms of three years, staggered so that no more than two Trustees are elected at one time. The Town Council may appoint to three alternates in accordance with RSA 202-A:10, who may serve when elected members of the board are temporarily unable to attend a board meeting. Vacancies shall be filled by appointment by the Town Council for the unexpired term. **[Amended 4-12-2016 ATM by Art. 8]**
- C. Ethics Committee. The Ethics Committee shall consist of five residents of the Town of Merrimack. Ethics Committee members shall be elected at a regular Town election for terms of three years, staggered so that no more than two members are elected at one time. A quorum of three or more Committee members shall be necessary to hear any complaint that is filed. Should a vacancy in the Committee arise, the remaining members of the Ethics Committee shall appoint a Town resident to serve out the remainder of the term. Any tie shall be resolved by the vote of the Town Moderator. The members of the Ethics Committee shall elect a Chairperson on an annual basis.

§ 6-3. Judicial boards/committees/commissions.

- A. Zoning Board of Adjustment. There shall be a Zoning Board of Adjustment appointed by the Town Council, consisting of five members each serving a three-year term and three alternates each serving a three-year term. Such terms shall be

staggered. The Town Council shall fill any vacancy for the period of the unexpired term. The Zoning Board of Adjustment shall have all the powers granted to such boards under New Hampshire state law.

§ 6-4. Vacancies in elected office.

Unless otherwise specified in this Charter, or as otherwise provided by New Hampshire state law, in the event of a vacancy in an elected office, board or commission of the Town, the Town Council shall fill that vacancy by appointment, such appointment to continue until the next regular Town election.

§ 6-5. Terms of appointive office.

The terms of office of all members of appointed boards, committees, and commissions shall begin on July 1 and end on June 30. If an appointee receives an appointment subsequent to July 1 of the year in which the term of office originally commenced, the term to which the person was appointed will end June 30 in the year that it was scheduled to end.

§ 6-6. Annual review of Town boards/committees/commissions.

At least annually, and more often if Town affairs warrant, the Town Council shall meet with the chairs of all standing and other Town boards, committees, and commissions to review significant actions taken by the committees, projects currently under discussion, and anticipated activity for the coming year.

ARTICLE VII
Administration of Government

§ 7-1. Town Manager.

The chief administrative officer of the Town shall be the Town Manager (hereinafter called the "Manager"). The Town Council shall appoint a person especially qualified by experience and training, who receives the votes of at least five members of the Town Council, to be Manager. The Manager shall serve at the pleasure of the Council with no fixed term of office. The Council shall fix the Manager's salary and benefits and other terms of employment.

§ 7-2. Qualifications of Manager; oath and bond.

- A. Qualifications of Manager. The Manager shall be appointed solely on the basis of qualification for the office, with special reference to education, training and previous experience in public or private office. The Manager need not be a resident of the Town or of the State of New Hampshire at the time of appointment but must reside within a reasonable distance or response time, agreeable to the Town Council. The Manager shall devote full time to the office and shall not hold any other public office, elective or appointive, except as authorized by this Charter, nor engage in any other business or occupation unless with the approval of the majority of the Town Council. **[Amended 4-12-2011 ATM by Art. 9]**
- B. Oath and bond. Before entering upon the duties of office, the Town Manager shall be sworn to the faithful and impartial performance thereof, and a certificate to that effect shall be filed with the Town Clerk, and the Town Manager shall execute a bond in favor of the Town for the faithful performance of the Town Manager's duties in such sum and with such surety or sureties as may be approved by the Council.

§ 7-3. Evaluation of Manager's performance.

Following the first anniversary of the Manager's service to the Town and during each subsequent year thereafter, the Council shall conduct an evaluation of the Manager's performance in office. After such evaluation, the Council shall determine whether the Manager's overall performance in office has been satisfactory or unsatisfactory. The Council shall also establish the Manager's compensation for the ensuing year.

§ 7-4. Reprimand and removal from office.

- A. Reprimand. The Manager may be reprimanded by a vote of five members of the Town Council. The Town Council shall adopt a resolution of reprimand stating the reasons therefor and any sanctions to be imposed, which shall be served on the Manager. Immediately upon delivery to the Manager of said resolution of reprimand, the Manager may be relieved of office and/or such duties as the Town Council may determine. If relieved by the Town Council, the Manager shall continue to receive full salary and benefits until the effective date of a final resolution of reprimand. If a final resolution of reprimand is not adopted, the Manager shall resume office forthwith.

- B. Removal. The Manager may be removed from office by a vote of five members of the Town Council. The Town Council shall adopt a resolution for removal stating the reasons therefor, which shall be served on the Manager. Immediately upon delivery to the Manager of said resolution for removal, the Manager shall be relieved of office and all further duties. The Manager shall continue to receive full salary and benefits until the effective date of a final resolution for removal. If a final resolution for removal is not adopted, the Manager shall resume office forthwith.
- C. Procedures. The Manager may reply in writing to any resolution of reprimand or for removal within 10 days of receipt. Upon request of the Manager, he or she shall be afforded a hearing, either public or private, in accordance with the provisions of New Hampshire state law. The hearing shall occur not earlier than 10 days nor later than 15 days after such hearing is requested. After the hearing, if one is requested, and after full consideration, the Town Council, by a vote of five its members, may adopt a final resolution of reprimand or for removal within seven days. The action of the Town Council in reprimanding or removing the Manager shall be final.
- D. Appointment of Acting Town Manager. If the Manager is relieved of office pending reprimand or removal, the Town Council shall, by a vote of at least four members of the Council, appoint an Acting Town Manager to serve at the pleasure of the Town Council for not more than 90 days or until the Manager resumes the office, whichever occurs first.

§ 7-5. Acting Town Manager.

If the Manager is determined by a vote of at least four members of the Council to be temporarily incapacitated or unable to act or the Council may determine that the office has become temporarily vacant, the Council shall, within 15 days from such determination, appoint an Acting Town Manager in the same manner as in § 7-1 who shall serve for not more than 120 days or such lesser time until the incapacity shall be relieved.

The Acting Town Manager shall have all the powers and perform all the duties of the Manager except to the extent that said powers and duties may be specifically restricted by Council resolution. Said Acting Town Manager shall be paid such salary for services hereunder as may be prescribed by the Council. The Acting Town Manager may be reappointed for an additional term of 120 days.

By a vote of at least four Councilors, the Council may determine from credible medical or other evidence that the Manager is incapacitated and unable to perform any or all duties and the office may be declared vacant.

§ 7-6. Vacancy.

Any vacancy in the office of the Manager shall be filled as soon as practicable by the Council. The Council shall appoint a person to perform temporarily the duties of that office.

§ 7-7. Powers and duties of the Manager.

- A. The Manager shall be the chief administrative officer of the Town, shall supervise

and be responsible for the administrative and financial affairs of the Town, and shall carry out the policies enacted by the Council. The Manager shall be charged with the preservation of the health, safety and welfare of persons and property and shall see to the enforcement of the ordinances of the Town, this Charter, and general laws governing administration of the Town. The Manager shall supervise and direct the administration of the Town departments and personnel therein.

- B. Except as otherwise provided by this Charter, the Manager shall appoint, upon merit and fitness alone, and may remove all officers and employees of the Town subject to the provisions of pertinent statutes, the Administrative Code, and the Personnel Plan.
- C. The Manager in accordance with the Personnel Plan shall fix the compensation of all Town officers and employees appointed by the Manager within the limits established by existing appropriations.
- D. The Manager shall propose for adoption by the Town Council a system of personnel administration known as the "Personnel Plan." The Personnel Plan shall include provisions with regard to classification, compensation, selection, training, promotion, grievances, discipline, vacations, retirement and any other matters necessary to the maintenance of efficient service and proper working conditions.
- E. The Manager shall keep a full and complete inventory of all property of the Town, both real and personal. The Manager shall have full jurisdiction over the rental and use of all Town facilities under the Manager's control. The Manager shall be responsible for the maintenance and repair of all Town property under the Manager's control, within the limits of existing appropriations.
- F. The Manager shall be responsible for purchasing all supplies, material, and equipment for all departments and activities of the Town.
- G. The Manager shall keep the Council informed of the needs of the Town and make such reports and recommendations as the Manager may deem advisable or as the Council, as provided by this Charter or by ordinance, shall direct.
- H. No compensation shall be paid without certification by the Manager, or such others as he may direct, that the recipients are employed by the Town and that their rates of compensation comply with approved pay schedules.
- I. The Manager shall be responsible for proposing appropriate internal controls to the Town Council for adoption for the collection, accounting, deposit and periodic reporting of all Town revenues and expenditures in a secure and businesslike manner in accordance with generally accepted accounting practices and proper internal controls.
- J. The Manager shall have and perform such other powers and duties not inconsistent with the provisions of this Charter as now are, or may be, conferred or imposed upon the Manager by ordinance or by state law. The Manager shall attend all meetings of the Council unless excused by the Council. The Manager shall have the right to take part in the discussion of all matters before the Council, but not the right to vote.

- K. The Manager shall be charged with and shall perform all of the duties and responsibilities of cemetery trustees, as set forth in RSA 289. **[Added 4-9-2013 ATM by Art. 8]**

§ 7-8. Appointment/removal of department heads and appeal.

The Manager shall have the power to appoint and remove, subject to the provisions of this Charter or New Hampshire state law, all Town department heads. Such appointments shall be on merit and fitness alone and with confirmation of the Council. The Manager, for cause, may suspend or dismiss department heads or take other appropriate disciplinary action. Said suspension, dismissal, or other disciplinary action shall be effected only upon the Manager's presentation to the department head of a written specification of the reasons therefor at least 10 days before said action is taken.

The said department head involved may, within five days, demand a hearing before the Council, in which event the department head shall not be removed until such hearing has been held. The Manager may, however, suspend said department head from duty during said period, with or without pay. Such hearing shall be either private or public, as allowed under New Hampshire state law, at the aggrieved party's request. The Council, by a vote of five members, may override the Manager's decision.

§ 7-9. Noninterference with Town administration.

The Council shall act in all matters as a body. Except as expressly provided elsewhere in this Charter, neither the Council nor any of its members shall direct or request the appointment of any person to office or employment or direct the removal, suspension, discipline, or adjustment in pay, benefits, or working conditions of any employee by the Manager or of any of the Town department heads.

No Councilor shall give orders to or interfere with the performance of the duties of any of the administrative officers or employees, either publicly or privately. Nothing contained in this section shall prohibit the Council from meeting with the Manager to discuss the operation or conduct of any department head or employee and to recommend an investigation and report by the Manager of any complaint.

Any violation of the provisions of this section by a Councilor shall constitute grounds for forfeiture of office under the provisions of § 4-4B.

§ 7-10. Departments; Administrative Code.

The Town shall have departments, divisions, boards or committees as may be established by this Charter or as the Town Council may establish by ordinance. It shall be the duty of the Manager to draft and to submit to the Town Council, within nine months after assuming office, an ordinance consistent with this Charter to be titled as the "Administrative Code," which provides for the division of the administrative service of the Town into departments or agencies and defines the functions and duties of each.¹

The ordinance shall include, subject to any collective bargaining agreements that may be agreed upon, provisions for the Personnel Plan to ensure that all appointments and

1. Editor's Note: See Ch. 8, Administrative Code.

promotions in the service of the Town shall be made solely on the basis of merit and only after appropriate examination or review of the applicants' relative knowledge, skills, abilities and experience and provisions governing discipline and dismissal of personnel. Subsequent to the adoption of such ordinance, upon recommendation of the Manager, the Town Council by ordinance may amend it to create, consolidate or abolish departments, agencies or other divisions of the Town, define the functions and duties of each, or otherwise amend it.

The head of each department shall have supervision of such department and with the approval of the Town Manager may have the power to prescribe rules and regulations for the conduct of such department, not inconsistent with general law, this Charter, the Administrative Code, and the provisions of the Personnel Plan. Prior to adoption of the Administrative Code, the Manager shall have the power to establish temporary rules and regulations to ensure economy and efficiency in the several divisions of Town government.

§ 7-11. Town Clerk/Tax Collector.

A Town Clerk/Tax Collector shall be elected to a three-year term at a regular Town election by ballot pursuant to the applicable provisions of New Hampshire state law and shall have the powers and duties prescribed by New Hampshire state law pertaining to town clerks and town tax collectors.

The Town Clerk/Tax Collector may be removed from office in accordance with the applicable provisions of New Hampshire state law. Vacancy in the office of Town Clerk/Tax Collector shall be filled in accordance with the applicable provisions of New Hampshire state law.

ARTICLE VIII
Finance

§ 8-1. Fiscal year.

The fiscal and budget year of the Town shall begin on the first day of July and end on the 30th day of June.

§ 8-2. Preparation of budget.

At such time as may be requested by the Manager or specified by the Administrative Code, each officer or director of a department shall submit an itemized estimate of the expenditures and any revenues for the next fiscal year for the departments or activities under their control to the Manager. The Manager shall, based on these estimates and other data, prepare a recommended budget which shall, together with these department estimates, be submitted to the Council on such date as the Council shall establish. In presenting the budget to the Town Council, the Manager shall also include a detailed report of estimated revenues other than those to be derived from real estate taxes, paying particular attention to enterprise departments or activities, and an estimate of the impact on the Town portion of the tax rate. The Council shall review the budget for the following fiscal year and make such modifications and amendments as it desires.

§ 8-3. Budget hearings.

The Council shall hold in convenient places as many public hearings on the budget as it deems necessary. However, at least one public hearing on the budget shall be scheduled in accordance with the provisions of RSA 40:13, II-b. Notice of such public hearing and the first session of the annual meeting, together with a copy of the budget documents as required by New Hampshire state law, shall be posted in at least two public places. A copy of the budget shall be available to the public at the office of the Town Manager during regular business hours. In addition, notice of such public hearing and the first session of the annual meeting shall be published in a newspaper of general circulation in the Town, as well as the posting of the notice in at least two other public venues as the Town Council may designate in accordance with RSA 40:13, II-b.

§ 8-4. Final adoption of budget.

- A. Notwithstanding RSA 39:3-d and RSA 40:4-e, the Town of Merrimack shall utilize the official ballot for voting on all budgetary issues before the voters.
- B. The warrant for any annual meeting shall prescribe the place, day, and hour for each of two separate sessions of the meeting, and notice shall be given in accordance with RSA 39:5.
- C. The first session of the annual meeting, which shall be for the transaction of all business other than voting by official ballot, shall be held between the second Tuesday of March and the Saturday following the second Tuesday in March, at a time prescribed by the Town Council. The second Tuesday in April shall be deemed the annual meeting date for purposes of all applicable statutes pertaining to hearings, notice, petitioned articles, and warrants, including but not limited to RSA 31:95-d, RSA 32:5, RSA 33:8-a, RSA 39:3 and RSA 39:5. RSA 39:3 shall only be

used for the purpose of petitioned warrant articles for appropriations.

- D. The first session of the annual meeting, governed by the provisions of RSA 40:4, RSA 40:4-a, RSA 40:4-b, RSA 40:4-f, and RSA 40:6 to 40:10, shall consist of explanation, discussion, and debate of each warrant article. Warrant articles may be amended, subject to the following limitations:
- (1) Warrant articles whose wording is prescribed by law shall not be amended.
 - (2) Warrant articles that are amended shall be placed on the official ballot for a final vote on the main motion, as amended.
- E. All budgetary warrant articles shall be placed on the official ballot for a final vote.
- F. The second session of the annual meeting shall be held on the second Tuesday in April to elect, by official ballot, officers of the Town and to act upon questions required by law to be inserted on said official ballot, such articles for bonds and notes as may be presented, and to vote on all appropriation warrant articles from the first session. Notwithstanding RSA 669:1, the second session shall be deemed the annual election date for purposes of all applicable election statutes, including but not limited to RSA 669:5, RSA 669:19, and RSA 669:30.
- G. The Town Clerk shall prepare an official ballot, which may be separate from the official ballot used to elect officers, for all warrant articles. Wording shall be substantively the same as the main motion, as it was made or amended at the first session, with only such minor textual changes as may be required to cast the motion in the form of a question to voters.
- H. "Operating budget" as used in this section means a statement of recommended appropriations and anticipated revenues submitted to the annual meeting as an attachment to, and as part of the warrant for, an annual or special meeting, exclusive of "special warrant articles," as defined in RSA 32:3, VI.
- I. If no operating budget article is adopted, the Town either shall be deemed to have approved a "default budget," which shall be developed in accordance with RSA 40:13, IX(b), or the Town Council may hold a special meeting to take up the issue of a revised operating budget only, provided that RSA 31:5 shall not apply to such a special meeting. If no operating budget article is adopted, the estimated revenues shall nevertheless be deemed to have been approved.
- J. The wording of the article on the operating budget shall be as follows: "Shall the Town raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant or as amended by vote of the first session, for the purposes set forth therein, totaling \$ _____? Should this article be defeated, the default budget shall be \$ _____, which is the same as last year, with certain adjustments required by previous action of the Town or by law; or the Town Council may hold one special meeting, in accordance with RSA 40:13, X and XVI, to take up the issue of a revised operating budget only."
- K. Voting at the second session of the annual meeting shall conform to the procedures for the nonpartisan ballot system as set forth in RSA 669:19 to 669:29, including all

requirements pertaining to absentee voting, polling places, and polling hours.

- L. Warrant articles concerning the issuance of bonds or notes shall be placed on the official ballot for approval by the voters. Approval of all warrant articles shall be as provided by New Hampshire state law.
- M. Votes taken at the second session of the annual meeting shall be as provided by New Hampshire state law.
- N. Votes taken at the second session of the annual meeting shall not be reconsidered except by warrant article at a subsequent annual or special meeting.
- O. The warrant for any special meeting shall prescribe the date, place and hour for both a first and second session. The second session shall be warned for a date not fewer than 28 days nor more than 60 days following the first session. The first and second sessions shall conform to the provision of this subdivision pertaining to the first and second sessions of annual meetings. Special meetings shall be subject to RSA 31:5 and RSA 39:3, provided that no more than one special meeting may be held to raise and appropriate money in any one calendar year or fiscal year, whichever applies, and further provided that any special meeting held pursuant to this section shall not be subject to RSA 31:5 and shall not be counted toward the number of special meetings which may be held in a given calendar or fiscal year.
- P. The Council may make emergency expenditures in accordance with the provisions of the New Hampshire Municipal Budget Law (RSA 32) as the same may be amended from time to time.

§ 8-5. Borrowing procedures.

- A. Subject to the applicable provisions of New Hampshire state law and the rules and regulations provided by ordinance in the Administrative Code, the Council may authorize by resolution the borrowing of money for any purpose within the scope of the powers vested in the Town and the issuance of bonds of the Town or other evidence of indebtedness therefor and may pledge the full faith, credit, and resources of the Town for payment of the obligation created hereby, provided that no notes or bonds shall be issued by the Council except by a vote of four Councilors and a vote at a regular or special Town meeting as provided by § 8-4 of this Charter. Notification and posting of such bond issues shall be in the same manner as if it were a bond issue of a town pursuant to RSA 33, with voting by official ballot at a regular or special Town meeting.
- B. The Council may borrow in anticipation of taxes.

§ 8-6. Lapse of appropriations.

All appropriations shall lapse at the end of the fiscal year, and any unexpended portion thereof shall not be expended without further appropriation, except as provided in RSA 32:7 as the same may be amended from time to time.

§ 8-7. Quarterly budget reports.

Quarterly, and more often if required by the Council, the Manager or his designee

shall submit to the Council data showing the relation between the estimated and actual income and expenses to date, together with outstanding indebtedness and estimated future expenses, anticipated transfers, other major variances to the operating budget, active and anticipated risks to the Town which may impact the operating budget, and other reports related to present or future revenues and expenses which the Council may require.

§ 8-8. Transfer of appropriations.

After the budget has been adopted, no money shall be drawn from the treasury of the Town nor shall any obligation for the expenditure of money be incurred except pursuant to a budget appropriation. The head of any department, with the approval of the Manager, may transfer any unspent balance or any portion thereof from one fund or agency within his department to another fund or agency within his department. The Manager, with the approval of the Council, may transfer any unspent balance or any portion thereof from one department to another.

§ 8-9. Capital improvements plan.

- A. The Town Manager, after consultation with the Planning Board, shall prepare and submit to the Town Council a capital improvements plan at least one month prior to the final date for submission of the budget. The capital improvements program shall include:
- (1) A clear summary of its contents.
 - (2) A list of all capital improvements including major replacements that are proposed to be undertaken during the next six fiscal years, including but not limited to equipment, facilities, infrastructure, or property, with appropriate supporting information as to the necessity for such improvements.
 - (3) Cost estimates, methods of financing, and recommended time schedule for each improvement.
 - (4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.
- B. The capital improvements plan shall be based on a period of not less than six years and shall be guided by the Master Plan for the Town.
- C. The foregoing information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.
- D. A summary of the updated capital improvements plan with estimated costs shall be included in the Town report and the current year costs of the capital improvements plan shall be included in the Town budget.
- E. The Town Council shall by resolution adopt the capital improvements plan with or without amendment, provided that each amendment must be voted separately and that any increase in the capital improvements plan as submitted must clearly identify the method of financing proposed to accomplish the increase.

§ 8-10. Purchasing procedures.

The Administrative Code shall establish purchasing and contract procedure, including the assignment of all responsibility for purchasing to the Manager or his designee and the combination purchasing of similar articles by different departments. The Council shall establish dollar limits for purchases and contracts which must be by competitive bid and shall establish the bidding procedures.

§ 8-11. Depository.

The Council shall approve to the Treasurer the depository or depositories for Town funds and shall provide for the timely deposit of all Town monies. The Council may require such security for Town deposits as it deems necessary, except that personal surety bonds shall not be deemed proper security.

§ 8-12. Bonding of officials; indemnification.

- A. Bonding. Any Town officer elected or appointed by authority of this Charter shall be bonded in an amount as required by New Hampshire state law or dictated by prudent fiscal practice for the faithful performance of the duties of the office. The Manager and all officers receiving or disbursing Town funds shall be so bonded. All official bonds shall be corporate surety bonds, and the premiums thereon shall be paid by the Town. Such bonds shall be filed with the Town Clerk.
- B. Indemnification of officers, board members, and employees. The Town shall undertake to indemnify and save harmless all its officers, officials, boards, commissions, employees, and volunteers from personal loss and expense. Expenses may include reasonable legal fees and costs, if any, arising out of any claim, demand, suit, or judgment by reason of negligent acts or omissions, if the indemnified person was acting in the scope of office or employment and in good faith in accord with the provisions of New Hampshire state law.

§ 8-13. Investments; trust funds.

The Trustees of Trust Funds shall invest and account for funds under their supervision in accordance with New Hampshire state law.

§ 8-14. Fiscal control.

The Administrative Code shall establish procedures governing fiscal control of all Town finances, including but not limited to a pre-audit of all authorized claims against the Town before payment.

§ 8-15. Grants; gifts.

The Town Council may apply for, accept and expend monies received from the state, federal, or other governmental units, or from private sources which become available during the fiscal year in accordance with RSA 31:95-b and RSA 31:95-e as the same may be amended from time to time.

§ 8-16. Independent audit.

Independent compliance and financial audits shall be made of all accounts of the Town at least annually and more frequently if deemed necessary by the Town Council. Such audits shall be conducted according to auditing procedures of the American Institute of Certified Public Accountants, the National Committee on Government Accounting, and other such procedures which may be necessary under the circumstances, by certified public accountants experienced in municipal accounting. Summaries of the results of such audits, including findings and recommendations and any management letters, shall be made public. At least once every five years the Town Council shall change auditors. An annual report of the Town's business for the preceding year shall be made available to the public not later than 90 days after the close of the fiscal year.

§ 8-17. Appropriations after budget adoption.

Appropriations may be made after budget adoption at the annual meeting in accordance with the provisions of RSA 31:5, RSA 32:6, RSA 32:11, and RSA 39:4.

§ 8-18. Town Treasurer.

- A. Treasurer. There shall be a Town Treasurer (hereinafter called "Treasurer") who shall have all the powers and duties granted by this Charter and New Hampshire state law; provided, however, that in making investments of Town funds, the Treasurer shall follow the written investment policy as adopted or modified by the Town Council. The Treasurer shall be appointed by the Town Council on the basis of merit and fitness and in accordance with RSA 41:57-a and shall serve until the appointment and qualification of his/her successor. Vacancies in the office of Treasurer shall be filled pursuant to New Hampshire state law.
- B. Deputy Treasurer. A Deputy Treasurer may be appointed in accordance with New Hampshire state law.

ARTICLE IX
Conduct of Officials; Code of Ethics

§ 9-1. Preamble.

It is the policy of the Town of Merrimack to uphold, promote and demand the highest standards of ethics and conduct from all of its employees and officials, whether elected, appointed or hired. The Town Council, all Town employees and all members of Town boards, commissions, and committees shall maintain the highest standards of personal integrity, truthfulness, honesty and fairness in discharging their public duties and never abuse their positions or powers for improper or personal gain.

§ 9-2. Purpose.

The purpose of this code is to establish guidelines for the ethical standards of conduct for Town officials, board members and employees. We expect our public servants and volunteers to act in the best interest of the Town. We expect Town officials, board members and employees to disclose any personal, financial or other interests in matters affecting the Town that come before them for action. We expect Town officials, board members and employees to remove themselves from decision making if they have a conflict of interest. We expect Town officials, board members and employees to be independent, impartial, and responsible to their fellow Townspeople in their actions. We expect that the Town's official decisions and policies be made through the proper channels of government.

We expect that public office or a volunteer position in our Town not be used for personal gain. It is important that the public has confidence in the integrity of its government and that Town officials, board members, volunteers and employees have an opportunity to protect their personal reputation. This code establishes a process by which one may obtain guidance regarding potential ethical issues and it establishes a course of action for resolving disputes in a manner that is fair to all of the parties involved.

§ 9-3. Explanation of code provisions.

- A. No conflicts of interest. Officials, board members and employees of the Town of Merrimack shall avoid conflicts of interest. As a Town official, board member or employee, you shall not participate in any matter in which you, or a member of your family, have a personal interest that may directly or indirectly affect or influence the performance of your duties. In such instances, you shall recuse yourself from discussion and decisionmaking. Recusal means to remove yourself completely from all further participation in the matter in question. Officials, board members or employees who have been recused shall immediately leave the room or shall seat themselves with the other members of the public who are present. When recused, you shall not participate in further discussions, unless you clearly state for the record that you are doing so only as a general member of the public. As a recused person, you shall not deliberate or vote on the matter in question.
- B. A duty to recuse in quasi-judicial actions. A "quasi-judicial action" is any action where the board or committee you are a member of is acting like a judge or a jury. For example, when your board or committee has a duty to notify the potential parties, hear the parties, and can only decide on the matter after weighing and

considering such evidence and arguments as the parties choose to lay before you, you are involved in a quasi-judicial action. The work of the planning and zoning boards is largely quasi-judicial. Not only do officials, board members and employees of the Town of Merrimack have a duty to recuse themselves as outlined in the section above, you must recuse yourself in a quasi-judicial action if you would not be qualified to sit as a juror in that case. For example, jurors are not qualified to sit in a case if they have advised or assisted either party in a matter being decided, are prejudiced to any degree regarding the pending matter, or believe they cannot for any reason be totally fair and impartial. As a representative of the Town of Merrimack, you are expected to hold yourself to this same standard.

- C. A duty to disclose. As an official, board member or employee of the Town of Merrimack, you shall not participate in the conduct of business on behalf of the Town or enter into discussion or deliberation of any matter without first, publicly and on the record, stating all possible conflicts that may exist between you and your family and the principals or the issue under consideration.
- D. No unfair personal use of Town property. No official, board member or employee of the Town of Merrimack shall use Town property, services, or labor personally, or make the same available to others unless such use is available to other residents upon request on equal terms.
- E. No misuse of confidential information. No official, board member or employee of the Town of Merrimack shall use any confidential information acquired by virtue of that individual's official position for personal benefit, or for the benefit of any other person or business. This does not apply to information which is readily available to the general public. In addition, no official, board member or employee of the Town of Merrimack shall violate the privacy of others by publicizing, gossiping, or discussing information confidentially acquired in the course of official duties without a legitimate reason to do so.
- F. No improper gifts. No official, board member or employee of the Town of Merrimack shall accept a gift (or allow acceptance of such gift by a family member) from any individual, group, or corporation that has or is likely to have a matter pending before the board, committee, or commission on which the official or employee serves. This provision of the code is not meant to apply to gifts traditionally exchanged between family members at holidays or birthdays, for example.
- G. A duty to cooperate. All officials, board members and employees of the Town of Merrimack shall cooperate with the Ethics Committee regarding any complaint or inquiry alleging violation of this Code of Ethics.
- H. Fair and equal treatment. Acting in their official capacity, all officials, board members and employees of Town government shall give each and every person fair and equal treatment. No official, board member or employee shall in the course of their official duties give or deny any person special consideration, advantage, or treatment as a result of the person's public status, position, sex, race, religion, creed, sexual orientation, or national origin.

§ 9-4. Definitions of terms.

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

- A. Board: Any board, committee or commission, permanent or special, established by the Town Council under New Hampshire state law or this Charter.
- B. Complainant: A resident of the Town of Merrimack who has submitted a petition to the Ethics Committee requesting an inquiry or alleging a violation of the Code of Ethics.
- C. Conflict of interest: A situation, circumstance, or financial interest that has the potential to cause a private or personal interest to interfere with the proper exercise of a public duty. **[Amended 4-10-2007]**
- D. Employee: A person who is paid by the Town of Merrimack for his/her services but who is not an independent contractor.
- E. Ethics Committee: The committee established by Article VI of this Charter.
- F. Family: Any person who is related to the official, board member or employee in one of the following ways: spouse, parent, grandparent, child, grandchild, sibling, or similar relation to the individual's spouse. This includes all persons who are members of the same household as the official, board member or employee in question, regardless of whether they are related by blood or marriage.
- G. Interest: Any legal or equitable right, share, or claim, whether or not subject to an encumbrance or a condition, which is owned or held, in whole or in part, jointly or severally, including but without limitation, a right, share or claim to land.
- H. Official: Any elected or appointed officer, board member, or agent of the Town of Merrimack.
- I. Principals: Those people who are the subject of the action or application that is before the board.
- J. Public servant: A person who serves the Town of Merrimack in an official capacity, whether elected or appointed, paid or unpaid, any Town official, board member or employee.
- K. Respondent: Board member or employee named in a petition submitted to the Ethics Committee as an inquiry or alleging a violation of the Code of Ethics.
- L. Resident: A resident of the Town of Merrimack.
- M. Quasi-judicial action: Any action where the board or committee has a duty to notify the potential parties, hear the parties, and can only decide after weighing and considering such evidence and arguments as the parties choose to lay before them.
- N. Town: The Town of Merrimack, including all of its departments, boards, commissions, and committees.

§ 9-5. Exclusions.

The provisions of this Code of Ethics shall not be interpreted so as to bar:

- A. Any official, board member or employee who is a resident of the Town of Merrimack from fully participating in any public proceeding conducted by the Town;
- B. Acceptance of donations for the expressed purpose of financing a political campaign, provided such contributions are reported in accordance with all local, state and federal laws that pertain to such donations;
- C. Participation in a matter that relates to a person or business from which an official, board member or employee has merely purchased goods or services, if the individual in question has no other conflict of interest relating to that person or business;
- D. Police officers, firefighters, and other emergency personnel from acting in the course of their official capacities when responding to emergencies in accordance with the rules and regulations of their departments; and
- E. Supervisors of Town employees from appropriately carrying out personnel policies.

§ 9-6. Ethics Committee.

The Ethics Committee shall:

Educate officials, board members and employees of Town government regarding the provisions of the Ethics Code;

Provide advice and counsel to officials, board members and employees regarding ethical issues with which they are confronted; and

Hear and resolve ethics complaints which are filed against officials, board members and employees of Town government.

A. Education.

- (1) At the time that each newly elected or appointed official, board member or employee takes the oath of office, they shall receive a copy of this code and acknowledge in writing that they have received a copy of this code.
- (2) The Ethics Committee shall hold a meeting each spring for newly elected or appointed officials, board members and employees so they may familiarize themselves with the provisions of this code.
- (3) It shall be the responsibility of the supervisor of any new employee to ensure that the new employee familiarizes themselves with the provisions of this code.

B. Inquiries. The Ethics Committee shall establish a mechanism by which officials, board members, employees and residents of the Town of Merrimack may obtain advice and counsel from the committee regarding ethical issues that may arise from time to time. Upon request of a Town official, board member or employee, the

Ethics Committee may issue a written advisory opinion in response to such an inquiry.

C. Complaints.

- (1) The Ethics Committee shall:
 - a. Have the power to investigate all written complaints which are filed;
 - b. Establish forms by which officials, board members, employees, and residents of the Town of Merrimack may file complaints or request that an inquiry be made;
 - c. Only review complaints based on alleged violations of § 9-3A to H of this article. All such requests or complaints must be in writing, shall specify the provision of the code which the complainant believes was violated, and must be signed by a resident of Merrimack. When signing the complaint, the complainant shall certify that he or she has read the Code of Ethics, that they believe the matter within the complaint is a fair subject of inquiry, and they have exhausted all other avenues of relief available to them within our Town government.
- (2) Any official, board member or employee against whom a written complaint is filed shall be given a copy of the complaint and upon written request shall be afforded an opportunity to be heard and to present evidence to the Ethics Committee.
- (3) The Ethics Committee shall have sole discretion for setting rules regarding the conduct of hearings. The Committee shall seek to make sure that both the complainant and the respondent have an opportunity to be heard and to present evidence, but the Committee may limit the testimony and evidence which is presented to it if in the opinion of the Committee the testimony and evidence in question is irrelevant, unnecessary, redundant, or unreliable.
- (4) The Ethics Committee may require, with sufficient written notice, any official, board member or employee of Town government to appear before it to provide testimony regarding pending complaints. The Ethics Committee, for this purpose, may administer oaths and require the production of evidence such as documents.
- (5) Within 30 days of concluding an investigation into a written complaint, the Ethics Committee shall issue a written statement setting forth its findings. The Ethics Committee shall not have the power to impose any monetary or other penalty, only to issue a written statement as set forth above.

ARTICLE X
Citizen Initiatives

§ 10-1. Citizen concerns.

The Council shall establish rules for residents to address the Council at regular and other meetings. The Council shall provide a minimum time for individuals to address the Council and the total time that the Council will hear concerns or proposals at each meeting. The rules shall be reviewed annually.

- A. Individual petitions, action discretionary. The Town Council shall receive all petitions which are addressed to them and signed by a registered voter and may, in their discretion, take such action in regard to such petitions as they deem necessary and appropriate.
- B. Group petitions, action required. The Town Council shall hold a public hearing and act by taking a vote on the merits of every petition which concerns a matter in which the Town is empowered to act, which is addressed to it, and which is signed by at least 50 registered voters. The hearing shall be held by the Town Council, or by a committee or subcommittee thereof, and the action by the Town Council shall be taken not later than 60 days after the petition is filed with the Town Manager. Hearings on two or more petitions filed under this section may be held at the same time and place. The Town Manager shall mail notice of the hearing to 10 petitioners whose names first appear on each petition at least seven days before the hearing. Notice shall be given by publication, as defined in § 5-3, of a summary of the contents of a petition at least seven days prior to all such hearings, at public expense. No hearing shall be held upon more than one petition containing the same subject matter in any twelve-month period. No action by the Town Council under this section shall be required in the case of any petition to suspend the implementation of an adopted budget or enacting a land use regulation.

§ 10-2. Initiative petitions.

The registered voters of the Town shall have the power to propose measures to the Council.

- A. Commencement of proceedings. Initiative procedures shall be started by the filing of an initiative petition with the Town Manager. The petition shall be addressed to the Town Council, shall contain a request for passage of a particular measure set forth in the petition, and shall be signed by 500 registered voters.

Signatures to an initiative petition need not be all in one paper. All such papers pertaining to any one measure shall be fastened together and shall be filed in the office of the Town Manager as one instrument, with the endorsement thereon of the names and addresses of the persons designated as filing the same. With each signature to the petition shall be stated the place of residence of the signer, giving the street and number, if any. Within seven days after the filing of an initiative petition, the Town Clerk shall ascertain by what number of registered voters the petition is signed and shall attach thereto a certificate showing the result of such examination.

The Town Manager shall forthwith transmit the certificate with the petition to the Town Council and at the same time shall send a copy of the certificate to the first person designated on the petition as filing the same. When such certificate establishes that the petition appears to have been signed by the requisite number of registered voters, the petition shall be deemed to contain requisite signatures unless written objections are made with regard to the signatures thereon by a registered voter within seven days after such certificate has been issued, by filing such objections with the Town Council and a copy thereof with the Town Clerk. The validity of any such objection shall be determined by the Town Council at their next regular meeting.

- B. Requirements for passage and submission to electorate. If the Town Council determines that the petition contains the requisite signatures of registered voters and the petitioned initiative measure may lawfully be passed by the Town Council, the Town Council shall hold a public hearing within 20 days after the petition has been finally determined to be sufficient and:
- (1) Pass the measure without alteration; or
 - (2) Schedule a special Town election. The first session of the special election shall be scheduled within 35 days of the Council's final action and is to be conducted in accordance with the provisions of § 8-40 of this Charter. However, if any other Town election is to occur within 90 days after the petition has finally been determined to be sufficient, the Town Council may omit a special election and submit the measure to a vote at such other Town election.

The ballot presenting an initiative measure shall state the nature of the measure in terms sufficient to communicate the substance thereof. The question shall be whether the initiative measure should be adopted.

§ 10-3. Referendum petitions.

The registered voters of the Town shall have the power to require reconsideration by the Council of any adopted measure.

- A. Commencement of proceedings. Referendum petitions must be filed with the Town Manager within 30 days after adoption by the Town Council of the measure or part thereof protested by the petition. Referendum petitions shall identify specifically the measure or part thereof protested and must be signed by no fewer than 1,250 registered voters. The procedures of § 10-2B shall apply to referendum petitions

except that the words "measure or part thereof protested" shall, for this purpose, replace the word "measure" in the said section whenever it may occur, and the word "referendum" shall replace the word "initiative" and the word "repeal" shall replace the word "passage" in said section.

- B. Suspension of effect of measure or part thereof protested. When a referendum petition is filed with the Town Manager, the measure or part thereof protested shall be suspended from taking effect, except for emergency ordinances adopted under § 5-5 of this Charter or ordinances adopting a budget or land use regulation, which shall not be subject to suspension. Such suspension shall terminate when:
- (1) There is a final determination of insufficiency of the petition; or
 - (2) The filers of the petition withdraw it; or
 - (3) After certification of the Town's vote on the measure or part thereof protested.
- C. Action on petition. When a referendum petition has been finally determined to be sufficient, the Town Council shall reconsider the protested measure or part thereof by voting whether to repeal it. If the Town Council fails to repeal the protested measure or part thereof within 30 days after the day the petition was finally declared sufficient, the Town Council shall submit the protested measure or part thereof to a vote of the Town at a special Town election to be held on a date fixed by the Town Council. The first session of the special election shall be scheduled within 35 days after the Town Council's final vote on repeal. The special election shall be conducted in accordance with the provisions of § 8-40 of this Charter. However, if any other Town election is to occur within 90 days after the Town Council's vote on repeal, the Town Council may omit a special election and submit the protested measure or part thereof to a vote at such other Town election.

The ballot presenting a referendum measure under this section shall state the nature of the protested measure or part thereof in terms sufficient to communicate its substance. The question shall be whether the referendum measure should be repealed.

§ 10-4. Submission of proposed measure to the voters.

The Council of its own motion may submit any measure or proposition for repeal or amendment of a measure to the voters at any regular or special Town election.

§ 10-5. Measures with conflicting provisions.

If two or more proposed measures passed at the same election contain conflicting provisions, only the one receiving the greater number of affirmative votes shall take effect.

ARTICLE XI
General Provisions

§ 11-1. Agreements with other municipalities.

The Council is authorized, as provided by New Hampshire state law, to enter into agreements and regional compacts with neighboring cities and towns, state agencies, or private nonprofit corporations for the purpose of resolving their common problems for the mutual advantage and benefits of the Town and its neighboring cities and towns.

§ 11-2. Authentication of Charter; copies to be kept on file.

- A. Authentication of Charter. Upon adoption, the official Charter, duly authenticated by affixing the signatures of all members of the Charter Commission and the Board of Selectmen and the Town Clerk and affixing the Town Seal, shall be filed with the Town Clerk and remain in the Town Clerk's office as the official Charter of the Town of Merrimack. At its first meeting, the Town Council shall affirm the validity of the Town Charter.
- B. Amendments. All amendments to this Charter shall be authenticated by the Town Council and be filed with and remain a part of the official Charter.
- C. Maintenance. The Town Clerk shall be responsible for the proper maintenance of the Charter. Copies of the Charter shall be available to the public, and the Town Clerk may charge a fee to defray printing costs.

§ 11-3. Charter amendments.

Amendments to this Charter may be initiated pursuant to the provisions of New Hampshire state law.

§ 11-4. Indemnification of Town officers, board members and employees.

All Town officers and members of Town agencies shall be deemed to be public or municipal officers or officials. The Town shall indemnify any such officer or member for expenses or damages incurred in the defense or settlement of a claim against the officer or member which arose while acting in good faith within the scope of official duties or employment, but only to the extent and subject to the limitations imposed by New Hampshire state law.

§ 11-5. Land use ordinances.

All land use regulations and ordinances, including the adoption of the zoning ordinances and amendments by referendum, must be adopted pursuant to New Hampshire state law.

§ 11-6. Rescissions.

- A. Municipal Budget Act. By adoption of this Charter, the voters and the Town of Merrimack expressly repeal and rescind the previous adoption of the provisions of the Municipal Budget Act.
- B. Historic District Commission. By adoption of this Charter, the voters and the Town

of Merrimack expressly repeal and rescind the previous establishment of the Historic District Commission.

§ 11-7. Public records and meetings.

All records of the Town and all meetings of the Council, boards, committees, commissions, authorities or other municipal bodies shall be open to the public, and their minutes and other records shall be available to the public in accordance with the provisions of New Hampshire state law.

§ 11-8. Reorganization plans.

- A. Council initiated. Except for those agencies established by this Charter or as otherwise prohibited by New Hampshire state law, the Council may reorganize, consolidate, or abolish any existing Town agency in whole or in part or establish new Town agencies and prescribe the functions of any Town agencies, provided that such action shall not eliminate the statutory duties of Town officials. Such reorganization plans shall be accompanied by explanatory messages when proposed.
- B. Manager initiated. The Manager may prepare and submit to the Council for its approval proposed reorganization plans which may, subject to applicable law and this Charter, reorganize, consolidate or abolish any Town agency in whole or in part or establish new Town agencies as are deemed necessary or expedient. Such reorganization plans shall be accompanied by explanatory messages when submitted.

§ 11-9. Severability.

The sections of this Charter and the parts hereof are separable. If any portion or section of this Charter, or the application thereof to any person or circumstance, shall be held invalid by a court of competent jurisdiction, the remainder of the Charter shall not be affected thereby. If a clause, portion of or section of this Charter is so held invalid, then the applicable provisions of New Hampshire state law, if any, shall govern.

§ 11-10. Specific provisions to prevail.

To the extent that any specific provision contained in this Charter conflicts with any provision expressed in general terms, the specific provision shall prevail.

ARTICLE XII
Transitional Provisions

§ 12-1. Effective date.

This Charter shall take effect July 1, 2006. Prior to that date, the Selectmen shall prepare for the transition to the new form of government.

§ 12-2. Effect on incumbent office holders.

Those Selectmen whose terms have not expired as of June 30, 2006, shall continue in office as Councilors until the expiration of their terms and until their successors are elected and certified.

The persons holding the following offices as of June 30, 2006, shall continue in those offices until the expiration of their terms and their successors are elected and certified: Moderator, Treasurer, Town Clerk/Tax Collector, Supervisors of the Checklist, Library Trustees, Trustees of the Trust Fund, and members of the Ethics Committee.

§ 12-3. Special election.

The Town shall conduct a special election on the second Tuesday of June 2006 to elect Town Councilors for the following terms: one for a term to run from July 1, 2006, to the regular Town election in April 2008 and one for a term to run from July 1, 2006, to the regular Town election in April 2009. Both shall serve until their successors are elected and certified as provided in § 3-7 of this Charter.

All election officers holding office prior to and at the time of the special election held under this Charter shall conduct such election and shall have all the powers granted to them under New Hampshire state law for such purposes and shall have all the powers that are granted to their successors under this Charter which are necessary to conduct properly such election.

§ 12-4. Abolition of certain boards and officials.

The following Town agencies shall be abolished effective on the dates listed herein:

- (1) The Board of Selectmen, June 30, 2006; and
- (2) The Municipal Budget Committee, June 30, 2006 established under RSA 32; and
- (3) The Historic District Commission, June 30, 2006.

§ 12-5. Continuation of government.

All members of the Town government, elected or appointed, except those abolished by this Charter, shall continue to perform their duties until the expiration of their current term and until successors to their respective positions are duly appointed, elected and certified or their duties have been transferred. The Board of Selectmen and the successor Town Council shall take whatever measures are necessary to effectuate an orderly transition and shall take whatever actions are necessary to enable such transitions in office to comply with the provisions of this Charter.

The Administrative Code, in effect on the date of the adoption of this Charter, shall remain in effect until such time as the Town Council shall adopt a proposed Administrative Code as defined by the process in § 7-10.

§ 12-6. Continuation and compensation of personnel.

Until expressly changed after the effective date of this Charter, the compensation of all officers, department heads, and employees of the Town shall be the same as that in effect on July 1, 2006.

Any person holding an office or position in the administrative service of the Town, or any person serving in the employment of the Town, shall retain such office or position and shall continue to perform their duties until provisions shall have been made in accordance with the Charter for the performance of the said duties by another person or agency as long as the service rendered is suitable; provided, however, that no person in the service or employment of the Town shall forfeit their pay grade or time in service. All such persons shall be retained in a capacity as similar to their former capacity as is practical.

Removal of personnel for such issues as inefficiency, poor performance, violation of policies and procedures, or other disciplinary reasons, in effect at the time of the adoption of this Charter, shall not be prohibited, provided that the continued or interim policies and/or contracts are followed.

§ 12-7. Transfer of records and property.

All records, property, and equipment of any Town agency, the powers and duties of which are assigned in whole or part to another Town agency, shall be transferred forthwith to the Town agency to which such powers and duties are assigned.

§ 12-8. Effect on obligations, taxes and other legal acts.

All official bonds, recognizance, obligations, contracts, and other instruments entered into or executed by or to the Town before its adoption of this Charter and all taxes, special assessments, fines, penalties, and forfeitures incurred or imposed, due or owing to the Town shall be enforced and collected; all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue without abatement and remain unaffected by the Charter; and no legal act done by or in favor of the Town shall be rendered invalid by the adoption of the Charter.

§ 12-9. Conflicts resolved in favor of the Charter.

To the extent that there is any conflict between the Charter and any continued code, ordinance, policy or procedure, the Charter shall prevail.