



**TOWN OF NEWMARKET, NEW HAMPSHIRE  
TOWN COUNCIL AGENDA**

**WEDNESDAY, JUNE 7, 2017, 7:00PM  
NEWMARKET TOWN HALL COUNCIL CHAMBERS**

**6:15PM Non-Public Meeting pursuant to RSA 91-A:3.II(a) Personnel**

1. Pledge of Allegiance
2. **Public Forum** (*Public Forum is an opportunity for the public to address the Town Council. All comments should be addressed to the Chair of the Council. No person will be allowed to speak longer than five (5) minutes.*)
3. Public Hearing – None
4. Town Council to Consider Acceptance of Minutes
  - a. May 17, 2017 Regular Meeting Minutes
  - b. May 17, 2017 Non-Public Meeting Minutes
5. Report of the Town Administrator
  - a. Ree Cooper – Linked Together – Lemonade Stand
6. Committee Reports
7. Old Business
  - a. Resolutions/Ordinances in the 2<sup>nd</sup> Reading
  - b. Resolutions/Ordinances in the 3<sup>rd</sup> Reading – None
  - c. \* Items Laid on the Table –
    - i. Resolution #2015/2016-52 – Resolution Authorizing the Designation of a portion of Rt. 152 as an Economic Recovery Zone (This Resolution is tabled from the June 15, 2016 Council Meeting pending Planning Board action).
8. New Business/Correspondence
  - a. Town Council to Consider Nominations, Appointments and Elections
    - i. *Strafford Regional Planning Commission (SRPC) Commissioner – Peter Nelson – Expires 3/1/2021*
  - b. Resolutions/Ordinances in the 1<sup>st</sup> Reading

- i. Resolution #2016/2017-33 – Relating to Paving Improvements Bid
  - ii. Resolution #2016/2017-34 – Relating to Paving Improvements to Bay Road/Lamprey Street Parking Lot.
  - iii. Resolution #20162017-35 - Relating to the Replacement of the Air Conditioning Unit at the Police Station.
  - iv. Ordinance #04-2016/2017 - An Ordinance Adopting Chapter 14 Article III of the Code of The Town of Newmarket, New Hampshire: Sewer Use Ordinance.
  - v. Ordinance #05-2016/2017 – An Ordinance Amending Chapter 32 Zoning, Article I. Section 32-2 Purposes and Article IV Signs of the Municipal Code of the Town of Newmarket and Zoning Ordinance, adopted 02/14/1996, as amended through March 1, 2017.
- c. Correspondence to the Town Council
  - d. Closing Comments by Town Councilors
  - e. Next Council Meeting – June 21, 2017

## 9. Adjournment



1  
2  
3  
4  
5  
6  
7 **TOWN OF NEWMARKET, NEW HAMPSHIRE**  
8 **TOWN COUNCIL REGULAR MEETING**

9 **May 17, 2017 7:00 PM**

10 **TOWN COUNCIL CHAMBERS**  
11  
12

13 **PRESENT:** Council Chairman Dale Pike, Councilor Amy Thompson, Councilor Gretchen Kast, Councilor  
14 Kyle Bowden, Councilor Casey Finch

15  
16 **EXCUSED:** Council Vice Chairman Toni Weinstein, Councilor Amy Burns  
17

18 **ALSO PRESENT:** Town Administrator Steve Fournier, Environmental Services Director Sean Greig, Public  
19 Works Director Rick Malasky, Margaret Blank of Underwood Engineers  
20

21 **AGENDA**  
22

23 Chairman Dale Pike welcomed everyone to the May 17, 2017 Newmarket Town Council Meeting and  
24 called the meeting to order at 7:00 pm, followed by the Pledge of Allegiance.  
25

26 Councilor Bowden made a motion to seal the minutes of the Non-Public Session, which was seconded by  
27 Councilor Kast.  
28

29 Town Administrator Fournier polled the Council and the motion to seal the minutes of the Non-Public  
30 Session was approved by a vote of 5-0.  
31

32 **PUBLIC FORUM**  
33

34 Chairman Pike opened the Public Forum at 7:01 pm  
35

36 As no one from the Public came forward, Chairman Pike closed the Public Forum at 7:01 pm.  
37

38 **PUBLIC HEARING – None**  
39

40 **TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES**

**Acceptance of the Minutes of the Non-Public Session of May 3, 2017**

Councilor Kast made a motion to approve the minutes of the Non-Public Session of May 3, 2017, which was seconded by Councilor Bowden.

Town Administrator Fournier polled the Council and the minutes of the Non-Public Session of May 3, 2017 were approved by a vote of 5-0.

**Acceptance of the Minutes of the Regular Meeting of May 3, 2017**

Councilor Finch made a motion to approve the minutes of the Regular Meeting of May 3, 2017, which was seconded by Thompson.

Town Administrator Fournier polled the Council and the minutes of the Regular Meeting of May 3, 2017, were approved by a vote of 5-0. Two minor errors were later corrected on page 4 of the minutes.

**REPORT OF THE TOWN ADMINSTRATOR**

Town Administrator Steve Fournier reviewed the **FY2017 Budget** and stated that with 83% of the year completed, they had expended 80% of the Operating Budget and 80% of the General Fund. He said the only significant area of concern was the Department of Public Works which was 89% expended, mainly due to snow overtime in March. He said revenues were slightly below where they were last year. He said this year revenues were estimated at \$24.2 million and they had collected \$23.8 million to date. He said they were seeing a slight decline in Motor Vehicle Registrations, but said there was an opportunity in the fall to revise revenue estimates. He said Ambulance receipts were currently \$50,000 below where they were at this period last year.

Town Administrator Fournier addressed the **Downtown Project** and said they had met with the contractor on May 4<sup>th</sup> to review the project and walk the site, and they found a number of things that Target Construction needed to address. He said currently the project was being delayed by NHDOT to make sure previous contractors had been paid. He said the Town would receive the payment from the State for their portion of the grant, which would then be forwarded to the construction company to distribute the funds to subcontractors. Chairman Pike asked about the asphalt that had been put down in the Downtown crosswalks. Town Administrator Fournier said that the State had come in and filled them with asphalt cold patch until they could be fixed, as the pavers had moved more during a recent rain incident.

Town Administrator Fournier stated that the Town Clerk-Tax collector would be sending out **Tax Bills** tomorrow which were due on July 6, 2017. He explained that this bill did not include the Bond for the School that was passed in March which would show on the second tax bill of the year. He said he had received a communication from a member of the Veterans Memorial Trust Committee to remind people that the **Memorial Day Parade** would be held on May 30<sup>th</sup> at 6:00 pm, ending at Riverside Cemetery where there would be an event that evening. In the case of rain the parade would be postponed to May 31<sup>st</sup>, and after that would be cancelled. He said there would also be a **Veterans Memorial Golf Tournament** on



June 5, 2017 at Rockingham Country Club, and all money raised would go towards the Veterans Memorial they planned to install near the Library. He said information was available on the Town website.

Town Administrator Fournier stated that they had received a **Paving Bid** from Bell & Flynn. He said though it was the only bid received, the amount was lower than expected and would allow the Town to pave New Road further this year as well as Beech Street Extension. He said that he and Superintendent Meredith Nadeau had discussed setting up the **Joint School Board/Town Council Meeting** for late this summer, tentatively August 30, 2017.

Discussion: Councilor Thompson asked whether the overtime was just a one-time thing due to snow, and Town Administrator Fournier said the winter was fairly mild, but the salt budget was over as well as overtime.

#### **Water & Sewer Assessment Management Plan**

Environmental Services Director Sean Greig stated that the Town of Newmarket had received a \$15,000 matching grant from the New Hampshire Department of Environmental Services (NHDES). He said they worked with Underwood Engineers on this and Margaret Blank of Underwood was here to provide a presentation on the plan. He said the main purpose of the grant was to look at the aging water and sewer infrastructure of the Town, inventory everything, and rate it so they could determine the most critical pieces of their infrastructure and replace what needed to be replaced.

Margaret Blank of Underwood Engineers stated that an Asset Management Plan had been prepared for the Town of Newmarket. She said it was a \$30,000 effort with \$15,000 from NHDES and a \$15,000 match from the Town. She said that Asset Management was basically a decision-making tool to provide the desired level of services at the lowest cost, and the components consisted of level of service, asset inventory, identify critical assets, and life-cycle costing to come up with a funding strategy.

Ms. Blank said that Level of Service included meeting customer needs and expectations, regulatory compliance, secondary standards, and availability by servicing as many people as possible and using ISO fire flows where feasible. She said they would need to make sure supply kept up with demand and needed to maintain a certain amount of pressure on the system, with 60-80 PSI preferred and a minimum of 20 PSI. She said the system needed to be reliable with a minimum number of unplanned shutdowns and breaks, and they should provide 48-hour notice of planned shutdowns.

Ms. Blank said that as far as Asset Inventory, Newmarket had 3 supply wells, a blending facility, a booster pump station, a storage tank, and over 132,000 feet of water main, or 25 miles. She said the value of the water main was approximately 98% of the cost of the system. She explained that Critical Assets were those with system-wide impact like wells and blending facilities, those that potentially impact a lot of customers like the booster pump station or the storage tank, and those water mains that would have significant impact in the event of failure, had exceeded their useful lives, or were undersized. She said that Newmarket had 25,000 feet of mains that had been installed in 1895, and said that Underwood had also identified some mains that needed to be up-sized. Town Administrator Fournier asked where the majority of the 1895 water mains were located. Environmental Services Director Greig said there were

some on Elm Street and South Main Street, some on Bay Road, and some on Route 108 by the golf course, but said the bulk were around Spring Street.

Ms. Blank addressed Life-Cycle Costs and said they found that replacement costs for a water system over 100 years would be \$43 million, or approximately \$132,000 per year. She said the need for the next 10 years would be approximately \$4 million. Chairman Pike asked if the figures were in today's dollars, and Ms. Blank said she had used today's dollars as costing out involved a lot of uncertainty. She next addressed setting up a Long-Term Funding Strategy to pay for all this. She said they needed to look at revenues from water use charges and system development charges, build Capital Reserve Funds into the budget reserves, and set aside surpluses or utilize loans or grants.

Discussion: Councilor Finch said that based on some of the charts for the next 20 years, it looked like the focus would be replacing water mains, and asked if it was the 1895 lines that needed to be replaced. Ms. Blank said it was the 1895 lines, and added that there were also some lines from 1940 which would need to be sized up. Councilor Thompson mentioned recent rate increases and said they were building in now to kind of pay ahead, and wondered if that was included in this. Environmental Services Director Greig said that rates were going to have to increase and said they were trying to set money aside. He said they had just done some major projects and were doing a build-out study, and they needed to plan out against so many years and look at rates. He said it was important not to replace all the water mains at the same time and said the replacements would be spread out.

Councilor Thompson said she assumed it would also require taking services down as sequencing needed to get done. Environmental Services Director Greig said it was shaping up to show exactly what their next steps were going to be, and said it was an important planning tool. Councilor Bowden said the document showed that normal working pressure for this system was 35 pounds and he asked where Newmarket was today. Environmental Services Director Greig said they were up to approximately 80 pounds as they needed to maintain a certain pressure unless they were in an emergency situation.

Chairman Pike asked if they were close to having to sell the Water Treatment Plant. Environmental Services Director Greig said they needed to wait until the Wastewater Treatment Plant was completed, and they had funds to move all the water operations out and into the Wastewater Treatment Plant to centralize and streamline it. He stressed that this document was a draft and there would be changes to it. He said a major part of having this meeting was that they were required to educate the public as part of the grant. Ms. Blank said that people needed to be aware that this was coming (\$43 million) gradually. Environmental Services Director Greig said they were moving towards GIS which would maintain the system and track everything.

Ms. Blank said she had planned to show the map which came out of GIS, and said there was an attribute table associated with all the Town pipes and valves. She said the Newmarket staff was ahead of the curve and gave her well-prepared information, and she felt that their Asset Management Plan was a great tool. Councilor Bowden asked if the costs reflected the Department of Public Works and what they were going to need to do with the road work. Environmental Services Director Greig said the cost of \$5/linear foot went into what it would cost to replace the water main and put the road back together.



Environmental Services Director Greig said that next they planned to look at the sewer side and start overlapping the sewer with the water and look at drainage and paving. He said perhaps they could put all the projects together so as to go into an area once and all share the costs. Councilor Finch commented that the draft was very user-friendly, and said it was helpful and reassuring to see the foresight for a 100-year plan. Councilor Kast asked if there were other tools besides GIS to put all the variables together to help in the decision-making process.

Chairman Pike asked about the capacity study coming up. Environmental Services Director Greig said he met with Wright-Pierce last week to go over some additional information and said he had been assured that the capacity study would be ready next week. Chairman Pike mentioned the Technical Committee on groundwater modeling, and said that with rising seawater there could be parts of their community not on Town water. He said there were a lot of contingencies that needed to be worked with on their plan. Councilor Kast asked if the tool would help to adjust the plan as they went along. Environmental Services Director Greig said that was where they would rate by importance and everything would get a numbering system based on criticality.

Ms. Blank showed the spreadsheet that scheduled out the cost for the wells and the pump station. She said there was a column that listed impact of failure and probability of failure, and said the report had a criticality matrix, so that as the Town upgraded facilities the probability of failure would go down. She said any changes to the numbers would carry through to the whole spreadsheet and change the schedule. She said the pipe inventory information came directly out of a map of the system, and there was an impact and probability for each of the pipes as well.

Luis Adorno, the Environmental Program Manager for water with NHDES, said he echoed all that had been said. He said Environmental Services Director Greig and his staff had done a great job putting this tool together and would help the Town in the future. He said the beauty of the tool was that Environmental Services Director Greig would have full control of it, and that if Underwood Engineers needed to do another study they could make adjustments. He said he wanted to congratulate the Department of Environmental Services on what they were doing and asked that the Town Council keep supporting this great effort.

Chairman Pike said it seemed that all this methodology applied to more than just water. Environmental Services Director Greig said they would start with the water system and then start to bring in the sewer system. Mr. Adorno said it was not just for water and sewer but also applied to stormwater and to Public Works with a different kind of format. Councilor Kast asked if Newmarket was the first community to do this, and Mr. Adorno said they had established 48 communities that have gone through the Asset Management process. Ms. Blank said the spreadsheet format made things very adaptable, and if Newmarket found a better program they could migrate this information into that product.

#### **MRI Update – Environmental Services Director Sean Greig**

Environmental Services Director Sean Greig said that MRI had looked at their Water & Sewer Department and came up with 3 main things: (1) to add 1 additional person at the Wastewater Treatment Plant, (2) to add an administrative element, and (3) to look at training as necessary and on-going and look at salaries.

He said they were finding that water and sewer had the oldest workforce and that no one new was coming into that workforce. He said as a result they needed to look at what they were paying and what they could do to keep their staff.

Environmental Services Director Greig said as far as adding an additional employee at the Wastewater Treatment Plant, the difficulty with the MRI Study was that it started halfway through their budget year and they had not planned for that person. He said because the Wastewater Treatment Plant was planned to be completed this budget year, they would only need to make a half-payment next year on the loan which would free up funds. Chairman Pike asked if this position would be beyond the new hire already required by the new wastewater plant, and Environmental Services Director Greig said it was beyond that. He said they needed more staff because of the amount of added infrastructure and the degree of technicality of the new plant, and said they had also added a Blending Facility.

Environmental Services Director Greig said that currently their administrative person was being shared with the Department of Public Works and they were paying 20% of the salary. He said ideally his department should hire an administrative person who would be paid 50% out of water and 50% out of sewer. He said there would be money from sewer out-of-flow, and that for water, when they took over the project from NHDES to replace the water main up to the water tower, they got 20% forgiveness and were currently at 40% forgiveness. He said this was a million-dollar project and instead of \$200,000 forgiveness they would be getting \$400,000, which reduced the loan substantially.

Town Administrator Fournier reminded the Council that if a percentage of the administrative salary came from the Department of Public Works, they would have to make up the difference in the General Budget. He said one idea might be for the Department of Public Works to share the position with the new Facilities Director, which would provide him with some clerical staff. Councilor Thompson asked if there was enough workload there for a fulltime person, and Environmental Services Director Greig said they were looking at job descriptions which would need to be redefined.

Environmental Services Director Greig said the last piece was compensation and evaluation of all their employees on a yearly basis, and making sure they got their certificates and training. He said as far as compensation, a Wage Survey was done a few years ago and the department was found to be on the lower side with salaries. He said for the next budget year they would need to try to get people up to where they should be, and said he was working on this with the Town Administrator.

Discussion: Councilor Thompson thanked Environmental Services Director Greig and said he was really fine-tuning things to point out where they needed to go on an administrative level. Councilor Bowden asked if there was a timeline for hiring an administrative person. Environmental Services Director Greig said he first had to work it out with the Department of Public Works, and he was working on it with the Town Administrator. He said salary evaluations would come every July. Town Administrator Fournier said that the last Wage Study was conducted in 2015 and presented on March 9, 2016.

Chairman Pike said there had been some conversation about another community possibly joining the Town sewer system, and asked Environmental Services Director Greig if he was now trying to figure out capacity. Environmental Services Director Greig said they still had conversations with one community and



said the Capacity Study would be coming back soon. He said other communities would need to wait until the Town had received their permit.

**MRI Update – Department of Public Works Director Rick Malasky**

Public Works Director Rick Malasky said he felt the MRI Study was a great thing but that it had been difficult with it being in the middle of a budget year. He said that everyone in the Town realized the importance of addressing roads and said that UNH had come up with a plan and the Council had increased the budget figure. He said they no their mechanic had been cut by a former Town Council, and they had been making it work and had saving money. He said as far as facilities, the new Facility Director had been hired and would be starting in a few weeks.

Public Works Director Malasky said that the Public Works Department was a member of the Lamprey Cooperative and got a reduced fee with other communities for disposal of their trash and recyclables. He said they had been with the Lamprey Coop for 25 years and also used MRA Management for disposal of items from the Transfer Station. He said the department also got a discount with other communities and took advantage of State pricing for many items. He said that he was already doing most of the MRI Report recommendations. As far as staffing, he said the Town was very lean in a number of departments.

Discussion: Councilor Bowden asked if he felt there was anything that MRI missed, and Public Works Director Malasky said that he thought they had been very thorough and had left no stone unturned. Councilor Bowden said a neighbor had repeatedly asked him where the recycling goes. Public Works Director Malasky said that Casella Waste Management took all the risk, so that if the market was slow they sometimes had to pay to have things recycled. He said that personally he felt it was fiscally irresponsible to recycle curbside.

Town Administrator Fournier explained that there were a number of facilities run by Casella with the State. He said aluminum was probably shipped overseas as well as a lot of the plastics, and said the pulp from paper was recycled into other paper goods. He said if the Town did not recycle, their tipping fees and tonnage would be much higher. Chairman Pike felt there was a good system in the Town, and said recycling encouraged people to create less trash.

**MRI Update – Fire Chief Rick Malasky**

Fire Chief Rick Malasky stated that MRI had made 25 recommendations and that the Fire Department was already doing 21 of them. He said the first was to maintain potential recruitment and training which they had been doing for several years. He said it was getting tougher and tougher for someone working fulltime with a family to also be a volunteer firefighter. He said the Newmarket Fire Department was extremely busy with a high volume of calls, and it was challenging to find staff. He said he had picked up a lot of new applicants with a recent mailing.

Chairman Pike asked if training was part of the time demand put on new recruits. Fire Chief Malasky stated that it took 6-8 months to get the training required to be able to run calls, and said the department had medical calls approximately every 2 hours and Fire Department calls were up 100 calls per year. He said

the Town of Newmarket was also the largest employer and it was hard to find recruits. He said as far as partnering with other communities, Newmarket was already doing that. He said the Fire Department was a member of Seacoast Chiefs, which consisted of 41 communities with a membership fee of less than \$2,000/year. He said with the membership, the Fire Department got a Hazmat Team and the cost was shared as part of the \$2,000 fee they paid and this allowed them to utilize equipment worth billions of dollars. He said they also did group purchases and said that all the communities put in for their gear at the same time.

Councilor Thompson said she was aware that staffing levels were tight and the Fire Department needed more people, but that the Town Administrator had said that Ambulance receipts were down. Fire Chief Malasky said there was some catching up with books that would show the department being off there. Town Administrator Fournier said that also at night if they were toned out and there was no response from a volunteer in Newmarket, they toned out to Durham or Exeter to cover and they got the revenues. Councilor Thompson asked what percentage of the numbers listed were toned out and asked if calls were going to other Towns. Town Administrator Fournier said that he and the Fire Chief were looking into that right now, and he wanted to do an analysis of response times. He said he had asked Dispatch for support of calls from last year as to when they were toned, when the response occurred, and who responded.

Councilor Thompson said she was concerned that the wait was longer when the ambulance had to come from another town. Fire Chief Malasky said typically calls were lost because an ambulance was out of service or because a vehicle was in the shop for repairs. Town Administrator Fournier stated that the policy of Police Chief True was that if an ambulance is toned out a police officer goes to the scene as well, and said he was trying to address the weekend stipend for volunteer firefighters. Fire Chief Malasky said the department had lost some key players and said he had made some adjustments which seemed to be working right now, but said they would have to increase salaries for call to sustain this. Town Administrator Fournier said he hoped to address the issues this year with a study, but said the culture of the volunteer firefighter had changed.

Fire Chief Malasky said that as far as Paramedic services they were provided to the Fire Department free, and did not feel it was fiscally responsible for them to hire paramedics. He said that as far as staffing they did pursue working with other communities, and said they looked at their staffing hours and responses. He said the recommendation to work with local businesses was already addressed. He said the Fire Department applied for grants as much as possible, but that unless the applications were regional Newmarket was overlooked due to the size of the Town.

Chairman Pike asked Fire Chief Malasky if he did most of the grant writing, and Fire Chief Malasky said that John Diesel wrote grants for a living and they had worked with him periodically. He felt the Town should reconsider finishing the upstairs of the Fire House so they could potentially provide board for on-call volunteers. Councilor Kast asked if the Fire Department could then get volunteers from other communities. Fire Chief Malasky said they had already expanded that and said there were a lot of students right next door at UNH who were fully certified, but could not respond on medical calls. He said the department did what they could without facilities for locker rooms and showers.



Chairman Pike asked what the cost might be to renovate the Fire House and Fire Chief Malasky said approximately \$275,000. He said the area was a big open space and was not set up for individual spaces, and they could not do sections one at a time. He said he had looked into working with the High School but that classes were usually held at night, and he felt the students needed to concentrate on graduation first. He said he was working with the Superintendent to have students start taking EMT and Fire 101 and 102. He said as far the MRI recommendation to find his successor, he felt the Town was very lucky to have him in the same building being able to do what he did.

Chairman Pike said when he first joined the Council there was a lot of yearning for regionalization by councilors without any understanding of any lower level regionalization already going on. He said he felt it was hard to go to higher level regionalization without some lead by the State. He said the MRI Report had helped the Council to better understand what things were already happening in terms of efforts to be efficient. Fire Chief Malasky said it was difficult geographically for Newmarket having smaller communities next door. He said they were looking into billing for emergency services, and said it was challenging to try to discuss this with other communities. He said as far as adding a false alarm, the Fire Department already had a false alarm system.

Chairman Pike asked Fire Chief Malasky if there was anything he felt would make his department more efficient or more effective that MRI did not address with their report. Fire Chief Malasky said having more people, and said he tried to work with what he had but it was getting very challenging to cover all the calls. Chairman Pike also asked where he thought the Fire Department was in terms of fire equipment. Fire Chief Malasky stated that the CIP was a little off for engine replacement, and said a new engine would be coming up in the next couple of years which he would be putting it in CIP.

Councilor Kast asked if some calls could be reduced by education of the public, and Fire Chief Malasky said he did not think that was an issue. Town Administrator Fournier said it was not so much a category but more of an individual, and they had frequent customers who may not be using it for the right reasons. Chairman Pike said MRI had been very complimentary to Fire Chief Malasky and his department and their level of efficiency. He said that was one good result of doing the MRI Study, and said this type of document would help succeeding Town Councils get up to speed with where they were as a Town.

#### COMMITTEE REPORTS

Councilor Finch reported that the *Conservation Commission* had met on May 11, 2017. He said they had done a site walk of Schanda Park due to concern about some erosion around the seawalls. He said they had found visible damage to the seawalls and flows that needed to be addressed, and were trying to find ways to stabilize those areas. He said there were concerns about a buffer zone being encroached upon in the Boulder Brook Subdivision area, and they were continuing developments with Schoppmeyer Park.

Chairman Pike said there was a meeting of the *Groundwater Technical Committee* with regard to a study looking at bedrock wells, which alerted them to some of the challenges brought on by rising sea levels. He said it was also challenging to figure out all the agencies involved and how to coordinate it. He said the *Macallen Dam Committee* would be meeting next week to start reviewing the proposals coming in for the next step in the process.

Chairman Pike said that Fish & Game had their fish ladder for the herring run which was held last Saturday, and said the Lamprey was the largest herring run of all the rivers that flowed into Great Bay. He said this would be reconsidered when the dam was reengineered for the abutment walls, and they needed to preserve access to the fish ladder per the Lamprey River Advisory Committee.

**OLD BUSINESS**

**ORDINANCES AND RESOLUTIONS IN THE 2<sup>ND</sup> READING – None**

**ORDINANCES AND RESOLUTIONS IN THE 3<sup>RD</sup> READING – None**

**ITEMS LAID ON THE TABLE – *Resolution #2015/2016-52 Authorizing the Designation of a Portion of Route 152 as an Economic Recovery Zone.*** (This Resolution is tabled from the June 15, 2016 Council Meeting pending Planning Board action.)

**NEW BUSINESS/CORRESPONDENCE**

**TOWN COUNCIL TO CONSIDER NOMINATIONS, APPOINTMENTS AND ELECTIONS – None**

**ORDINANCES AND RESOLUTIONS IN THE 1ST READING – None**

**CORRESPONDENCE/CLOSING COMMENTS**

Chairman Pike mentioned that the Town Administrator had set a date for the School/Town Council Joint Meeting of August 30, 2017. He said he felt it would also be useful for the Sub-Committee to meet one last time to wrap up before the joint meeting. He said the Town Administrator and the Superintendent were working on the agenda.

Councilor Finch reminded everyone that the Annual Fishing Derby was scheduled to take place on Saturday June 17, 2017 from 7 am to 10:30 am.

Councilor Thompson asked where the other two councilors were this evening, and Chairman Pike said that Councilor Burns and Councilor Weinstein were both excuse.

**NEXT MEETING:** Next regular Town Council Meeting June 7, 2017

**ADJOURNMENT**

Chairman Pike adjourned the meeting at 8:55 pm.

Respectfully submitted,

Patricia Denmark, Recording Secretary





TOWN OF NEWMARKET, NEW HAMPSHIRE  
OFFICE of the TOWN ADMINISTRATOR

**REPORT OF THE TOWN ADMINISTRATOR**  
**June 7, 2017**

**Groundwater Modeling Report:** In 2016, the Strafford Regional Planning Commission collaborated with staff from the University of New Hampshire to implement a groundwater modeling study to identify existing and potential future locations where public water systems may be vulnerable to sea level rise impacts.

The outcome of this project was a report titled, "Sea-Level Rise Impacts on Drinking Water: A Groundwater Modeling Study in Newmarket, NH" and the results will be presented to the Planning Board on June 13 at 7PM. The presentation will provide a brief overview of the project, the computer model and sea level rise projections that were used, specific outcomes, and recommended adaptation strategies for the town to consider.

The Town Council is invited to attend.

**Channel 13 Upgrade:** I have met with the Channel 13 Station Manager and the Director of IT and we are recommending upgrading the servers and bulletin board system for Channel 13. We believe that the system was installed over 25 years ago, when Cablevision first set up the channel. We are concerned with being able to repair the current system in the future, improving broadcasts and providing information. Any appropriation would come from previously established Cable Capital Reserve Funds and not affect the operating budget.

**Financial Software:** One item in the FY18 budget is upgrading our current financial software. We have been discussing this for a number of years, as our current system's provider has been sold a number of years ago. We formed a working group to review products and to get us online by July 2018. The Finance Director will be issuing a RFP this summer with the intention of having a vendor in place in the late fall to begin roll out in the winter. Please note that the cost of the system is substantial, and it is our intention to lease the software to reduce cost. The lease payment is in the current budget.

An additional goal is to make sure it is compatible with any school system. There are not many systems that will cover both town and school, and we have to have separate books. It is our intention to have similar systems so people will feel at ease using either one.

**Linked Together Kids:** The Linked Together Kids will be at the meeting to make a presentation.

## ONGOING PROJECTS

---

\*\*\*This section will not be reported on orally to the Town Council at the meeting, but will use this as a chance to update on any developments in ongoing projects. \*\*\*

**MRI Efficiency Study:** We continue to work on these goals. The Town Council has seen the spreadsheet with all of that information as part of the Department Heads Report.

The Finance Director will be present at the next meeting to make a presentation.

**Downtown Project:** As of June 1, the Town began to assess liquidated damages against Target Construction again. We are still trying to get them to respond to numerous issues and legal counsel has been in contact with the bonding company.

**Fire Department Response Time:** I am currently analyzing response time data for 2016.

**Street Lighting - LED:** Awaiting Eversource to review potential savings and grant amounts.

**NHDOT v Town of Newmarket:** No new developments.

**Road Paving for FY18:** There is a resolution for a first reading to enter into an agreement to begin paving at the beginning of the fiscal year.

### Town Council Goals:

#### *Goal #1 - Unified Town-wide CIP*

- Draft CIP process plan document is finished. We are waiting for the Facilities Director to come on board to comment on the plan.

#### *Goal #2 - Increased parking in downtown by exploring public and/or private solutions*

- Ongoing.

#### *Goal #3 - Continue relations with School Board and SAU staff to find further efficiencies and solidify current agreement with shared finance and facilities*

- The Facilities Director began Monday.
- The Superintendent and I will begin looking at sharing IT service late this summer or early fall. We are currently working to make sure that our upgraded phone system will be expandable to include the school in the future.

#### *Goal #4 - Meet with Planning Board to work together to align goals for 2017 based off summaries of consultants and Strafford Regional Planning Commission reports*



- The Town Council met with the Planning Board.

Respectfully Submitted,

A handwritten signature in black ink, reading "Stephen R. Fournier". The signature is written in a cursive style with a large, stylized "S" and "F".

Stephen R. Fournier  
Town Administrator

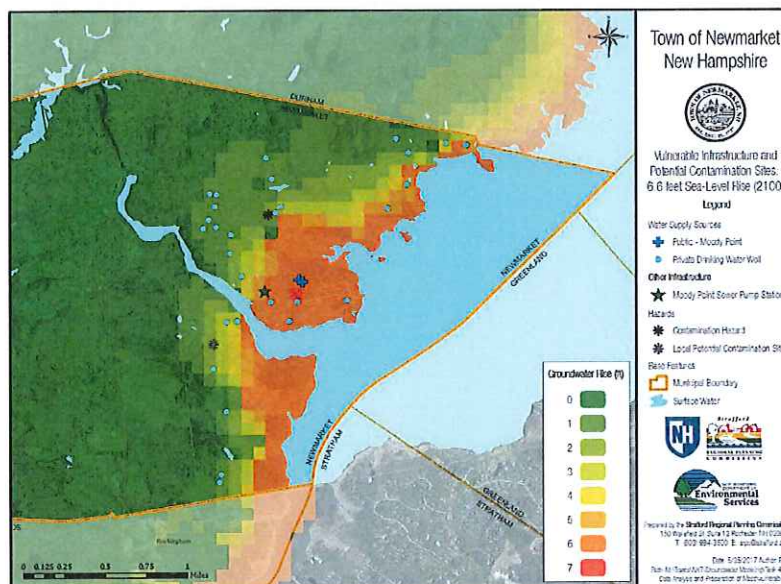


Tuesday, June 13, 2017 at 7:00 P.M. Town Council Chambers Presentation at 7:15 P.M.

## FEATURED PRESENTATION

### Findings from the Groundwater Modeling Report

You're invited to attend the next Newmarket Planning Board meeting for a special presentation by the Strafford Regional Planning Commission (SRPC) on the results from a recently completed groundwater modeling study.

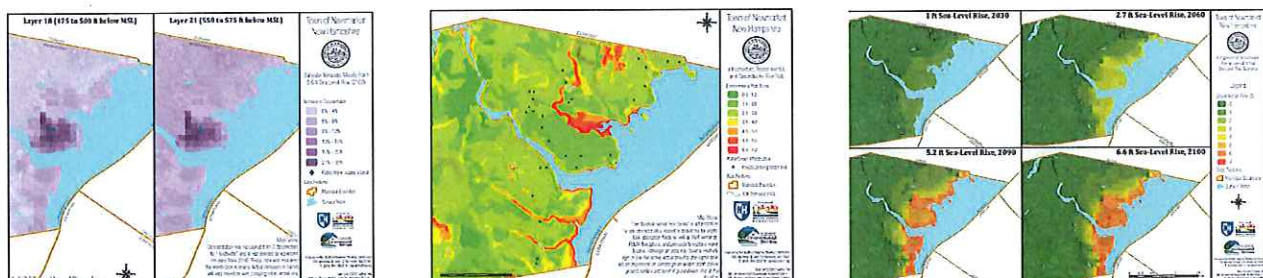


In 2016, SRPC partnered with staff from the University of New Hampshire to implement a groundwater modeling study to identify existing and potential future locations where public water systems may be vulnerable to sea-level rise impacts.

This project culminated in a final report titled, "Sea-Level Rise Impacts on Drinking Water: A Groundwater Modeling Study in Newmarket, NH" and the results will be presented to the Planning Board by Principal Regional Planner, Kyle Pimental and GIS Planner, Rachael Mack of the Strafford Regional Planning Commission. The presentation will provide a brief overview of the project, the computer model and sea-level rise projections that were used, specific outcomes, and recommended adaptation strategies for the town to consider.

This project was funded through the NHDES Local Source Water Protection Grant Program.

For more information on the meeting contact Diane Hardy at [dhardy@newmarketnh.gov](mailto:dhardy@newmarketnh.gov).

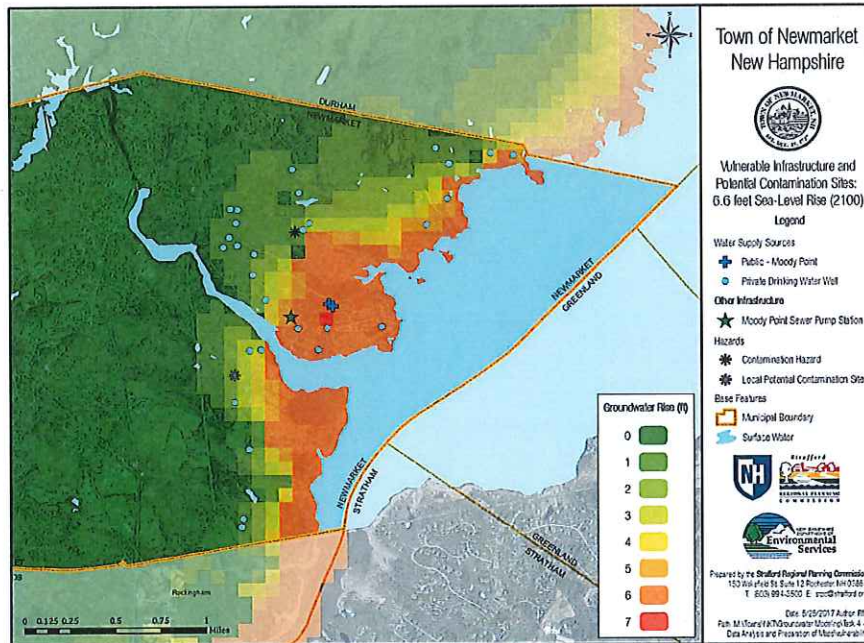




## FEATURED PRESENTATION

### Findings from the Groundwater Modeling Report

You're invited to attend the next Newmarket Planning Board meeting for a special presentation by the Strafford Regional Planning Commission (SRPC) on the results from a recently completed groundwater modeling study.

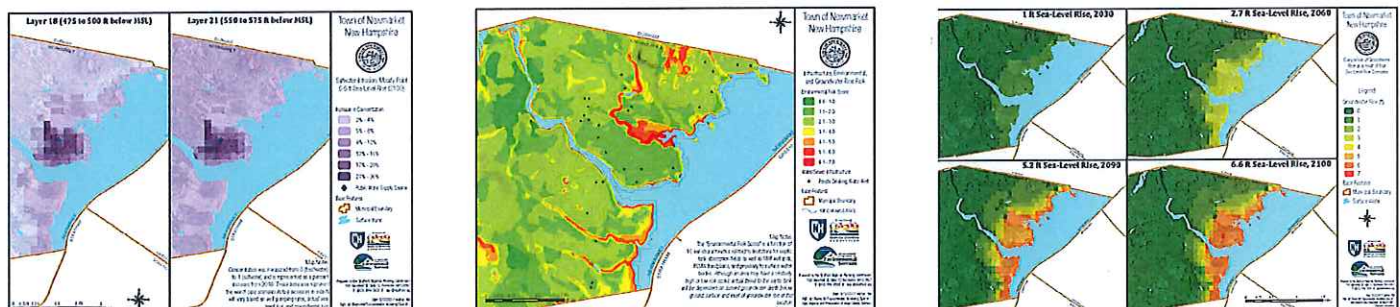


In 2016, SRPC partnered with staff from the University of New Hampshire to implement a groundwater modeling study to identify existing and potential future locations where public water systems may be vulnerable to sea-level rise impacts.

This project culminated in a final report titled, "Sea-Level Rise Impacts on Drinking Water: A Groundwater Modeling Study in Newmarket, NH" and the results will be presented to the Planning Board by Principal Regional Planner, Kyle Pimental and GIS Planner, Rachael Mack of the Strafford Regional Planning Commission. The presentation will provide a brief overview of the project, the computer model and sea-level rise projections that were used, specific outcomes, and recommended adaptation strategies for the town to consider.

This project was funded through the NHDES Local Source Water Protection Grant Program.

For more information on the meeting contact Diane Hardy at [dhardy@newmarketnh.gov](mailto:dhardy@newmarketnh.gov).



CHARTERED JANUARY 1, 1991

FOUNDED DECEMBER 15, 1727



**TOWN OF NEWMARKET, NEW HAMPSHIRE**  
**By the Newmarket Town Council**

**Resolution 2015/2016-52**

**Authorizing the Designation of a portion of Rt. 152 as an Economic Recovery Zone**

WHEREAS: NH RSA 162N allows for the creation of Economic Recover Zones in communities to encourage the redevelopment of certain land in exchange for state tax credits for the developer, and

WHEREAS: The Town desires to redevelop what is the B3 zone along Rt. 152, including the following lots on Town Tax Map R6 (updated April 2015):

Lots 1, 2, 3, 4-1, 4-2, 4-3, 5, 6, 7, 8, 9, 10, 11-1, 11-1A, 11-2, 12, 50, 50A, 50B, 50C, 50-1, 50-2, 50-3, 50-4, 50-4, 50-5, 50-6, 50-7, 50-8, 51 and 52. .

NOW, THEREFORE, BE IT RESOLVED BY THE NEWMARKET TOWN COUNCIL THAT:

The Town Council requests that the Commissioner of the Department of Resources and Economic Development declare this portion an Economic Recovery zone and authorizes the Town Administrator to execute any agreements.

First Reading: June 1, 2016

Tabled: June 1, 2016

Second Reading:

Approval:

Approved: \_\_\_\_\_  
Dale Pike, Town Council Chairman

A True Copy Attest \_\_\_\_\_  
Terri J. Littlefield, Town Clerk





APPLICATION FOR APPOINTMENT TO A BOARD,  
COMMISSION, OR COMMITTEE POSITION WITHIN THE  
TOWN OF NEWMARKET

Applicant's Name: Peter Nelson

Address: 15 A Water St Phone/Cell 603-817-1859

RSA 669:19 Newmarket Registered Voter: ☒ Yes No # of Years as Resident: 2  
RSA 91:2 Are you an American Citizen? ☒ Yes No

Email address: pete\_nelson@comcast.net

Full membership (3 year term) position applying for SRPC Commissioner

State what the new term expiration date is: 3/1/2021

Alternate position (3 year term) position applying for \_\_\_\_\_

State what the new term expiration date is: \_\_\_\_\_

I feel the following experience and background qualifies me for this position: \_\_\_\_\_

I have served in this capacity with SRPC  
for the last year or longer and would like  
to continue to contribute to this effort at  
representing Newmarket

(need more room, please use the back)

Signature Peter Nelson

Date 4/28/17

You are welcome to submit a letter or resume with this form. Applicants are requested to attend the Council meeting to address the Town Council prior to the decision making process. Applicants will be notified of the time and date of this meeting in advance. Thank you for your application and interest in the Town of Newmarket.

## Diane Hardy

---

**From:** Diane Hardy  
**Sent:** Friday, May 26, 2017 1:56 PM  
**To:** Wendy Chase  
**Cc:** Sue Jordan (sjordan@newmarketnh.gov) (sjordan@newmarketnh.gov)  
**Subject:** Nomination to the Strafford Regional Planning Commission

Dear Wendy,

At the May 9, 2017 Planning Board meeting, the PB voted unanimously to nominate Peter Nelson to the Strafford Regional Planning Commission for another term as a commission. I will be leaving a package for you to get this on the next Town Council Agenda. I have included Pete's application, the letter from the SRPC, and a form that needs to be filled out and signed by the Town Council Chair after their approval of the nomination. Please let me know if you have any questions.

Thank you for following up on this.

Sincerely,  
Diane H.



**Second: Janice Rosa**  
**Vote: All in favor**

Diane Hardy stated one of the earlier motions should have mentioned forwarding the changes to the Town Council for consideration for adoption, as the Planning Board does not adopt zoning changes.

**Action**

**Motion: Rose-Anne Kwaks made a motion to amend her original motion of just approving Section 32-2 and adding "send it to the Town Council for approval."**

**Second: Janice Rosa**  
**Vote: All in favor**

**Agenda Item #5 – Other Business**

***Appointment to SRPC – Peter Nelson***

**Action**

**Motion: Rose-Anne Kwaks made a motion to recommend to Town Council to appoint Peter Nelson as representative to Strafford Regional Planning Commission**

**Second: Janice Rosa**  
**Vote: All in favor**

***Planner's Report***

Diane Hardy stated, at the end of April, she submitted to SRPC a grant proposal to update our stormwater regulations. There is a new stormwater management ordinance that is being recommended by the Seacoast Watershed Coalition, which reflects the state of our thinking on stormwater management. It is an \$8,000 grant to update the regulations. They were last done in 2008. There have been quite a few changes, since then. These regulation will be required under the MS4 program, which will go into effect in July 2018. The Town Council has joined other communities, which are appealing the NPDES permit for the MS4 program, which was issued in January 2018. There should be a decision soon.

Rose-Anne Kwaks stated she loves the new "Welcome to Newmarket" signs. Diane Hardy stated those were Mike Hoffman's initiative. He worked closely with the Town Administrator on this, met with the sign people and made sure the design was something that would be compatible with the historic downtown theme. There will be a new sign at Heron Point Sanctuary, as well.

BARRINGTON  
BROOKFIELD  
DOVER  
DURHAM  
FARMINGTON  
LEE  
MADBURY  
MIDDLETON  
MILTON



NEW DURHAM  
NEWMARKET  
NORTHWOOD  
NOTTINGHAM  
ROCHESTER  
ROLLINSFORD  
SOMERSWORTH  
STRAFFORD  
WAKEFIELD

February 8, 2017

RECEIVED

Newmarket Town Council  
186 Main Street  
Newmarket NH 03857

FEB 14 2017

Dear Chair Levy and Council Members:

NEWMARKET, NH  
PLANNING BOARD

As prescribed by RSA 36:46-III: Each municipality which shall become a member of a regional planning commission shall be entitled to 2 representatives on said commission. **A municipality with a population over 10,000 but less than 25,000 shall be entitled to have three representatives on said commission and a municipality with a population over 25,000 shall be entitled to have four representatives on said commission.** Population as set forth in this section shall be deemed to be determined by the last federal census. The population for the Town of Newmarket as reported in the 2010 census was 8,936. Based upon this estimate, the Town of Newmarket is entitled to 2 representatives.

Representatives to a regional planning commission shall be nominated by the planning board of each municipality from the residents thereof and shall be appointed by the municipal officers of each municipality. Representatives may be elected or appointed officials of the municipality. The terms of office of members of a regional planning commission shall be for 4 years. Vacancies shall be filled for the remainder of an unexpired term in the same manner as original appointments. Municipalities may also appoint alternate representatives.

**Our records indicate that you have one position that is about to expire:**

*Current Commissioners*

<u>Name</u>	<u>Expiration</u>
Peter Nelson	3/1/2017*
Lisa Henderson	12/7/2020

*\*There was an error on the last letter we sent out regarding the appointment of Ms. Lisa Henderson which noted that Peter Nelson's term extended until 5/13/2019. This was incorrect; his term expires on March 1, 2017.*

Please indicate on the attached form whether Mr. Nelson will be renewing his term as SRPC Commissioner, or alternatively, please appoint one resident to serve as SRPC Commissioner at your earliest convenience. You may do so by filling out the attached form and sending it ATTN: Shayna Sylvia, Strafford Regional Planning Commission, 150 Wakefield Street, Suite 12, Rochester, NH 03867. View the included flyer for more information on the role of a SRPC Commissioner

Once you have appointed your Commissioner, please forward the information to this office. If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Executive Director Cynthia Copeland, AICP

*Thank you for  
your support!*

cc: Planning Board, Diane Hardy, Steve Fournier, Peter Nelson



The signatures of the Appointing Official(s) listed below confirm that the above named individual(s) shall be appointed as the Town of Newmarket representative of the Strafford Regional Planning Commission.

Appointee: Peter Nelson  
 Mailing Address: 15A Water St. Newmarket, NH 03857  
 Phone Number: 603-817-1859  
 Email: Pete-nelson@comcast.net  
 Expiration Date: 3/1/2021 (Four years from appointment date)

_____ Appointing Official/Title	_____ Date
_____ Appointing Official/Title	_____ Date
_____ Appointing Official/Title	_____ Date

# A Guide to Being a SRPC Commissioner



## What?

The role of a SRPC Commissioner is to offer insight and guidance regarding projects and processes of the SRPC Commission through discussions at meetings, input to staff for reports, and adoption of reports and other planning documents. Additional responsibilities include adopting and amending the Bylaws; adopting the Annual Budget and Annual Dues; and electing Officers and Executive Committee members.



## Three Roles

As an SRPC Commissioner you are also a member of the Strafford Metropolitan Planning Organization Policy Committee and serve on the Board of Directors for the Strafford Economic Development District. The Policy Committee provides a forum for the development of regional transportation policies for the SMPO and acts as a vehicle to coordinate the implementation of these policies. The Strafford EDD is a federally designated organization charged with the maintenance and implementation of a regional Comprehensive Economic Development Strategy (CEDS).



## Time Commitment & Responsibilities

As a Commissioner you are appointed for a four year term. During each year there are four quarterly Commission meetings that are held in a variety of locations throughout the region and are scheduled for 4 pm. The Commission meetings also serve as the quarterly meetings for the Strafford Economic Development District.

For the Strafford MPO Policy Committee there are 12 monthly meetings that are held at the SRPC Office at 9 am on the third Friday of every month. View this year's schedule listed on the right.

In both of these roles you count towards a quorum, which requires a designated number of members to be present at meetings in order to vote on official business.

We ask that you set aside some time each week to read SRPC emails and news, and review packet materials prior to meetings. There may also be an opportunity to serve on subcommittees for SRPC projects.

## Quick Facts

- Strafford Regional Planning Commission (SRPC) is a Metropolitan Planning Organization (MPO) and an Economic Development District (EDD).
- SRPC is made up of 18 communities including all of Strafford County, in addition to Brookfield and Wakefield in Carroll County, and Nottingham, Newmarket, and Northwood in Rockingham County.
- Established by state legislation in 1969 the regional planning commissions serve in an advisory role to local governments and community organizations.
- SRPC's mission is to assure that the region is responsive to the needs of its residents through cooperation with the federal and state agencies and its member communities, through the implementation of SRPC's policies and plans, and through local planning assistance.

## FY2017 Meeting Schedule

### Commission/ Strafford EDD (1-1.5 hours)

September 22, 2016 at 4 pm  
December 1, 2016 at 4 pm  
February 23, 2017 at 4 pm  
May 25, 2017 at 11:30 am\*

\*Denotes the Annual Meeting/Luncheon

### Policy Committee (1-2 hours)\*

July 15, 2016 at 9 am  
August 19, 2016 at 9 am  
September 16, 2016 at 9 am  
October 21, 2016 at 9 am  
November 18, 2016 at 9 am  
December 16, 2016 at 9 am  
January 20, 2017 at 9 am  
February 17, 2017 at 9 am  
March 17, 2017 at 9 am  
April 21, 2017 at 9 am  
May 19, 2017 at 9 am  
June 16, 2017 at 9 am

\*SRPC understands if Commissioners are unable to attend some Policy meetings due to work schedules

## Contact

Executive Director Cynthia Copeland, AICP  
SRPC, Suite 12, 150 Wakefield St.,  
Rochester, NH 03867  
(603) 994-3500  
srpc@strafford.org

## Have we sparked your interest???

Get in touch with us directly using the contact information to the right or reach out to your local town planning officials.



CHARTERED JANUARY 1, 1991

FOUNDED DECEMBER 15, 1727



**TOWN OF NEWMARKET, NEW HAMPSHIRE  
By the Newmarket Town Council**

**Resolution #2016/2017 - 33**

**Paving Improvements**

- WHEREAS: Annually, the town issued an RFP to find and award a contractor to perform the town's paving program; and
- WHEREAS: the town received one (1) proposal from Bell & Flynn LLC, who have been competitively bidding the towns work for several years, and have been awarded the contract every year since 2001; and
- WHEREAS: the town budgeted \$155,000 towards this expenditure in the operating budget and an additional \$175,000 was budgeted in the capital reserve to fund the Road Management Plan that has been adopted and will have a balance of \$240,223 on July 1st; and
- WHEREAS: the proposal from Bell and Flynn LLC is \$229,862.50. This proposal is below the cost estimate in the Road Management Plan.

NOW, THEREFORE, BE IT RESOLVED, that the Newmarket Town Council does hereby award the contract to Bell & Flynn LLC with a dollar amount not to exceed \$330,000 with \$155,000 coming from the operating budget and \$175,000 coming from the capital reserve on July 1, 2017.

*First Reading: June 7, 2017*

*Second Reading:*

*Approval:*

Approved: \_\_\_\_\_  
Dale Pike, Chairman Town Council

A True Copy Attest: \_\_\_\_\_  
Terri Littlefield, Town Clerk



TOWN HALL  
186 MAIN STREET  
NEWMARKET, NH 03857

TEL: (603) 659-3617  
FAX: (603) 659-8508

FOUNDED DECEMBER 15, 1727  
CHARTERED JANUARY 1, 1991

## TOWN OF NEWMARKET, NEW HAMPSHIRE

# STAFF REPORT

**DATE:** May 31, 2017

**TITLE:** Paving Improvements 2017-2018-33

**PREPARED BY:** Rick Malasky, Public Works Director

**TOWN ADMINISTRATOR'S COMMENTS – RECOMMENDATION:**

I recommend passage of this resolution. These funds will be taken out of FY18 Budget.

**BACKGROUND:** Annually, the town issued an RFP to find and award a contractor to perform the town's paving program.

**Process:** An RFP was created and posted online, it was also sent out to several contractors.

**Results:** We received one proposal back and it was from Bell & Flynn LLC. Several contractors made inquiries about the work but did not submit a proposal.

**DISCUSSION:** I have no concerns with the fact that we only have one proposal because it is from Bell & Flynn LLC. They have been competitively bidding the towns work for several years and being awarded the contract every year since 2001. They're a local company, very dependable, and do great work.

**FISCAL IMPACT:** The Town budgeted \$155,000 towards this expenditure in the operating budget and an additional \$175,000 was budgeted in the capital reserve to fund the Road Management Plan that has been adopted. The capital reserve will have a balance of \$240,223 on July 1st. The proposal from Bell and Flynn LLC is \$229,862.50. This proposal is below the cost estimate in the Road Management Plan. The plan called out to complete 6,000 LF of New Road this year. I recommend we do an additional 2,900 LF of New Road which will be what was budgeted and expected to be spent on the roads this year. The cheaper than expected bid will allow us to do more paving at a lower cost.

**RECOMMENDATION:** I recommend the Town award the contract to Bell & Flynn LLC with a dollar amount not to exceed \$330,000 with \$155,000 coming from the operating budget and \$175,000 coming from the capital reserve on July 1st 2017. We will be paving Beech Street Extension and 8,900 LF of New Road.

***ATTACH ALL PERTINENT DOCUMENTS TO SUPPORT THE REQUEST.***



**CONTACT INFORMATION, SUSPENSION & DEBARMENT CERTIFICATE,  
AND SIGNATURE REQUIRED:**

Recent names and phone number information must be provided for at least three (3) other customers for whom these types of services have been provided.

**Contact information:**

Official Entity Name	<i>Bell &amp; Flynn, LLC</i>	Warranty/Guarantee	<i>* see below</i>
Address	<i>69 Bunker Hill Ave</i>	FOB Information	<i>N.A.</i>
City, State, Zip	<i>Stratham, N.H. 03885</i>	Availability	
E-mail Address	<i>jtb@bellandflynn.com</i>	State of Incorporation	<i>N.H.</i>
Telephone Number	<i>(603) - 778-8511</i>	Price holds for	<i>~ June, 2018</i>
Fax Number	<i>(603) - 772-4396</i>		

**Suspension and Debarment Certificate:**

I certify that this vendor has not been suspended or debarred from participating in any federal or State contract or grant.

The Town reserves the right to request Bidder's last Financial Statements. Certified audited statements, if available, prepared by an independent Certified Public Accountant, may be requested by Owner. If requested, such statements must be provided within five (5) business days or the bid proposal will be rejected. Internal statements may be used only if audited financial statements were not prepared.

  
Signature

May 10, 2017  
Date

Vice - Pres / Treas  
Title

*\* All materials guaranteed to be as specified.  
All work to be completed in accordance with standard industry practices.*

## PROPOSAL FORM

### Roadway Paving

The contractor must bid on all of the following items. (Hourly rates are to be total cost).

Item	Proposed Price
Reclaimed Stabilized Base 8" Depth Price SY 13,350 SY.	\$ 1.75 23,362.50
2" Hot Bituminous Concrete Binder Course (19mm) By machine method price per ton 1,500 tons.	\$ 67.00/T 100,500.00
1" Hot Bituminous Concrete Surface Course (12.5mm) By machine method price per ton 750 tons	\$ 70.00/T 52,500.00
1" Hot Bituminous concrete Surface Course (9.5mm) By machine method price per ton 360 tons.	\$ 75.00/T 27,000.00
Install bituminous pavement by hand method price per ton 80 tons.	\$ 125.00/T 10,000.00
Cold plane existing asphalt pavement at limits of work area as required price per LF 1,000 LF.	\$ 3.00/LF 3,000.00
Installation of processed gravel shoulders following paving activities price CY 450 CY.	\$ 30.00/cy 13,500.00
Total	\$ 229,862.50

### REFERENCES

Recent names and phone number information must be provided for at least three (3) other customers for whom these types of services have been provided.

1. Town of Newfield  
Brian Knipstein 580 1536
2. Town of Stratham  
Colin Lantry 772-5550
3. Town of Exeter  
Jay Perkins 773-6157



CHARTERED JANUARY 1, 1991

FOUNDED DECEMBER 15, 1727



**TOWN OF NEWMARKET, NEW HAMPSHIRE  
By the Newmarket Town Council**

**Resolution #2016/2017 - 34**

**Paving Improvements Bay Road Municipal Parking Lot**

- WHEREAS: the town has acquired the parking lot at the corner of Bay Road and Lamprey Street and the parking lot is deteriorated and needs to be fixed; and
- WHEREAS: the town is currently under contract with Bell and Flynn of Stratham for its paving projects and the Town Administrator requested a proposal to repair the parking lot; and
- WHEREAS: the town currently has \$273,223 in the Municipal Transportation Fund that can be utilized to fund this parking lot improvement and not have any effects to the road paving program; and
- WHEREAS: the total cost to repair the parking lot is \$14,700

NOW, THEREFORE, BE IT RESOLVED, that the Newmarket Town Council does hereby approve the withdrawal of funds in the amount of \$14,700 from the Municipal Transportation Fund for the repair of the Bay Road/Lamprey Street parking lot.

*First Reading: June 7, 2017*

*Second Reading:*

*Approval:*

Approved: \_\_\_\_\_  
Dale Pike, Chairman Town Council

A True Copy Attest: \_\_\_\_\_  
Terri Littlefield, Town Clerk



TOWN HALL  
186 MAIN STREET  
NEWMARKET, NH 03857

TEL: (603) 659-3617  
FAX: (603) 659-8508

FOUNDED DECEMBER 15, 1727  
CHARTERED JANUARY 1, 1991

## TOWN OF NEWMARKET, NEW HAMPSHIRE

# STAFF REPORT

**DATE:** May 31, 2017

**TITLE:** Paving Improvements Bay Road Municipal Parking Lot Resolution #2016/2017-34

**PREPARED BY:** Rick Malasky, Public Works Director

**TOWN ADMINISTRATOR'S COMMENTS – RECOMMENDATION:**

I recommend passage of this resolution

**BACKGROUND:** The town has acquired the parking lot at the corner of Bay Road and Lamprey Street. This parking lot has deteriorated and needs to be fixed.

**Process:** The town is currently under contract with Bell and Flynn of Stratham for its paving projects. I requested a proposal to repair the parking lot.

**DISCUSSION:** This parking lot has just been being utilized for storage and over flow parking for the residents of Bay Road and Lamprey Street. The goal is to fix the parking lot and sell permits like the town currently does with other parking lots. This lot has the potential to have 20 parking spaces. We currently maintain and plow the parking lot. This parking lot is in very poor condition and really needs to be fixed. This parking lot is full of vehicles on a daily basis and could generate a lot of new revenues for the town.

**FISCAL IMPACT:** The Town currently has \$273,223 in the Municipal Transportation Fund that can be utilized to fund this parking lot improvement and not have any effects to the road paving program. This is funded from every vehicle that is registered in the Town with a \$5.00 fee from every registration.

**RECOMMENDATION:** I recommend the Town accept the proposal from Bell and Flynn for \$14,700 and repair the parking lot.

**ATTACH ALL PERTINENT DOCUMENTS TO SUPPORT THE REQUEST.**



# Proposal

**BELL & FLYNN, LLC**

Bunker Hill Avenue  
Stratham, New Hampshire 03885

**Phone 778-8511 Fax 772-4396**

Town of Newmarket  
Department of Public Works  
Attn: Rick Malasky, Director  
4 Young's Lane  
Newmarket, NH 03857

659-3093

May 19, 2017

[rmalasky@newmarketnh.gov](mailto:rmalasky@newmarketnh.gov)

Pavement Improvements  
Bay Rd/Lamprey Ct Parking Lot  
Newmarket, NH

Area Involved: Approx. 700 SY

Work Involved:

- a) Furnish processed gravel/RAP as required
- b) Fine Grade and Compact
- c) Construct a 2 1/2" Bituminous Concrete Pavement in one course by machine method
- d) Install Bituminous Concrete Berm
- e) Layout and Grade Control

Price:

a) FOB	\$10.00/CY	
DEL	\$15.00/CY	<u>Estimated</u> Quantity: 100 CY
b) 1. Cat 140 Grader Rental	\$135.00/HR	<u>Estimated</u> Quantity: 8 HRS
2. Cat CB334 Vibratory Compactor Rental	\$90.00/HR	<u>Estimated</u> Quantity: 4 HRS
3. Labor Rental	\$40.00/HR	<u>Estimated</u> Quantity: 4 HRS
c)	\$105.00/T	<u>Estimated</u> Quantity: 100 T
d)	\$4.00/LF	<u>Estimated</u> Quantity: 275 LF
e)	\$75.00/HR	No Charge

a-e

Estimated total : \$14,700

Notes:

- 1) Applicable permits as required to be secured by owner
- 2) Traffic Control as required to be performed by others
- 3) Removal of existing asphalt pavement to be performed by others
- 4) Fine Grading and Compaction of areas inaccessible to Caterpillar 140 Grader to be performed by others
- 5) Restoration, i.e. Loaming and Seeding, of perimeter areas following construction activities to be performed by others
- 6) Pavement Marking to be performed by others
- 7) Unit pricing is reflective of 2017-2018 "Pavement Improvements" Agreement
- 8) Price of Bituminous Concrete Pavement is based upon May 15, 2017 NHDOT price of liquid asphalt. This price is subject to sudden fluctuation which may require price adjustment per NHDOT standard specifications.

**We propose** hereby to furnish material and labor-complete in accordance with above specifications Payment to be made as follows:

Net 30. A finance charge of 1-1/2% (18%APR) will be applied to the unpaid balance after 30 days. The purchaser agrees to pay all costs and expenses of collection including reasonable attorney fee.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance

Signature

Note: This proposal may be  
withdrawn by us if not accepted within \_\_\_\_\_ days.

**Acceptance of Proposal**-The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do work as specified. Payment will be made as outlined above.

Date of Acceptance:

Signature:

CHARTERED JANUARY 1, 1991

FOUNDED DECEMBER 15, 1727



**TOWN OF NEWMARKET, NEW HAMPSHIRE  
By the Newmarket Town Council**

**Resolution # 2016/2017-35**

**Police Station Air Conditioning System Replacement**

**WHEREAS**, the Air Conditioning (AC) Unit at the Police Department is twenty-three (23) years old and not repairable; and

**WHEREAS**, Thermo Dynamics is currently under contract with the town to maintain and repair all AC and Heating Units; and

**WHEREAS**, the AC Unit services the entire upstairs of the police station, and was evaluated by Thermo Dynamics who recommended replacing the AC Unit and all if its components; and

**WHEREAS**, there is currently \$199,638 in the Building Improvement Capital Reserve Account, and the cost of replacing the AC Unit is \$7,940.

**NOW, THEREFORE BE IT RESOLVED** that the Newmarket Town Council does hereby approve the withdrawal of funds not to exceed \$7,940 from the Building Improvement Capital Reserve Fund to replace the AC Unit at the Police Station.

*First Reading: June 7, 2017*

*Second Reading:*

*Approval:*

Approved \_\_\_\_\_  
Dale Pike, Chairman Town Council

A True Copy Attest: \_\_\_\_\_  
Terri Littlefield, Town Clerk





TOWN HALL  
186 MAIN STREET  
NEWMARKET, NH 03857

TEL: (603) 659-3617  
FAX: (603) 659-8508

FOUNDED DECEMBER 15, 1727  
CHARTERED JANUARY 1, 1991

## TOWN OF NEWMARKET, NEW HAMPSHIRE

# STAFF REPORT

**DATE:** May 31, 2017

**TITLE:** Police Station AC System Resolution #2016/2017-35

**PREPARED BY:** Rick Malasky, Public Works Director

**TOWN ADMINISTRATOR'S COMMENTS – RECOMMENDATION:**

I recommend passage of this resolution.

**BACKGROUND:** The AC unit at the police station is 23 years old and not repairable; the unit needs to be replaced.

**Process:** Thermo Dynamics is currently under contract with the town to maintain and repair all AC and heating units.

**DISCUSSION:** The Police Station was built in 1995. The current AC unit is not repairable anymore. The unit was evaluated by Thermo Dynamics who recommended replacing the unit and all of its components. This unit services the entire upstairs of the police station which has a training room and office spaces that are utilized on a daily basis. With the hot days of summer fast approaching it's necessary to get this unit replaced.

**FISCAL IMPACT:** The building improvement capital reserve account currently has \$199,638 available in it. The cost of replacing the AC unit is \$7,940.

**RECOMMENDATION:** I recommend that \$7,940 to replace the AC unit be withdrawn from the building improvement capital reserve.

***ATTACH ALL PERTINENT DOCUMENTS TO SUPPORT THE REQUEST.***

4/1/2017  
cs

Trustee Acct#108200290884

Town of Newmarket  
Capital Reserve  
Buildings and Improvements  
FY 16/17

	<u>Year Replace</u>	<u>Replace Cost</u>	<u>Balance 7/1/2016</u>	<u>FY 16/17 Additions</u>	<u>Resolution Number</u>	<u>Withdrawals FY 16/17 Resolutions</u>	<u>Remaining Balance</u>
<u>Buildings and Facilities</u>							
Heating Unit Replacements		80,000	124,590	50,000			174,590
Air Conditioning		100,000					0
Roof Replacement		125,000					0
Exterior Painting of Bldgs(to be considered exp next year)		40,000					0
Flooring		67,000					0
Pointing of Bricks		30,000					0
Town Hall Basement Renovations		50,000					0
Town Hall First Floor Bathrooms							0
Siding Police & Community Ctr					16/17-17	-11,800	-11,800
Windows Community Center							0
Interest			36,287	561			36,848
Total		492,000	160,877	50,561		-11,800	199,638





## THERMO DYNAMICS INCORPORATED

*"New England's #1 Chiller Service Group."*

Pepperrell Green - Suite 203  
74 State Road  
Kittery, ME 03904

Phone: 207 439 5049  
800 676 9979  
Fax: 207 439 5063

Town of Newmarket  
Rick Malasky  
4 Young Lane  
Newmarket, NH 03857

May 12<sup>th</sup> 2017

RE: Police Department

Dear Mr. Malasky,

We are pleased to provide you with pricing to replace your existing indoor and outdoor Bryant AC system serving the hallway and conference room as follows;

- Recover existing refrigerant
- Disconnect and dispose of existing condenser and evaporator coil
- Install one new Bryant 2ton condensing unit
- Install one new Bryant 2ton cased evaporator coil
- Install one new refrigerant line set
- Reconnect to existing electrical
- Pressure test and evacuate
- Charge with new R-410A refrigerant
- Start and test for correct operation

Price: \$7,940.00

If you have any questions regarding this proposal, please do not hesitate to contact our office at any time.

Sincerely,

Frank Fortunato  
President  
Thermo Dynamics, Inc.

FF/jlf

**Town of Newmarket, New Hampshire**

By the Newmarket Town Council

**ORDINANCE NO. 4-2016/2017**

**AN ORDINANCE ADOPTING CHAPTER 14 ARTICLE III OF THE CODE OF  
THE TOWN OF NEWMARKET, NEW HAMPSHIRE: SEWER USE ORDINANCE**

THE TOWN OF NEWMARKET ORDAINS:

**1. Purpose:**

The purpose of this ordinance is that pursuant to enabling authority in New Hampshire Revised Statutes Annotated 149-I:6, or revisions thereto, the following is an Ordinance regulating the use of public and private sewers, private wastewater disposal, the installation and connection of building sewers, and the discharge of waters and wastes into the public sewer system(s), and providing penalties for violations thereof, in the Town of Newmarket, County of Rockingham, State of New Hampshire.

**2. Amendment:**

Chapter 14 is hereby amended by adding the following Article III:

[See Attached Document]

**3. Repeal**

This ordinance shall repeal any previously adopted ordinances, rules, or regulations

**4. Takes Effect**

This ordinance shall take effect upon passage and publication of notice as required by RSA 47:18

First Reading: June 7, 2017

Second Reading:

Public Hearing:

Council Approval:

Approved: \_\_\_\_\_  
Dale Pike, Chair Newmarket Town Council

A True Copy Attest: \_\_\_\_\_  
Terri Littlefield, Newmarket Town Clerk





TOWN HALL  
186 MAIN STREET  
NEWMARKET, NH 03857

TEL: (603) 659-3617  
FAX: (603) 659-8508

FOUNDED DECEMBER 15, 1727  
CHARTERED JANUARY 1, 1991

## TOWN OF NEWMARKET, NEW HAMPSHIRE


# STAFF REPORT

**DATE:** June 2, 2017

**TITLE:** Sewer Use Ordinance Update

**PREPARED BY:** Sean T. Greig

**TOWN ADMINISTRATOR'S COMMENTS – RECOMMENDATION:**

I recommend passage of this ordinance 

**BACKGROUND:** The Newmarket Sewer Use Ordinance was adopted in 1977. The purpose of the ordinance is to provide uniform standards for all users, prevent pollutants from interfering with the operation of the wastewater treatment facility (WWTF), passing through the WWTF into the receiving waters, and to protect the health and safety of the Town's personnel and the public. The ordinance is a set of rules and guidelines that allows the Town to be in compliance with its National Pollutant Discharge Elimination System (NPDES) permit. The Department worked with Underwood Engineers and the New Hampshire Department of Environmental Services to update the Newmarket Sewer Use Ordinance.

**DISCUSSION:** It is important that the Town has an up to date Sewer Use Ordinance, in order to have a uniform set of standards for residential, businesses, and contractors that use or want to add on to the Newmarket sewer system. The Sewer Use Ordinance is important for the Town to meet its NPDES permit requirements. The Environmental Services Department in the future will review and make changes to the ordinance more frequently.

**FISCAL IMPACT:** There is no fiscal impact.

**RECOMMENDATION:** I recommend the Town Council adopt the Sewer Use Ordinance.

**ATTACH ALL PERTINENT DOCUMENTS TO SUPPORT THE REQUEST.**

STAFF REPORT

**Newmarket, New Hampshire Sewer Use Ordinance Summary Handout**  
**Prepared May 25, 2017**

**Purpose**

- To prevent pollutants from interfering with the operation of the Publicly Owned Treatment Works (POTW), passing through the POTW into the receiving waters and to protect both the Town's personnel and the public.
- To comply with the Town's National Pollutant Discharge Elimination System (NPDES) permit.
- Authorizes the Town to issue wastewater discharge permits, monitor for compliance and enforce the rules.

**Administration**

- Designates the Town's Superintendent or their designee to administer, implement and enforce the provisions of the Ordinance.
- Establishes a schedule of charges to defray the cost of capital and maintenance with revisions as necessary.

**Definitions**

- Over 81 definitions provided specific to sewer use ordinances

**General Sewer Use Requirements**

- Requires the use of sewers and defines the requirements for installation and use.
- Establishes two classes of sewer permits; residential and commercial permits for domestic wastewater only and industrial permits for industrial wastewater.
- Establishes general and specific prohibitions of pollutants, substances or wastewater that cannot be discharged to the public sewer.
- Institutes Federal Categorical Pretreatment Standards for industrial users with the EPA as the Control Authority, because the Town is not required to have a local pretreatment program. Also allows the Town to institute more stringent standards.
- Establishes criteria for private sewers that connect to the public sewers, including maintenance and control of excessive infiltration and inflow by the private sewer system owner.

**Pretreatment of Wastewater**

- Establishes review and approval of pretreatment facilities and additional measures as necessary, such as an accidental discharge control plan.

**Industrial Discharge Permitting**

- Establishes an industrial user permit application and criteria for significant indirect dischargers.
- Describes the process the Town and industrial user will follow to establish or modify permit criteria and content.

**Powers and Authority**

- Provides Town with the authority to investigate for non-compliance, allows for right of entry to inspect and sample.

**Confidential Information and Public Participation**

- Allows for confidentiality of information, should the industrial user demonstrate protection is necessary under trade secrets as defined under applicable State and Federal law.

**Administrative Enforcement Remedies**



- Sets criteria for the notice of violations to the industrial user permit, compliance schedule, cease and desist orders, consent orders, termination of permit and termination of discharge.
- Allows for the requirement of a pollution prevention plan should violations occur.

**Judicial Enforcement Remedies**

- Establishes injunctive relief, civil penalties and criminal prosecution remedies.

**Supplemental Enforcement Action**

- Establishes performance bonds, liability insurance, cessation of water supply and other enforcement actions the Town can implement for compliance.

**Affirmative Defenses to Discharge Violations**

- Defines upset conditions as a defense for discharge violations and how this can be demonstrated and documented.

**Septage Disposal Requirements**

- Establishes septage disposal regulations, permits and charges.

**Abatements**

- Allows for written request for abatements with specific conditions.

**Validity**

- Establishes the validity of the ordinance and allows for continuance of the validity should one section or part become invalid.

**Interpretations of Requirements**

- Establishes the Town Superintendent and Town Council as the entity that will interpret and administer the ordinance, with conditions for appeal of the interpretation.

**User Fees**

- Establishes the schedule of charges as approved by Town Council resolution after public notice and discussion at the Town Council Workshop.

# Town of Newmarket, New Hampshire



## ORDINANCE GOVERNING THE DISCHARGE OF WATERS AND WASTEWATER INTO THE PUBLIC SEWER SYSTEM

*Adopted*

\_\_\_\_\_, \_\_\_\_\_ 2017



## **Town of Newmarket Sewer Use Ordinance**

### **ORDINANCE NO. XX**

Pursuant to enabling authority in New Hampshire Revised Statutes Annotated 149-I:6, or revisions thereto, the following is an Ordinance regulating the use of public and private sewers, private wastewater disposal, the installation and connection of building sewers, and the discharge of waters and wastes into the public sewer system(s), and providing penalties for violations thereof, in the Town of Newmarket, County of Rockingham, State of New Hampshire.

Be it ordained and enacted by the Town Council of the Town of Newmarket and adopted \_\_\_\_\_, 2017, as follows:

## TABLE OF CONTENTS

	<u>Page</u>
<b>SECTION 1 - GENERAL PROVISIONS .....</b>	<b>1</b>
1.1 Purpose and Policy .....	1
1.2 Administration .....	1
1.3 Abbreviations .....	2
1.4 Definitions .....	3
<b>SECTION 2 - GENERAL SEWER USE REQUIREMENTS.....</b>	<b>14</b>
2.1 Use of Public Sewers .....	14
2.2 Building Sewers and Connections.....	15
2.3 Prohibited Discharge Standards .....	18
2.4 Federal Categorical Pretreatment Standards .....	20
2.5 Local Discharge Restrictions .....	21
2.6 Town of Newmarket's Right of Revision.....	22
2.7 Dilution .....	23
2.8 Mass-Based Limitations .....	23
2.9 Private Sewer Systems .....	23
<b>SECTION 3 - PRETREATMENT OF WASTEWATER .....</b>	<b>24</b>
3.1 Pretreatment Facilities.....	24
3.2 Additional Pretreatment Measures .....	24
3.3 Accidental Discharge/Slug Control Plans .....	25
<b>SECTION 4 - INDUSTRIAL DISCHARGE PERMIT APPLICATION .....</b>	<b>26</b>
4.1 Wastewater Characterization.....	26
4.2 Industrial Discharge Permit Requirement .....	26
4.3 DES Industrial Wastewater Indirect Discharge Request (IDR) Requirement.....	26
4.4 Industrial Discharge Permitting: Existing Connections .....	26
4.5 Industrial Discharge Permitting: New Connections .....	27
4.6 Industrial Discharge Permitting: Categorical Standards .....	27
4.7 Industrial Discharge Permit Application Contents.....	27
4.8 Signatories and Certification .....	28
4.9 Hauled Wastewater Permits .....	29
<b>SECTION 5 - INDUSTRIAL DISCHARGE PERMIT ISSUANCE PROCESS.....</b>	<b>30</b>
5.1 Industrial Discharge Permit Decisions .....	30
5.2 Industrial Discharge Permit Duration.....	30
5.3 Industrial Discharge Permit Contents .....	30
5.4 Industrial Discharge Permit Appeals.....	33
5.5 Industrial Discharge Permit Modification .....	33
5.6 Industrial Discharge Permit Transfer .....	34
5.7 Industrial Discharge Permit Reissuance.....	34
5.8 Regulation of Waste Received from Other Jurisdictions .....	34
<b>SECTION 6 - REPORTING REQUIREMENTS .....</b>	<b>37</b>
6.1 Periodic Compliance Reports.....	37
6.2 Reports of Changed Conditions .....	37
6.3 Reports of Slug/Potentially Adverse Discharges .....	38
6.4 Reports from Unpermitted Users .....	38
6.5 Notice of Violation/Repeat Sampling and Reporting.....	38
6.6 Analytical Requirements.....	38
6.7 Sample Collection .....	39
6.8 Timing.....	39
6.9 Record Keeping.....	39
<b>SECTION 7 - POWERS AND AUTHORITIES OF INSPECTORS .....</b>	<b>40</b>
7.1 Compliance Monitoring .....	40
7.2 Right of Entry: Inspection and Sampling .....	40
7.3 Search Warrants .....	41



<b>SECTION 8 - CONFIDENTIAL INFORMATION/PUBLIC PARTICIPATION .....</b>	<b>42</b>
8.1 Confidential Information.....	42
8.2 Public Participation.....	42
<b>SECTION 9 - ADMINISTRATIVE ENFORCEMENT REMEDIES.....</b>	<b>43</b>
9.1 Notification of Violation .....	43
9.2 Compliance Schedule Development .....	43
9.3 Pollution Prevention Plan Development .....	43
9.4 Publication of Users in Significant Noncompliance .....	44
9.5 Show Cause Orders .....	44
9.6 Cease and Desist Orders.....	44
9.7 Consent Orders.....	44
9.8 Industrial Discharge Permit Termination .....	45
9.9 Termination of Discharge .....	45
9.10 Emergency Suspensions.....	46
9.11 Recovery of Expenses .....	46
9.12 Harm to Town of Newmarket Property.....	46
9.13 Liens and Collection of Sewer Charges .....	47
<b>SECTION 10 - JUDICIAL ENFORCEMENT REMEDIES .....</b>	<b>48</b>
10.1 Injunctive Relief.....	48
10.2 Civil Penalties .....	48
10.3 Criminal Prosecution.....	48
10.4 Nonexclusive Remedies .....	49
<b>SECTION 11 - SUPPLEMENTAL ENFORCEMENT ACTION .....</b>	<b>50</b>
11.1 Performance Bonds .....	50
11.2 Liability Insurance .....	50
11.3 Water Supply Severance .....	50
11.4 Public Nuisances .....	50
11.5 Contractor Listing .....	50
<b>SECTION 12 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS.....</b>	<b>51</b>
12.1 Upset .....	51
12.2 Prohibited Discharge Standards .....	52
12.3 Bypass .....	52
<b>SECTION 13 - SEPTAGE DISPOSAL .....</b>	<b>54</b>
13.1 Septage Hauler Requirements .....	54
13.2 Temporary Septage Permits .....	54
13.3 Septage Permits.....	54
13.4 Septage Disposal Charge.....	55
<b>SECTION 14 - ABATEMENTS .....</b>	<b>56</b>
<b>SECTION 15 - VALIDITY .....</b>	<b>57</b>
<b>SECTION 16 - INTERPRETATION OF REQUIREMENTS.....</b>	<b>58</b>
16.1 Interpretation .....	58
16.2 Appeals .....	58
<b>SECTION 17 – USER FEES.....</b>	<b>59</b>
<b>SECTION 18 - EFFECTIVE DATE .....</b>	<b>60</b>

## Appendices

Appendix A – Sewer User Fees

Appendix B – Residential/Commercial Sewer Connection Applications

Appendix C – Industrial Sewer Connection Application

Appendix D – POTW Screening Levels

## **SECTION 1 - GENERAL PROVISIONS**

### **1.1 Purpose and Policy**

This Ordinance sets forth uniform requirements for users of the Publicly Owned Treatment Works (POTW) of the Town of Newmarket and enables the Town of Newmarket to comply with all applicable State and federal laws, specifically the Clean Water Act (33 United States Code § 1251 *et seq.*) and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403). Recognizing that significant opportunities exist to reduce or prevent pollution at its source through cost effective practices, and that such practices can offer savings through reduced purchases of materials and resources, a decreased need for pollution control technologies, and lower liability costs, as well as assisting to protect the environment, the Town of Newmarket establishes the following objectives of this Ordinance:

- A. To prevent the introduction of pollutants into the POTW that will interfere with the POTW's operation;
- B. To prevent the introduction of pollutants into the POTW that will pass through the POTW, without adequate treatment, into receiving waters, or otherwise be incompatible with the POTW;
- C. To protect both POTW personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
- D. To promote the reuse of sludge from the POTW; and
- E. To enable the Town of Newmarket to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other federal or State law or regulation to which the POTW is subject.

This Ordinance shall apply to all users of the POTW. The Ordinance authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; and requires user reporting.

### **1.2 Administration**

Except as otherwise provided herein, the Superintendent or his designee shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to, or duties imposed upon, the Superintendent may be delegated by the Superintendent to any other Town of Newmarket personnel (designee).

- A. To defray the costs of operating and maintaining the sewer system, payment of any principal or interest on bonds, or other indebtedness, a schedule of charges shall be set established by the Town of Newmarket for all classes of service and defined in the Sewer User Charge system. Changes to the schedule of charges shall be approved by Town Council resolution after public notice and discussion at Town Council meeting.



- B. The Town shall, as necessary, make such changes or revisions in assessments, charges, and/or fees as may be required to raise necessary revenue to pay for all operation and maintenance charges, any principal and interest on bonds, or other indebtedness.
- C. To defray the cost of major repairs to the sewage collection, transmission or treatment facilities, the Town may create a sinking fund account for the purpose of such major repairs or repaying a debt incurred for the purpose of said major repairs.
- D. All sewer connection charges and all collected ad valorem tax assessments designated for the sewerage sinking fund account shall be deposited in the sinking fund account.
- E. The Town Council shall authorize withdrawals from the sinking fund account for repair or replacement work as shall be judged to be appropriate by the Superintendent.
- F. Any person found to be violating any provision of this Ordinance shall be served by the Town with written notice stating the nature of the violation and providing a 30-day period for the satisfactory correction thereof. The offender shall permanently cease all violations within the period of time as stated in said notice.
- G. Any person who shall continue any violation beyond the period of time provided in the notice shall be subject to fines and prosecution.
- H. Any person violating any of the provisions of this Ordinance shall be liable to the Town for any expense, loss, or damage occasioned the Town by reason of such violation.
- I. All ordinances or parts of ordinances in conflict herewith are hereby repealed.
- J. The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

### **1.3 Abbreviations**

The following abbreviations, when used in this Ordinance, shall have the following designated meanings:

· BOD	- Biochemical Oxygen Demand (Five Day)
· CFR	- Code of Federal Regulations
· COD	- Chemical Oxygen Demand
· EPA	- United States Environmental Protection Agency
· gpd	- Gallons per day
· IDP	- Industrial Discharge Permit
· mg/L	- Milligrams per Liter
· DES	- New Hampshire Department of Environmental Services
· NPDES	- National Pollutant Discharge Elimination System
· POTW	- Publicly Owned Treatment Works
· RCRA	- Resource Conservation and Recovery Act

- RSA - New Hampshire Revised Statute Annotated
- SIC - Standard Industrial Classification
- TDS - Total Dissolved Solids
- TSS - Total Suspended Solids
- USC - United States Code

#### 1.4 Definitions

A. Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Ordinance, shall have the meanings hereinafter designated.

1. Act or the Act. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.*

2. Approval Authority. The Regional Administrator of the EPA or his duly appointed agent.

3. Authorized Representative of the User.

a. If the user is a corporation:

i. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

ii. The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. If the user is a partnership or sole proprietorship: a general partner or the proprietor, respectively.

c. If the user is a federal, State, or local governmental facility: a director or the highest official appointed, elected, or designated to oversee the operation and performance of the activities of the government facility.

d. The individuals described in paragraphs (a) through (c), above, may designate another authorized representative if: (a) the authorization is in writing; (b) the authorization specifies the individual or position responsible for the overall



operation of the facility from which the discharge originates or the person having overall responsibility for environmental matters for the company; (c) and the written authorization is submitted to the Town of Newmarket.

4. Biochemical Oxygen Demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g., mg/L).
5. Building Drain. That part of the lowest horizontal piping of a drainage system that receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.
6. Building Sewer. The extension from the building drain to the public sewer or other place of disposal, also called house connection.
7. Bypass. The intentional diversion of waste streams from any portion of a wastewater treatment facility.
8. Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limitations promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317) that applies to a specific category of users and that appears in 40 CFR Chapter I, Subchapter N, Parts 405-471.
9. Town. The Town of Newmarket, New Hampshire
10. Combined Sewer. A sewer intended to receive both wastewater and storm or surface water.
11. Commercial Use. Premises used for financial gain, such as business or industrial use, but excluding residential uses and related accessory uses.
12. Commissioner. The Commissioner of the New Hampshire Department of Environmental Services or the Commissioner's duly appointed agent.
13. Compatible Pollutant. Biochemical oxygen demand, suspended solids, pH, and fecal coliform bacteria.
14. Control Authority. The term Control Authority as used in this Ordinance, refers to the Regional Administrator of the EPA.
15. Dental Practice. A business established for the purpose of practicing dentistry, as defined by RSA 317-A:20.
16. DES or NHDES. The New Hampshire Department of Environmental Services.
17. Domestic Wastewater or Sewage. Normal water-carried household and toilet wastes or

waste from sanitary conveniences of residences, commercial buildings, and industrial plants that contains no industrial waste, excluding ground, surface, or storm water. (See also: Industrial Wastes.)

18. Easement. An acquired legal right for the specific use of land owned by others.
19. Environmental Protection Agency or EPA. The United States Environmental Protection Agency or, where appropriate, the EPA Regional Water Management Division Director, or other duly authorized official of said agency.
20. Existing Source. Any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.
21. Floatable Oil. Oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the collection system.
22. Force Main. A line without access from individual properties, providing a connection from a pump station to a pump station, trunk, or sanitary sewer main.
23. Garbage. The animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.
24. Grab Sample. A sample that is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.
25. Grease. The material removed from a grease interceptor (trap) serving a restaurant or other facility requiring such grease interceptors. Grease shall also mean volatile and non-volatile residual fats, fatty acids, soaps, waxes and other similar materials.
26. Hauler. Those persons, firms, or corporations, who pump, haul, transport, or dispose of septage and who are licensed by the New Hampshire Department of Environmental Services pursuant to RSA 485-A:4,XVI-a and rules adopted to implement said section.
27. Human Excrement and other Putrescible Material. The liquid or solid matter discharged from the intestinal canal of a human, or other liquid or solid waste materials that are likely to undergo bacterial decomposition; These terms shall not include refuse as defined in RSA 145-M.
28. Incompatible Pollutant. Any pollutant that is not a compatible pollutant.
29. Industrial Discharge Permit or IDP. The written permit between the Town of Newmarket and an industrial user that outlines the conditions under which discharge by the industrial user to the POTW will be accepted.



30. Industrial User. A person who discharges industrial wastes to the POTW of the Town of Newmarket.
31. Industrial Wastes or Non-Domestic Wastewater. The wastewater and waterborne wastes from any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacturing trade, or business or from development of any natural resources as distinct from domestic wastewater, sewage or unpolluted water.
32. Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.
33. Instantaneous Discharge Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.
34. Interference. A discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and therefore is a cause of a violation of the Town of Newmarket's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as RCRA; any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; the Marine Protection, Research, and Sanctuaries Act; 40 CFR Part 503 Standards for Sewage Sludge Use and Disposal and RSA 485-A:4, XVI-a.
35. Local Limits. Numerical limitations on the discharge of pollutants established by the Town of Newmarket, as distinct from State or federal limitations for non-domestic wastewater discharged to the POTW.
36. May. Means permissive (see "Shall").
37. Medical/Infectious Waste. Medical/infectious waste" as defined by RSA 125-N:2, VIII.
38. National Pollutant Discharge Elimination System Permit or NPDES Permit. A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).
39. Natural Outlet. Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body or surface water or groundwater.
40. Normal Domestic Wastewater. Wastewater generated by residential users containing not more than 253 mg/L BOD and not more than 271 mg/L suspended solids.



41. New Source.

- a. Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced subsequent to the publication of proposed pretreatment standards under Section 307(c) of the Act that will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
  - i. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
  - ii. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - iii. The production or wastewater-generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, will be considered.
- b. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
  - i. Begun, or caused to begin, as part of a continuous on-site construction program
    - A. any placement, assembly, or installation of facilities or equipment; or
    - B. significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities that is necessary for the placement, assembly, or installation of new source facilities or equipment; or
  - ii. Entered into a binding contractual obligation for the purchase of facilities or equipment that are intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.
- c. Construction on a site at which an existing source is located results in a

modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section (a)(ii) or (a)(iii) above, but otherwise alters, replaces, or adds to existing process or production equipment.

42. Non-Contact Cooling Water. Water used for cooling that does not directly contact any raw material, intermediate product, waste product, or finished product.
43. Pass Through. A discharge that exits the POTW into waters of the United States in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the Town of Newmarket's NPDES permit, including an increase in the magnitude or duration of a violation.
44. Person. Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, State, and local governmental entities.
45. pH. A logarithmic measure devised to express the hydrogen ion concentration of a solution, expressed in Standard Units. Solutions with pH values greater than 7 are basic (or alkaline); solutions with pH values less than 7 are acidic.
46. Pharmaceutical waste. A prescription drug, as defined by RSA 318:1, XVII, or a nonprescription or proprietary medicine, as defined by RSA 318:1, XVIII, that is no longer suitable for its intended purpose or is otherwise being discarded.
47. Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and substances with characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).
48. Pollution Prevention. The use of materials, processes, or practices that reduce or eliminate the creation of pollutants or wastes at the source, or minimize their release to the environment prior to recycling, treatment or disposal. It includes practices that reduce the use of hazardous materials, energy, water or other resources. It also includes practices that protect natural resources and human health through conservation, more efficient use, or effective release minimization.
49. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.



50. Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.
51. Pretreatment Standards or Standards. Pretreatment standards shall mean prohibited discharge standards, categorical pretreatment standards 40 CFR 403, and local limits.
52. Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances as identified in Section 2.3 of this Ordinance.
53. Properly Shredded Garbage. Wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be transported freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch in any dimension.
54. Public Sewer. A pipe or conduit that carries wastewater, storm water, groundwater, subsurface water, or unpolluted water from any source, which is controlled by a governmental agency or public utility.
55. Publicly Owned Treatment Works or POTW. A "treatment works," as defined by Section 212 of the Act (33 U.S.C. §1292) that is owned by the Town of Newmarket. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances if said structures convey wastewater to a POTW wastewater treatment facility. The term also means the municipality that has jurisdiction over discharges to and from such a treatment plant, and any sewer that conveys wastewater to the POTW from persons outside the Town of Newmarket who are, by contract or agreement with the Town of Newmarket, users of the Town of Newmarket's POTW.
56. Radiological Waste. Radioactive waste as regulated by RSA 125-F.
57. Recreational Vehicle or "RV". A mobile vehicle or trailer used for temporary living e.g. a camper or wholly self-contained transport and living unit.
58. Sanitary Sewer. A sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial facilities, and institutions, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.
59. Screening Level. That concentration of a pollutant that under baseline conditions would cause a threat to personnel exposed to the pollutant, or would adversely impact structures of the POTW. To be administered as local limits applicable to a particular discharge, the screening levels must be adjusted to account for conditions at the point of discharge that differ from baseline conditions.
60. Semi-Public Use. Premises of private, non-profit organizations such as schools, hospitals, and religious institutions.
61. Septage or Septic Tank Waste. Any liquid, solid, or sludge pumped from chemical

toilets, vaults, septic tanks, or cesspools or other holding tanks, that have received only domestic wastewater.

62. Septage Tank Truck. Any watertight vehicle that is used for the collection and hauling of septage as described above and that complies with the rules of the New Hampshire Department of Environmental Services.

63. Sewage. Human excrement and gray water, including but not limited to household showers, dishwashing operations, etc.

64. Sewer. A pipe or conduit that carries wastewater, storm water, groundwater, subsurface water, or unpolluted water from any source.

65. Shall. Means mandatory (see "May").

66. Significant Indirect Discharger. An indirect discharger that meets one or more of the following state criteria:

- a. Is subject to national categorical pretreatment standards under 40 CFR 403.6 as amended;
- b. Discharges an average of 10,000 gallons per day or more of process wastewater;
- c. Discharges a process wastewater which contributes 5 percent or more of the hydraulic or organic loading to the wastewater treatment plant;
- d. Discharges medical/infectious waste, pharmaceutical waste, or radiological waste; or
- e. Is designated as such by the municipality as having a reasonable potential for adversely affecting the POTW's operation or performance or for violating any pretreatment standard or requirement.

67. Significant Industrial User. An indirect discharger that meets one or more of the following federal criteria:

- a. A user subject to categorical pretreatment standards under 40 CFR 403.6; or
- b. A user that:
  - i. Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW, excluding sanitary, non-contact cooling, and boiler blowdown wastewater;
  - ii. Contributes a process waste stream that comprises five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or



- iii. Is designated as such by the Town of Newmarket on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
- c. Upon determining that a user meeting the criteria in Subsection b.i. or b.ii. has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Town of Newmarket may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a Significant Industrial User.

68. Significant Noncompliance or SNC. An industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

- a. Chronic violations. A pattern of violating the same pretreatment standard daily maximum or average limit (any magnitude of exceedance) sixty-six percent (66%) or more of the time in a 6-month period;
- b. Technical Review Criteria (TRC violations). Thirty-three percent (33%) or more of the measurements exceed the same pretreatment standard daily maximum limit or average limit by more than the TRC factor in a six-month period. The TRC factor is 1.4 for biochemical oxygen demand (BOD), total suspended solids (TSS), oil & grease and 1.2 for all other pollutants;
- c. Any other discharge violation that the Superintendent believes has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;
- d. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the Superintendent's exercise of its emergency authority to halt or prevent such a discharge;
- e. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- f. Failure to provide within thirty (30) days after the due date, any required reports, including, Industrial Discharge Permit applications, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- g. Failure to accurately report noncompliance; or
- h. Any other violation(s) that the Superintendent determines will adversely affect the operation or implementation of the local pretreatment program.

69. Slug Load or Slug. Means:

- a. Any discharge of water, wastewater, sewage, or industrial sewage which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than fifteen (15) minutes, more than five (5) times the average twenty-four (24) hour concentration or flow during normal operation;
- b. Any discharge at a flow rate or concentration that could cause a violation of the prohibited discharge standards in Section 2.3 of this Ordinance; or
- c. Any discharge that may adversely affect the collection system and/or performance of the POTW.

70. Source Reduction. Any practice that:

- a. Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and
- b. Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.
- c. The term includes equipment or technology modifications; process or procedure modifications; reformulation or redesign of products; substitution of raw materials; and improvements in housekeeping, maintenance, training, or inventory control. The term "source reduction" does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity that itself is not integral to and necessary for the production of a product or the providing of a service.

71. Standard Industrial Classification (SIC) Code. A classification pursuant to the *Standard Industrial Classification Manual* issued by the United States Office of Management and Budget.

72. State. The State of New Hampshire.

73. Storm Drain or Storm Sewer. A drain or sewer for conveying storm water, groundwater, subsurface water, or unpolluted water from any source.

74. Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including but not limited to rainfall and snowmelt.

75. Superintendent. The person designated by the Town of Newmarket to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this Ordinance, or a duly authorized representative.

76. Suspended Solids or TSS. The total suspended matter that floats on the surface of, or is



suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

77. Treatment Plant, Treatment Works, or Treatment Facility. Any device or system used in the storage, treatment, equalization, recycling or reclamation of wastewater and/or wastewater sludge as defined herein.
78. Unpolluted Water. Water of quality equal to or better than the State Water Quality Standards (Part Env-Wq 1703) or water that would not cause a violation of receiving water quality standards and would not be benefitted by discharge to the POTW.
79. User or Industrial User. A source of pollutants introduced into the POTW from any non-domestic source regulated under Section 307 (b), (c), or (d) of the Act.
80. Wastewater. Liquid and water-carried industrial wastes and/or sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.
81. Watercourse. A natural or artificial channel for the passage of water either continuously or intermittently.

## SECTION 2 - GENERAL SEWER USE REQUIREMENTS

### 2.1 Use of Public Sewers

- A. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the Town of Newmarket or in any area under the jurisdiction of said Town, any human or animal excrement, garbage, or objectionable waste.
- B. It shall be unlawful to discharge to any natural outlet within the Town of Newmarket, or in any area under the jurisdiction of said Town of Newmarket, any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Ordinance and with State and federal laws and regulations.
- C. Sewers for Intended Uses Only. No person shall discharge into any public sewer of the Town of Newmarket, or into any fixture that thereafter discharges into any public sewer, any waste or substance other than for which the particular sewer is intended, designed or provided.
- D. Applicable Permits Required. No person shall discharge into any public sewer of the Town of Newmarket, or into any fixture that thereafter discharges into any public sewer, any waste or substance until all applicable federal, state and local permits have been obtained.
- E. Use of Sanitary Sewers. Except as specifically provided with reference to a particular sewer, sanitary sewers shall be used only for the conveyance and disposal of domestic wastewater, and for industrial wastes that are not objectionable as hereinafter provided. No sanitary sewer shall be used to receive and convey or dispose of any storm or surface water, subsoil drainage, or unpolluted water.
- F. Use of Storm Sewers. Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designed as storm sewers, or a natural outlet approved by the Director of Public Works. An NPDES permit is required prior to discharging industrial cooling water, process waters, or storm water runoff generated in areas of industrial activity (as defined in 40 CFR Part 122) to a storm sewer or natural outlet.
- G. Use Designation. If the intended or designated use of any particular sewer or drain and allowable discharge thereto is unclear, the Superintendent will consider the pertinent facts and make a determination as to the sewer or drain's designated use. Said determination will be final and binding.
- H. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater in any area where a public sewer is available, as described in paragraph (I) below.
- I. The owner(s) of all houses, buildings, or properties used for human occupancy,



employment, recreation, or other purposes, situated within the Town of Newmarket and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary sewer of the Town of Newmarket, is hereby required at the owner(s)' expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Ordinance, within forty five (45) days subsequent to the date of official notice to do so, provided that said gravity public sewer is within one hundred (100) feet of the property line of said premises. This requirement for connection may be waived when permitted by the Superintendent if the household is already connected to a properly functioning, State-approved septic system approved after 1985.

- J. Where a public sanitary sewer is not available under the provisions of paragraph (I) above, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of RSA 485-A:29-44 and all rules promulgated thereto. The owner(s) shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times and at no expense to the Town of Newmarket. At no time shall any quantity of industrial waste be discharged into a private, domestic wastewater disposal facility.
- K. Holding tank contents and the sludge from private disposal systems shall be removed only by licensed operators. If disposal is made within the Town, then holding tank contents and septic tank sludge shall be disposed of at the wastewater treatment facilities or at the site(s) designated by the Town Council. (See Section 4.9)
- L. At such time as a public sewer becomes available to a property serviced by a private wastewater disposal system, the owner shall connect to the public sewer, as provided in paragraph (I) above. Any septic tanks, cesspools, and similar private wastewater disposal facilities shall be cleaned of sludge and filled with clean mineral soils, and their use shall be discontinued.
- M. No statement contained in the preceding paragraphs of this Section shall be construed to interfere with any additional requirements that may be imposed by the Superintendent.
- N. No person(s) shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment that is part of the POTW. Violators shall be required to make financial restitution to repair any damage and shall be subject to fines. Any actor who violates this Paragraph maliciously or willfully shall be guilty of a misdemeanor if a natural person and a felony if an unnatural person.

## **2.2 Building Sewers and Connections**

- A. No person(s) shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining written permission from the Superintendent or authorized designee of the Superintendent. Any person proposing a new discharge into the system or any change in the volume or character of pollutants that are being discharged into the system shall obtain prior approval of the Superintendent.

- B. There shall be two (2) classes of building sewer permits: (a) for residential and commercial service producing only domestic wastewater, and (b) for service to establishments producing industrial wastes. For residential and commercial services, the owner(s) or his agent shall make application to the Town of Newmarket at least thirty (30) days prior to said service connection (Appendix B). For an establishment discharging industrial wastes, the owner(s) or his agent shall make application to the Town of Newmarket at least sixty (60) days prior to said service connection (Appendix C). The permit application shall be supplemented by any plans, specifications, or other information (including pollution prevention studies) considered pertinent in the judgment of the Superintendent. A permit and inspection fee in accordance with the provisions of this ordinance (Appendix A) shall be paid to the Town of Newmarket at the time any application for permit is filed.
- C. All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner(s). The owner(s) shall indemnify the Town of Newmarket from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
- D. A separate and independent building sewer shall be provided for every building, except where approved by special exception by the Superintendent, but the Town of Newmarket does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection.
- E. Existing building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent to meet all requirements of this Ordinance.
- F. The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the Town of Newmarket and DES Env-Wq 700. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the American Society for Testing and Materials (ASTM) and Water Environment Federation (WEF) Manual of Practice No. FD-5 shall apply. In the event that discrepancies arise between Town and State requirements, the Town requirements which are uniformly equal to or more stringent than the State requirements shall take precedence.
- G. During construction of a new sanitary sewer, the Town of Newmarket may construct the service connections for existing buildings to the curb or the property line or the edge of a right-of-way. Construction of the building sewer, including connection to the structures served, shall be the responsibility of the owner of the improved property to be connected, and such owner shall indemnify and save harmless the Town of Newmarket, its officers, and agents from all loss or damage that may result, directly or indirectly, due to the construction of a building sewer on his premises or its connection to the service connection. The owner shall thereafter be obligated to pay all costs and expenses of operation, repair and maintenance, and of reconstruction, if needed of the building sewer and service connection.



- H. Whenever possible, sewer mains will be constructed at an elevation to accommodate existing building drains. However, in all buildings in which any building drain is too low to permit gravity flow to the public sewer, sewage conveyed by such building drain shall be lifted by an approved means and discharged to the building sewer at the owner's expense.
- I. No person(s) shall make connection of roof downspouts, interior or exterior foundation drains, area-way drains, or other sources of surface run-off or groundwater to a building sewer or building drain that in turn is connected directly or indirectly to a public sanitary sewer.
- J. No person shall obstruct the free flow of air through any drain or soil pipe.
- K. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the Town of Newmarket, or the procedures set forth in appropriate specifications of the ASTM and the WEF Manual of Practice No. FD-5. All such connections shall be made gas-tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Superintendent before installation.
- L. The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. Such notice shall be provided not less than 48 hours in advance of the time any connection is to be made to any public sewer. The connection and testing shall be made under the supervision of the Superintendent or his representative. This requirement shall also apply to repairs or alterations to building connections, drains or pipes thereto.
- M. Suitable provisions shall be made at the point of connection for testing, which responsibility shall rest with the holder of the sewer connection permit.
- N. No building sewer shall be covered until it has been inspected and approved by the Superintendent. If any part of building sewer is covered before being inspected and approved, it shall be uncovered for inspection at the cost and expense of the owner of the improved property to be connected to the public sewer.
- O. The Superintendent shall maintain a record of all connections made to public sewers and drains under this Ordinance and all repairs and alterations made to building connections or drains connected to or discharging into public sewers and drains of the Town of Newmarket or intended to so discharge. All persons concerned shall assist the Superintendent in securing the data needed for such records.
- P. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Town of Newmarket at the expense of the owner. The requirements imposed under this Paragraph shall not preclude the Town from requiring additional safeguards as the circumstances necessitate.

- Q. Any person proposing to construct or modify any of the following or any combination of the following shall submit an application for a sewer connection permit to the DES in accordance with DES Env-Wq 700:
- (1) Any extension of a collector or interceptor, whether public or private, regardless of flow;
  - (2) Any wastewater connection or other discharge in excess of 5,000 gpd;
  - (3) Any wastewater connection or other discharge to a WWTP operating in excess of 80 percent design flow capacity or design loading capacity based on actual average flow or loadings for 3 consecutive months;
  - (4) Any industrial wastewater connection or change in existing discharge of industrial wastewater, regardless of quality or quantity;
  - (5) Any sewage pumping station greater than 50 gpm or serving more than one building; or
  - (6) Any proposed sewer that serves more than one building or that requires a manhole at the connection.

### 2.3 Prohibited Discharge Standards

Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be accidentally discharged to the POTW.

- A. General Prohibitions. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater that causes pass-through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other federal, State, or local pretreatment standards or requirements.
- B. Specific Prohibitions. No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
1. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, gas, solid, or any substance that may generate or form any flammable, combustible or explosive substance, fluid, gas, vapor or liquid when combined with air, water or other substances present in sewers, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;
  2. Wastewater having a pH less than 6.5 or greater than 8.5, as measured at the point of connection to the sanitary sewer or other available monitoring location, or otherwise causing corrosive structural damage or hazard to the POTW equipment, or personnel, or with alkalinity in such quantities that the pH of the influent to the POTW is caused to exceed 8.0;
  3. Solid or viscous substances capable of causing obstruction to the flow in sewers or other interference with the proper operation of the wastewater facilities such as, but not limited to, ashes, bones, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastic, wood, unground garbage, whole blood, paunch, manure, hair and fleshings, entrails, and paper dishes, cups, milk containers, etc. either whole or ground by garbage grinders. Also including water or wastes containing fats, wax,



grease, or oils, whether emulsified or not, or containing substances that may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees Fahrenheit (0-65 degrees C), in amounts that will cause obstruction of the flow in the POTW resulting in interference;

4. Pollutants, including oxygen-demanding pollutants (BOD, COD, etc.), or chlorine demand requirements released in a discharge at a flow rate and/or pollutant concentration that, either singly or by interaction with other pollutants, will cause interference with the POTW, constitute a hazard to humans or animals, create a public nuisance, exceed any national categorical pretreatment standard or cause pass through;
5. Wastewater having a temperature greater than 150°F (65°C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater that causes the temperature at the introduction into the POTW treatment plant to exceed 104°F (40°C);
6. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass-through;
7. Pollutants that result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
8. Trucked or hauled pollutants, except at discharge points designated by the Superintendent in accordance with Section 4.9 of this Ordinance;
9. Any medical/infectious wastes, pharmaceutical waste, or radiological waste except as specifically authorized in a discharge permit;
10. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent or sludge to fail a toxicity test;
11. Household hazardous wastes including but not limited to paints, stains, thinners, pesticides, herbicides, anti-freeze, transmission and brake fluids, motor oil and battery acid.
12. Any hazardous waste listed or designated by DES under Env-Hw 400.
13. Wastewater that imparts color that may not be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently may impart color to the treatment facility's effluent, thereby violating the Town of Newmarket's NPDES permit;
14. Noxious or malodorous liquids, gases, solids, or other wastewater that, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to health and safety, or to prevent entry into the sewers for maintenance or repair;

15. Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or federal regulations;
16. Storm water, surface water, foundation drains, basement sump pump discharges, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water, or otherwise unpolluted wastewater;
17. Sludges, screenings, or other residues from the pretreatment of industrial wastes unless specifically authorized by the Superintendent in a wastewater discharge permit;
18. Detergents, surface-active agents, or other substances that may cause excessive foaming in the POTW;
19. Wastewater causing a reading on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than 10 percent (10%) of the Lower Explosive Limit of the meter;
20. Garbage that has not been properly shredded (garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food in kitchens);
21. Any quantities of flow, concentrations, or both that constitute a "slug" as defined in Section 1.4 of this Ordinance;
22. Waters or wastes that, by interaction with other water or wastes in the POTW, release dangerous or noxious gases, form suspended solids that affect the operation of the collection system, or create a condition deleterious to structures and treatment processes; or
23. Any materials that exert or cause unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime, slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).
24. Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances to such a degree that any such material received in the composite waste water treatment works exceeds the limits established by the appropriate regulatory authority.

#### **2.4 Federal Categorical Pretreatment Standards**

The categorical pretreatment standards are found at 40 CFR Chapter I, Subchapter N, Parts 405-471.



EPA shall be the Control Authority for industrial users subject to categorical pretreatment standards. As the Control Authority, industrial users are responsible to the EPA for compliance with categorical pretreatment standards and the requirements of 40 CFR Part 403. Categorical industrial users shall provide the Town of Newmarket with copies of any reports to, or correspondence with, the EPA relative to compliance with the categorical pretreatment standards.

The industrial user is responsible for determining the applicability of categorical pretreatment standards. The user may request that the EPA provide written certification on whether the user is subject to the requirements of a particular category.

## **2.5 Local Discharge Restrictions**

All persons discharging industrial process wastes into public or private sewers connected to the Town of Newmarket's POTW shall comply with applicable federal and State requirements and standards for pretreatment of wastes as they may be amended from time to time in addition to the requirements of this Ordinance.

The Town reserves the right to establish local numerical discharge limitations on a case-by-case basis using a methodology determined by the Town and, all State pretreatment standards and federal categorical pretreatment standards shall apply. In the event of a conflict between a State, federal, or Town pretreatment standard, the more stringent standard shall apply.

If any waters or wastes are discharged or are proposed to be discharged to the POTW that exceed the standards or restrictions established in Sections 2.3, 2.4, and 2.5 of this Ordinance, which in the judgment of the Superintendent may have a deleterious effect upon the POTW, processes, equipment, or receiving waters, or that otherwise create a hazard to worker or public safety or health, or constitute a public nuisance, the Superintendent may:

- Reject or prevent any discharge to the POTW after notice has been served to the discharger and the discharger has had reasonable opportunity to respond;
- Require pretreatment prior to discharge to the POTW (Section 3.0);
- Require control (e.g., equalization) over the quantities and rates of discharge; and/or
- Require payment to cover additional cost of handling and treating the wastes.

If the Superintendent allows the pretreatment or equalization of waste flows, the design and installation of the systems and equipment shall be subject to the review and approval of the Superintendent and NHDES. (see Section 3).

- A. Screening Levels. Pollutants shall not be discharged to the POTW exceeding concentrations listed in Appendix D (*Source: EPA's Pretreatment manual*) without approval of the Superintendent. Screening levels are numerical values above which actions are initiated to evaluate, prevent or reduce adverse impacts due to flammability, chemical reactivity, organic/solids loadings, or worker health and safety.

If any of the screening levels are exceeded, repeat analysis must be performed to verify compliance or noncompliance with that screening level. If noncompliance is confirmed, then the industrial user may be required, at the discretion of the Superintendent, to conduct an appropriate engineering evaluation to determine the potential impact of the discharge of this pollutant to the Town of Newmarket's POTW or alternatively, to develop a pollution prevention plan specifically addressing the pollutant that exceeds the screening level. This study or plan must be conducted under the supervision and approval of the Town of Newmarket. Should the evaluation indicate the impact to be unsatisfactory, the industrial user shall reduce the pollutant concentration to a satisfactory level. If the evaluation supports development of an alternate site-specific limitation, then the screening level shall be adjusted and administered as a limit for the specific discharge.

- B. Special Agreements. No statement contained in this Section except for paragraphs 2.3(A), and 2.4 shall be construed as preventing any special agreement or arrangement between the Town of Newmarket and any industrial user whereby an industrial waste of unusual strength or character may be accepted by the Town of Newmarket for treatment provided that (1) said agreements do not contravene any requirements of existing federal or State laws, and/or regulations promulgated thereunder, (2) are compatible with any user charge system in effect, and (3) do not waive applicable federal categorical pretreatment standards. Special agreement requests shall require submittal of a pollution prevention plan that specifically addresses the discharge for which a special agreement is requested. For pollutants with numerical local limits, the Town of Newmarket has allocated a percentage of its allowable industrial loadings for such special agreements. Requests for special agreements that exceed this allocation will not be approved.

## **2.6 Town of Newmarket's Right of Revision**

The discharge standards and requirements set forth in Sections 2.3, 2.4, and 2.5 are established for the purpose of preventing discharges to the POTW that would harm the sewers, wastewater treatment process, or equipment; would have an adverse effect on the receiving stream; or would otherwise endanger lives, limb, health, safety, public property, or constitute a nuisance.

To meet these objectives, the Superintendent may, from time to time, review and set more stringent standards or requirements than those established in Sections 2.3, 2.4, and 2.5 if, in the Superintendent's opinion, more stringent standards or requirements are necessary. In forming this opinion, the Superintendent may give consideration to such factors as the quantity of waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment facility, degree of treatability at the wastewater treatment facility, pollution prevention activities, and any other pertinent factor(s). The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer shall not be exceeded without the approval of the Superintendent.

The Superintendent shall allow affected industrial users reasonable time to comply with any changes to the local limits. The conditions and schedule for compliance shall accompany the written notification of amended local limits.



## **2.7 Dilution**

No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The Superintendent may impose mass limitations on users who are using dilution to meet applicable pretreatment standards or requirements. The Superintendent may impose mass limitations on users in other cases when the imposition of mass limitations is appropriate.

## **2.8 Mass-Based Limitations**

Users implementing process changes may request that compliance be determined based on mass limitations in lieu of concentration limitations. Such mass-based limitations will be calculated from the permitted concentration-based limitations and flows, and shall be equivalent to or less than the mass discharge in effect at the time of the request. The intent of a mass-based limit is to encourage and allow pollution prevention and/or water conservation measures that might cause a facility to increase pollutant concentrations in its discharge even though the total mass of the pollutant discharged does not increase, and may in fact decrease. Decisions on granting requests for mass-based compliance limitations will be based on user-specific information and current operating conditions of the POTW, and will be authorized at the discretion of the Superintendent. Implementation of mass-based limitations may not contravene any requirements of federal or State laws and/or regulations implemented thereunder, and may not waive applicable categorical pretreatment standards.

## **2.9 Private Sewer Systems**

Private sewer systems that discharge to the Newmarket POTW are responsible for all collection system mapping and must perform all collection system operation and maintenance activities that are required by the Town of Newmarket's NPDES permit. Operation and maintenance activities and documentation of said activities shall be performed at the Owner's expense and documentation/records of this work shall be provided to the Superintendent within thirty (30) days of performing the work or from the request of the Superintendent that the work be performed.

The Town reserves the right to require that private systems eliminate extraneous infiltration and inflow greater than 1,500 gallons per day per inch diameter mile or the current Town standard from the private system, and the Owner shall bear the cost for performing all remedial work, study and documentation as approved by the Superintendent.

## **SECTION 3 - PRETREATMENT OF WASTEWATER**

### **3.1 Pretreatment Facilities**

Users shall provide wastewater treatment as necessary to comply with this Ordinance and shall achieve compliance with all limits, prohibitions, and requirements set out in Sections 2.3, 2.4, and 2.5 of this Ordinance within the time limitations specified by EPA, the State, or the Superintendent, whichever is more stringent. All facilities required to achieve and maintain compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Superintendent for review and shall be acceptable to the Superintendent and the DES before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the Town of Newmarket under the provisions of this Ordinance.

### **3.2 Additional Pretreatment Measures**

- A. Whenever deemed necessary to protect the POTW and determine the user's compliance with the requirements of this Ordinance, the Superintendent may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, or any other condition(s) as deemed necessary in the discretion of the Superintendent to protect the POTW and determine the user's compliance with the requirements of this Ordinance.
- B. The Superintendent may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An Industrial Discharge Permit may be issued solely for flow equalization.
- C. Grease, oil, and sand interceptors shall be provided at the owner's expense when, in the discretion of the Superintendent, these devices are necessary for the preliminary treatment of wastewater containing excessive amounts of grease and oil, or sand, except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the Superintendent and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, in accordance with state and local codes, by the user at his expense. The owner shall be responsible for the proper removal and disposal by appropriate means of the captured materials and shall maintain records of the dates and means of disposal, which shall be submitted to the Superintendent on a yearly basis and subject to review. Any removal and hauling of the collected materials shall be performed by currently licensed waste disposal firms.
- D. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter and alarm.
- E. Where pretreatment or flow equalizing facilities are provided or required for any waters or



wastes, these devices shall be maintained continuously to ensure satisfactory and effective operation by the owner at his expense.

- F. A dental practice which applies, alters, maintains or removes mercury-containing dental amalgam shall install, operate and maintain an amalgam separator(s) in accordance with DES Env-Wq 306.

### **3.3 Accidental Discharge/Slug Control Plans**

At least once every two (2) years, the Superintendent shall evaluate whether each significant indirect discharger needs an accidental discharge/slug control plan. The Superintendent may require any user to develop, submit for approval, and implement such a plan. Alternatively, the Superintendent may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:

- A. Description of discharge practices, including non-routine batch discharges;
- B. Description of stored chemicals;
- C. Procedures for immediately notifying the Superintendent of any accidental or slug discharge, as required by Section 6.3 of this Ordinance; and
- D. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including but not limited to solvents), and/or measures and equipment for emergency response.

## **SECTION 4 - INDUSTRIAL DISCHARGE PERMIT APPLICATION**

### **4.1 Wastewater Characterization**

When requested by the Superintendent, a user must submit information on the nature and characteristics of its wastewater within sixty (60) days of the request. The Superintendent is authorized to prepare a form for this purpose and may periodically require users to update this information.

### **4.2 Industrial Discharge Permit Requirement**

- A. No significant indirect discharger shall discharge wastewater into the POTW without first obtaining an Industrial Discharge Permit from the Superintendent, except that a significant indirect discharger that has filed a timely and complete application pursuant to Section 4.4 of this Ordinance may continue to discharge for the time period specified therein.
- B. The Superintendent may require other users to obtain Industrial Discharge Permits, or submit an application for an Industrial Discharge Permit, as necessary to execute the purposes of this Ordinance.
- C. Any violation of the terms and conditions of an Industrial Discharge Permit shall be deemed a violation of this Ordinance and shall subject the industrial discharge permittee to the enforcement actions set out in Sections 9 through 12 of this Ordinance. Obtaining an Industrial Discharge Permit does not relieve a permittee of its obligation to comply with all federal, State, or local pretreatment standards and requirements or with any other requirements of federal, State, and local law.

### **4.3 DES Industrial Wastewater Indirect Discharge Request (IDR) Requirement**

All Significant Indirect Dischargers must receive DES approval for any new industrial discharge, or any alteration in either flow or waste characteristics, in accordance with the Town of Newmarket's NPDES permit. Upon receipt of a complete Industrial Discharge Permit application by the Town of Newmarket in accordance with Section 4.7 of this Ordinance, an Industrial Wastewater Indirect Discharge Request will be submitted by the Town of Newmarket to DES on behalf of the user. All applicable DES review fees shall be provided by the user.

### **4.4 Industrial Discharge Permitting: Existing Connections**

Any user required to obtain an Industrial Discharge Permit who was discharging wastewater into the POTW prior to the effective date of this Ordinance, and is not currently covered by a valid Industrial Discharge Permit, and who wishes to continue such discharges in the future, shall, within sixty (60) days after said date, apply to the Superintendent for an Industrial Discharge Permit in accordance with Section 4.7 of this Ordinance, and shall not cause or allow discharges to the POTW to continue after one hundred twenty (120) days of the effective date of this Ordinance except in accordance with an Industrial Discharge Permit issued by the Superintendent.



#### **4.5 Industrial Discharge Permitting: New Connections**

Any user required to obtain an Industrial Discharge Permit who proposes to begin or recommence discharging into the POTW shall obtain an Industrial Discharge Permit prior to the beginning or recommencing of such discharge. An application for this Industrial Discharge Permit, in accordance with Section 4.7 of this Ordinance, shall be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.

#### **4.6 Industrial Discharge Permitting: Categorical Standards**

Within 120 days subsequent to the effective date of a categorical pretreatment standard, an industrial user subject to such standards shall submit an application for an Industrial Discharge Permit amendment. The application shall contain the information noted under Section 4.7.

#### **4.7 Industrial Discharge Permit Application Contents**

All users required to obtain an Industrial Discharge Permit, and other users subject to these rules, as required by the Superintendent, shall submit a permit application. The Superintendent shall require all users to submit as part of an application the following information where applicable, as a minimum:

- A. The name, street address, and mailing address of the indirect discharger;
- B. The name, position, and daytime telephone number of a responsible individual at the indirect discharger, such as a plant manager, plant engineer, president, or vice president of the company, who has certified the permit application in accordance with Env-Wq 305.13(b);
- C. The "SIC" code and the North American Industry Classification System ("NAICS") code of the indirect discharger, if available;
- D. Whether the indirect discharger is subject to national categorical standards, and if so, which standards;
- E. The estimated average, minimum, maximum and total daily flow for domestic discharges and each process discharge and the time and duration of those discharges;
- F. A schematic of the proposed treatment process;
- G. If applicable, plans, specifications, and operation and maintenance procedures for new or modified treatment facilities at the indirect discharger, stamped by a chemical, civil, sanitary, or environmental engineer registered in New Hampshire;
- H. A schematic diagram showing the production process, including the origin of each waste stream;
- I. A list of pollutants expected to be present in the discharge and the anticipated quantity

of each, based on:

- (1) Analyses of the waste stream(s) to be discharged, in which case test results shall be submitted with the discharge permit request; or
  - (2) Knowledge of the process which produces the wastewater;
- J. Information on the toxicity and treatability of the pollutants proposed to be discharged, as available from manufacturer's testing, safety, and data publications;
- K. A map showing the location within the municipality of the indirect discharger with respect to the POTW;
- L. A listing of all chemicals used at the indirect discharger that will be or could be discharged, such as production chemicals, degreasers, and cleaning solvents;
- M. A description and location diagram of all sampling locations at the indirect discharger;
- N. A brief narrative describing those measures taken or planned to reduce water usage and implement pollution prevention techniques, if any, such as:
- (1) Flow restrictors;
  - (2) Countercurrent rinses;
  - (3) Recycling of non-contact cooling water;
  - (4) Chemical substitutions; and
  - (5) Pollutant source reduction; and
- O. A list of all environmental permits held by or for the indirect discharger.

Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

#### **4.8 Signatories and Certification**

All Industrial Discharge Permit applications and user reports shall be signed by an authorized representative of the user and shall contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information



submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

#### **4.9 Hauled Wastewater Permits**

- A. Septic tank waste may be introduced into the POTW only at locations designated by the Superintendent, and at such times as are established by the Superintendent. Transport and discharge of such waste shall comply with Section 13.0 of this Ordinance.
- B. The Superintendent shall require generators of hauled industrial waste to obtain Industrial Discharge Permits. The Superintendent may require haulers of industrial waste to obtain Industrial Discharge Permits. The Superintendent may also prohibit the disposal of hauled industrial waste. All other requirements of this Ordinance apply to the discharge of hauled industrial waste.
- C. Industrial waste haulers may discharge loads only at locations designated by the Superintendent. No load may be discharged without prior consent of the Superintendent. The Superintendent may collect samples of each hauled load to ensure compliance with applicable standards. The Superintendent may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- D. Industrial waste haulers shall provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and a certification that the wastes are not hazardous wastes.

## **SECTION 5 - INDUSTRIAL DISCHARGE PERMIT ISSUANCE PROCESS**

### **5.1 Industrial Discharge Permit Decisions**

The Superintendent will evaluate the data provided by the industrial user and may require additional information. Upon approval of the application by the Superintendent, if required, an Industrial Wastewater Indirect Discharge Request will be submitted by the Town to DES on behalf of the user. All applicable DES review fees shall be provided by the user. Within thirty (30) days of receipt of a complete Industrial Discharge Permit application, or ninety (90) days in the case of an application for a new or modified discharge requiring review and approval by DES, the Superintendent will determine whether or not to issue an Industrial Discharge Permit. The Superintendent may deny any application for an Industrial Discharge Permit with just cause. An Industrial Discharge Permit approval shall be based on and apply only to the subject application and all associated plans and supporting information as submitted.

### **5.2 Industrial Discharge Permit Duration**

An Industrial Discharge Permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit, except that the Industrial Discharge Permit may be issued for three (3) years from the effective date of the permit in the case of a significant indirect discharger. An Industrial Discharge Permit may be issued for a period less than these intervals at the discretion of the Superintendent. Each Industrial Discharge Permit will indicate a specific date upon which it will expire. An Industrial Discharge Permit is void if the discharge approved does not begin within one year from date of approval.

Industrial Discharge Permits shall be terminated upon cessation of operations or transfer of business ownership, unless notification of such transfer is provided in accordance with Section 5.6 of this Ordinance. All Industrial Discharge Permits issued to a particular user are void upon the issuance of a new Industrial Discharge Permit to that user.

### **5.3 Industrial Discharge Permit Contents**

An Industrial Discharge Permit shall include such conditions as are deemed reasonably necessary by the Superintendent to prevent pass through or interference, protect the quality of the water body receiving the treatment facility's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

- A. Industrial Discharge Permits for significant industrial dischargers shall contain:
  - 1. The indirect discharger's name, street address, mailing address, and daytime telephone number;
  - 2. Dates of issuance and expiration;
  - 3. The general and specific prohibitions from this Ordinance which apply to the discharge;



4. A list of pollutants, allowable parameters, and discharge limits;
5. Identification of applicable EPA categorical standards;
6. A list of the pollutant(s) to be monitored and the monitoring requirements applicable thereto;
7. Sampling frequency, techniques, and locations;
8. Reporting requirements;
9. Inspection requirements;
10. Notification requirements, including for:
  - a. Slug loading;
  - b. Spills, bypasses, and upsets;
  - c. Changes in volume or characteristics of the discharge for which a permit revision is not required; and
  - d. Permit violations.
11. Record keeping requirements;
12. Applicable definitions and special conditions from this Ordinance;
13. Applicable civil and criminal penalties for violations;
14. Notification requirements prior to any new or modified discharge;
15. A requirement to submit a complete new application at a specified frequency, which shall be not less than once every five years; and a statement that indicates the Industrial Discharge Permit's duration, which in no event shall exceed five (5) years;
16. A statement that the Industrial Discharge Permit is nontransferable without prior notification to the Town of Newmarket in accordance with Section 5.6 of this Ordinance, and provisions for providing the new owner or operator with a copy of the existing Industrial Discharge Permit;
17. For users with reporting requirements, such reports at a minimum shall require:
  - a. Periodic monitoring results indicating the nature and concentration of pollutants in the discharge from the regulated processes governed by pretreatment requirements and the average and maximum daily flow for these process units;

- b. A statement as to whether the applicable pretreatment standards and requirements are being met on a consistent basis and, if not, the additional operation and maintenance practices and/or pretreatment systems that are necessary;
  - c. Submittal of any monitoring results performed in addition to the requirements of the Industrial Discharge Permit using procedures prescribed in the permit.
  - d. A description of identified pollution prevention opportunities at the facility.
  - e. A statement that compliance with the Industrial Discharge Permit does not relieve the permittee of responsibility for compliance with all applicable federal and State pretreatment standards, including those that become effective after the submission of the permit application and during the term of the Industrial Discharge Permit.
  - f. A statement that the industrial user shall fully comply with the Town of Newmarket Sewer Use Ordinance.
  - g. A statement that the industrial user shall not dilute its effluent as a substitute for proper pretreatment.
  - h. A statement that the Industrial Discharge Permit is based on and shall apply only to the subject discharge request and the associated plans and supporting information as submitted in the completed Industrial Permit Application.
- B. Industrial Discharge Permits may contain, but need not be limited to, the following conditions:
- 1. Limitations on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
  - 2. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices that are designed to reduce, eliminate, or prevent the introduction of pollutants into the POTW;
  - 3. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges;
  - 4. Development and implementation of pollution prevention plans to reduce the amount of pollutants discharged to the POTW;
  - 5. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;
  - 6. Requirements for installation and maintenance of inspection and sampling facilities and equipment; and



7. Other conditions as deemed appropriate by the Superintendent to ensure compliance with this Ordinance, and State and federal laws, rules, and regulations.

#### **5.4 Industrial Discharge Permit Appeals**

Any person, including the user, may petition the Superintendent to reconsider the terms of an Industrial Discharge Permit within thirty (30) days of its issuance.

- A. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- B. In its petition, the appellant user must indicate the Industrial Discharge Permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the Industrial Discharge Permit.
- C. The effectiveness of the Industrial Discharge Permit shall not be stayed pending the appeal.
- D. If the Superintendent fails to act within thirty (30) days, a request for reconsideration shall be deemed to be denied.
- E. Aggrieved parties may appeal the conditions of the Industrial Discharge Permit in accordance with Section 15.2 of this Ordinance.

#### **5.5 Industrial Discharge Permit Modification**

The Superintendent may modify an Industrial Discharge Permit for good cause, including, but not limited to, the following reasons:

- A. To incorporate any new or revised federal, State, or local pretreatment standards or requirements;
- B. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of Industrial Discharge Permit issuance;
- C. To address a change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- D. Upon receipt of information, from any source, indicating that the permitted discharge poses a threat to the Town of Newmarket's POTW, Town of Newmarket personnel, or the water quality in the receiving waters;
- E. Violation of any terms or conditions of the Industrial Discharge Permit;
- F. Misrepresentations or failure to fully disclose all relevant facts in the Industrial Discharge Permit application or in any required reporting;

- G. To correct typographical or other errors in the Industrial Discharge Permit; or
- H. To reflect a transfer of the facility ownership or operation to a new owner or operator.

The Superintendent shall ordinarily provide the user with five (5) days' notice and an opportunity to be heard prior to any proposed modification and the grounds supporting said modification unless public health, safety, or welfare requires a more immediate modification.

### **5.6 Industrial Discharge Permit Transfer**

Industrial Discharge Permits may be transferred to a new owner or operator only if the permittee provides at least sixty (60) days advance notice to the Superintendent, and the Superintendent approves the Industrial Discharge Permit transfer. The notice to the Superintendent shall include a written certification by the new owner or operator that:

- A. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes that generate wastewater to be discharged to the POTW;
- B. Identifies the specific date on which the transfer is to occur; and
- C. Acknowledges full responsibility for complying with the existing Industrial Discharge Permit.

Failure to provide advance notice of a transfer shall render the Industrial Discharge Permit void as of the date of facility transfer.

### **5.7 Industrial Discharge Permit Reissuance**

A user with an expiring Industrial Discharge Permit shall apply for reissuance of the Industrial Discharge Permit by submitting a complete permit application, in accordance with Section 4.7 of this Ordinance, a minimum of sixty (60) days prior to the expiration of the user's existing Industrial Discharge Permit. Under no circumstances shall the permittee continue to discharge without an effective permit. An expired permit will continue to be effective and enforceable until the permit is reissued if:

- The industrial user has submitted a complete permit application at least sixty (60) days prior to the expiration date of the user's existing permit; and
- The failure to reissue the permit, prior to expiration of the previous permit, is not due to any act or failure to act on the part of the industrial user.

### **5.8 Regulation of Waste Received from Other Jurisdictions**

- A. If another municipality, or user located within another municipality, contributes wastewater to the POTW, the Town of Newmarket shall enter into an Intermunicipal agreement with the contributing municipality.



- B. Prior to entering into an agreement required by paragraph (A), above, the Superintendent shall request the following information from the contributing municipality:
1. A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;
  2. An inventory of all users located within the contributing municipality that are discharging to the POTW; and
  3. Such other information as the Superintendent may deem necessary.
- C. An Intermunicipal agreement, as required by paragraph (A), above, shall contain the following conditions:
1. A requirement for the contributing municipality to adopt a sewer use ordinance that is at least as stringent as this Ordinance and local limits that ensure that the pollutant loadings allocated to the contributing municipality are not exceeded. The requirement shall specify that such Ordinance and local limits shall be revised as necessary to reflect changes made to the Town of Newmarket's Ordinance or revisions to the loadings allocated to the contributing municipality;
  2. A requirement for the contributing municipality to submit a revised user inventory on at least an annual basis;
  3. A provision specifying which pretreatment implementation activities, including Industrial Discharge Permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the Superintendent; and which of these activities will be conducted jointly by the contributing municipality and the Superintendent;
  4. A requirement for the contributing municipality to provide the Superintendent with access to all information that the contributing municipality obtains as part of its pretreatment activities;
  5. Limitations on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;
  6. Requirements for monitoring the contributing municipality's discharge;
  7. A provision ensuring that the Superintendent will have access to the facilities of users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the Superintendent; and
  8. A provision specifying remedies available for breach of the terms contained within

the agreement.

- D. Intermunicipal agreements shall be subject to approval by DES and the New Hampshire State Attorney General.



## **SECTION 6 - REPORTING REQUIREMENTS**

### **6.1 Periodic Compliance Reports**

- A. All significant indirect dischargers shall, at a frequency determined by the Superintendent but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge that are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports shall be signed and certified in accordance with Section 4.8 of this Ordinance.
- B. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to maintain its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.
- C. If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the Superintendent, using the procedures prescribed in Sections 6.11 and 6.12 of this Ordinance, the results of this monitoring shall be included in the report.

### **6.2 Reports of Changed Conditions**

Each industrial user shall notify the Superintendent of any planned changes to the user's operations or system that might alter the nature, quality, or volume of its wastewater at least ninety (90) days before the change.

- A. The Superintendent may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submittal of an Industrial Discharge Permit application under Section 4.7 of this Ordinance.
- B. Upon approval of the application by the Town of Newmarket, an Industrial Wastewater Indirect Discharge Request may be submitted by the Town of Newmarket to DES on behalf of the user. All applicable DES review fees shall be provided by the user.
- C. Upon approval of the Industrial Discharge Request by DES, the Superintendent may issue an Industrial Discharge Permit or modify an existing Industrial Discharge Permit under Section 5 of this Ordinance in response to changed conditions or anticipated changed conditions.
- D. A NHDES "Sewer Connection Permit" request in accordance with Section 2.2 of this Ordinance may be required for changes.

### **6.3 Reports of Slug/Potentially Adverse Discharges**

- A. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load, that may cause adverse impacts to the POTW, the user shall immediately telephone and notify the Superintendent of the incident. This notification shall include identifying the location of the discharge, the type of waste, the concentration and volume of the waste, if known, and corrective actions conducted by the user.
- B. Within five (5) days following such discharge, the user shall, unless waived by the Superintendent, submit a detailed written report describing the cause(s) of the discharge and the measures to be conducted by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability that may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability that may be imposed pursuant to this Ordinance.
- C. A notice shall be permanently posted on the user's employee bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph (A), above. Employers shall ensure that all employees who may cause such a discharge to occur or who may be present when a discharge occurs are advised of the emergency notification procedure.

### **6.4 Reports from Unpermitted Users**

All users not required to obtain an Industrial Discharge Permit shall provide appropriate reports to the Superintendent as the Superintendent may require.

### **6.5 Notice of Violation/Repeat Sampling and Reporting**

If the results of sampling performed by a user indicate a violation, the user shall notify the Superintendent within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Superintendent within thirty (30) days subsequent to becoming aware of the violation. The user is not required to resample if the Superintendent monitors at the user's facility at least once a month, or if the Superintendent samples between the user's initial sampling and when the user receives the results of this sampling.

### **6.6 Analytical Requirements**

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses shall be performed in accordance with procedures approved by the Town of Newmarket.



## **6.7 Sample Collection**

- A. Except as indicated in Paragraph (B), below, the user shall collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the Superintendent may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to demonstrate compliance with instantaneous discharge limitations (e.g., screening levels established to protect worker health and safety). A single grab sample may also be used in place of a composite sample with approval of the Superintendent when:
- The effluent is not discharged on a continuous basis (i.e., batch discharges of short duration), and only when the batch exhibits homogeneous characteristics (i.e., completely mixed) and the pollutant can be safely assumed to be uniformly dispersed;
  - Sampling a facility where a statistical relationship can be established between previous grab samples and composite data; and
  - The waste conditions are relatively constant (i.e., are completely mixed and homogeneous) over the period of the discharge.
- B. Samples for temperature, pH, phenols, sulfides, and volatile organic compounds shall be obtained using grab collection techniques.

## **6.8 Timing**

Written reports will be deemed to have been submitted on the date postmarked. For reports that are not mailed, the date of receipt of the report by the person designated in the Industrial Discharge Permit shall govern.

## **6.9 Record Keeping**

Users subject to the reporting requirements of this Ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact location, method, and time of sampling, and the name of the person(s) obtaining the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least five (5) years. This period shall be automatically extended for the duration of any litigation concerning the user or the Town of Newmarket, or where the user has been specifically notified of a longer retention period by the Superintendent. Before destroying the records, the industrial user shall request and receive permission from the Town of Newmarket.

## **SECTION 7 - POWERS AND AUTHORITIES OF INSPECTORS**

### **7.1 Compliance Monitoring**

The Town of Newmarket shall investigate instances of noncompliance with the industrial pretreatment standards and requirements, as well as compliance with all applicable State, federal or local laws or regulations.

The Town of Newmarket shall, as necessary, sample and analyze the wastewater discharges of contributing users and conduct surveillance and inspection activities to identify, independently of information supplied by such users, occasional and continuing noncompliance with industrial pretreatment standards or State, federal, or local laws and regulations. Each industrial user will be billed directly for costs incurred for analysis of its wastewater.

### **7.2 Right of Entry: Inspection and Sampling**

All users discharging to the Town of Newmarket's POTW shall allow unrestricted access by Town of Newmarket, State and EPA personnel ("Inspector(s)") for the purpose of determining whether the user is complying with all requirements of this Ordinance, and/or any Industrial Discharge Permit or order issued hereunder. Users shall allow the Inspector(s) ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

- A. If a user has security measures in force that require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Inspector(s) will be permitted to enter without delay for the purposes of performing specific responsibilities.
- B. The Inspector(s) shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.
- C. The Inspector(s) may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated at least annually to ensure accuracy.
- D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Inspector(s) and shall not be replaced. The costs of clearing such access shall be borne by the user.
- E. Unreasonable delays in allowing the Inspector(s) access to the user's premises shall be a violation of this Ordinance.
- F. The Inspector(s) is authorized to obtain information concerning industrial processes that have a bearing on the kind or source of discharge to the public sewer. The industrial user may



request that the information in question not be disclosed to the public in accordance with Section 8 of this Ordinance. The information in question shall be made available upon written request to governmental agencies for uses related to this Ordinance, the NPDES permit, or the pretreatment program. The burden of proof that information should be held confidential rests with the user. However, information regarding wastewater discharge by the user (flow, constituents, concentrations, and characteristics) shall be available to the public without restriction.

- G. While performing the necessary work on private properties referred to in this Section, the Inspector(s) shall observe all safety rules applicable to the premises established by the user. The user shall be held harmless for injury or death to the Inspector(s), and the Town of Newmarket shall indemnify the user against loss or damage to its property by Town of Newmarket employees and against liability claims and demands for personal injury or property damage asserted against the user and growing out of the monitoring activities, except as such may be caused by negligence or failure of the user to maintain safe conditions.
- H. The Inspector(s) shall be permitted to enter all private properties through which the Town of Newmarket holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the POTW lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

### **7.3 Search Warrants**

If the Superintendent has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the Town of Newmarket designed to verify compliance with this Ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Superintendent may seek issuance of a search warrant from the Rockingham Circuit Court- District Division. In the event a search warrant is granted by the Rockingham Circuit Court-District Division, the user who refused said access shall be responsible for any and all fees and expenses incurred by the Town of Newmarket in obtaining said warrant.

## **SECTION 8 - CONFIDENTIAL INFORMATION/PUBLIC PARTICIPATION**

### **8.1 Confidential Information**

Information and data on a user obtained from reports, surveys, Industrial Discharge Permit Applications, Industrial Discharge Permits, and monitoring programs, and from the Superintendent's inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the Superintendent, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report that might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person providing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

### **8.2 Public Participation**

The Town of Newmarket shall comply with the public participation requirements of 40 CFR Part 25 in the enforcement of industrial pretreatment standards and requirements.



## **SECTION 9 - ADMINISTRATIVE ENFORCEMENT REMEDIES**

### **9.1 Notification of Violation**

When the Superintendent determines that a user has violated, or continues to violate, any provision of this Ordinance, an Industrial Discharge Permit or order issued hereunder, or any other pretreatment standard or requirement, the Superintendent may serve a verbal or written Notice of Violation to the user. Within the time period specified in the violation notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Superintendent. Submittal of this plan in no way relieves the user of liability for any violations occurring before or subsequent to receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Superintendent to take any action, including emergency actions or any other enforcement action, without initially issuing a Notice of Violation.

### **9.2 Compliance Schedule Development**

The Superintendent may require any user that has violated or continues to violate any provision of this Ordinance, an Industrial Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, to develop a compliance schedule. A compliance schedule pursuant to this section shall comply with the following conditions:

- A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards including, but not limited to, retaining an engineer, completing preliminary and final design plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation;
- B. No increment referred to above shall exceed nine (9) months;
- C. The user shall submit a progress report to the Superintendent no later than fourteen (14) days following each date in the schedule and the final date of compliance which identifies, at a minimum, whether the user complied with the increment of progress, the reason for any delay, and, if appropriate, the action being taken by the user to return to the established schedule; and
- D. In no event shall more than nine (9) months elapse between such progress reports to the Superintendent.

### **9.3 Pollution Prevention Plan Development**

The Superintendent may require any user that has violated or continues to violate any provision of this Ordinance, an Industrial Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, to develop a pollution prevention plan. The pollution prevention plan must specifically address violation(s) for which this action was undertaken. The pollution prevention plan shall be developed using good engineering judgment and shall be

submitted to the Superintendent no later than sixty (60) days after the user was notified of this requirement.

#### **9.4 Publication of Users in Significant Noncompliance**

The Superintendent may publish annually, in the largest daily newspaper circulated in the Town of Newmarket, a list of the users that, during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements.

#### **9.5 Show Cause Orders**

The Superintendent may order a user that has violated, or continues to violate, any provision of this Ordinance, an Industrial Discharge Permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Superintendent and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, executing any other action against the user.

#### **9.6 Cease and Desist Orders**

When the Superintendent determines that a user has violated, or continues to violate, any provision of this Ordinance, an Industrial Discharge Permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Superintendent may issue an order to the user directing it to cease and desist all such violations and directing the user to:

- A. Immediately comply with all requirements; and
- B. Implement such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

#### **9.7 Consent Orders**

The Superintendent is hereby empowered to enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such orders shall include specific action to be taken by the user to correct the noncompliance within a time period also specified by the order. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the installation of pretreatment systems, additional self-monitoring, and



management practices. Such orders shall have the same force and effect as administrative orders issued pursuant to Sections 9.5 and 9.6 of this Ordinance and shall be judicially enforceable.

#### **9.8 Industrial Discharge Permit Termination**

Any industrial user who violates the following conditions of this Ordinance or a wastewater discharge permit or order, or any applicable State or federal law, is subject to permit termination:

- A. Violation of permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater constituents and characteristics; or
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 9.5 of this Ordinance why the proposed action should not be taken. Exercise of this option by the Superintendent shall not be a bar to, or a prerequisite for, taking any other action against the user.

#### **9.9 Termination of Discharge**

In addition to the provisions in Section 9.8 of this Ordinance, any user who violates the following conditions is subject to discharge termination:

- A. Violation of Industrial Discharge Permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or
- E. Violation of the pretreatment standards in Section 2 of this Ordinance.
- F. Refusal or failure to adequately respond to any Notice of Violation issued by the Superintendent per Section 9.1 of this Ordinance.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 9.5 of this Ordinance why the proposed action should not be taken. Exercise of this option by the Superintendent shall not be a bar to, or a prerequisite for, taking any other action against the user.

### **9.10 Emergency Suspensions**

The Superintendent may immediately suspend a user's discharge, subsequent to informal notice to the user, whenever such suspension is necessary to terminate an actual or threatened discharge that reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of POTW personnel or the public. The Superintendent may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or that presents, or may present, an endangerment to the environment.

- A. Any user notified of a suspension of its discharge shall immediately terminate or eliminate its wastewater discharge. In the event of a user's failure to immediately comply with the suspension order, the Superintendent may implement such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Superintendent may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Superintendent that the period of endangerment has passed, unless the termination proceedings in Section 9.8 or 9.9 of this Ordinance are initiated against the user.
- B. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures implemented to prevent any future occurrence, to the Superintendent prior to the date of any show cause or termination hearing under Sections 9.5, 9.8 or 9.9 of this Ordinance.

Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

### **9.11 Recovery of Expenses**

Any person or industrial user violating any of the provisions of this Ordinance shall be liable to the Town of Newmarket for any expense, loss, or damage occasioned the Town of Newmarket by reason of such violation. If the Superintendent or Town Council shall have caused the disconnection of a building sewer from a public sewer, the Town of Newmarket may collect the expenses associated with completing the disconnection from any person or user responsible for, or willfully concerned in, or who profited by such violation. The Town of Newmarket may thereafter refuse to permit the restoration of the former connection or of any new connection to the property concerned in the violation until the claim of the Town of Newmarket for the cost of completing such disconnection shall have been paid in full plus interest and the reasonable cost of any legal expenses incurred by the Town of Newmarket in connection therewith.

### **9.12 Harm to Town of Newmarket Property**

No person shall maliciously, willfully, or negligently damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment that is part of the public sewerage system. Any person violating this provision shall be subject to immediate arrest under charge of disorderly



conduct pursuant to the local Ordinances, and shall also be subject to penalties under State and federal statutes.

### **9.13 Liens and Collection of Sewer Charges**

Liens: Under provision of New Hampshire RSA 149-I:11 and RSA 38:22, all charges for sewer services shall constitute a lien in favor of the Town of Newmarket upon real estate where services were furnished. Interest on overdue charges shall be assessed in accordance with RSA 76:13. Town records shall be sufficient notice to maintain suite upon the lien against subsequent purchases or attaching creditors or real estate.

## **SECTION 10 - JUDICIAL ENFORCEMENT REMEDIES**

### **10.1 Injunctive Relief**

When the Town of Newmarket determines that a user has violated, or continues to violate, any provision of this Ordinance, an Industrial Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, the Town of Newmarket may petition the Rockingham County Superior Court through the Town of Newmarket's Attorney for the issuance of a temporary or permanent injunction, as appropriate, that restrains or compels the specific performance of the Industrial Discharge Permit, order, or other requirement imposed by this Ordinance on activities of the user. The Town of Newmarket may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, implementing any other action against a user.

### **10.2 Civil Penalties**

- A. A user who has violated, or continues to violate, any provision of this Ordinance, an Industrial Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the Town of Newmarket for a maximum civil penalty of \$10,000 per violation, per day, plus actual damages incurred by the POTW. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.
- B. The Town of Newmarket Council may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the Town of Newmarket. The Town Council shall petition the Court to impose, assess, and recover such sums.
- C. In determining the amount of civil liability, the Court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.
- D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, implementing any other action against a user.

### **10.3 Criminal Prosecution**

Any person or industrial user who willfully or negligently violates any provision of this Ordinance or any orders or permits issued hereunder shall, upon conviction, be guilty of a violation, punishable by a fine not to exceed \$10,000 for each violation. Every separate provision violated shall constitute a separate violation. Every day that a violation occurs shall be deemed a separate violation. Ref. RSA 47:17, I, RSA 149-I:6, RSA 31:39, III.



#### **10.4 Nonexclusive Remedies**

The remedies provided for in this Ordinance are not exclusive. The Town of Newmarket may take any, all, or any combination of these actions against a non-compliant user. Enforcement of pretreatment violations will generally be in accordance with the Town of Newmarket's enforcement response plan; however, the Town of Newmarket may pursue any other action against any user without limitation, including *ex parte* temporary judicial relief to prevent a violation of this Ordinance. Further, the Town of Newmarket is empowered to pursue more than one enforcement action against any non-compliant user.

## **SECTION 11 - SUPPLEMENTAL ENFORCEMENT ACTION**

### **11.1 Performance Bonds**

The Superintendent may decline to issue or reissue an Industrial Discharge Permit to any user who has failed to comply with any provision of this Ordinance, a previous Industrial Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, unless such user first files a satisfactory bond, payable to the Town of Newmarket, in a sum not to exceed a value determined by the Superintendent to be necessary to achieve consistent compliance.

### **11.2 Liability Insurance**

The Superintendent may decline to issue or reissue an Industrial Discharge Permit to any user who has failed to comply with any provision of this Ordinance, a previous Industrial Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

### **11.3 Water Supply Severance**

Whenever a user has violated or continues to violate any provision of this Ordinance, an Industrial Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, subsequent to satisfactory demonstration of its ability to comply.

### **11.4 Public Nuisances**

A violation of any provision of this Ordinance, an Industrial Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the Superintendent. Any person(s) creating a public nuisance shall be subject to the penalty provisions of state law or the Town Code, as applicable, governing such nuisances, including reimbursing the Town of Newmarket for any costs incurred in removing, abating, remedying, or enforcing compliance to cease said nuisance, including the Town's legal fees and expenses.

### **11.5 Contractor Listing**

Users that have not achieved compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the Town of Newmarket. Existing contracts for the sale of goods or services to the Town of Newmarket held by a user found to be in significant noncompliance with pretreatment standards or requirements may be terminated at the discretion of the Superintendent.



## SECTION 12 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

### 12.1 Upset

- A. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with pretreatment standards due to factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with pretreatment standards if the requirements of paragraph (C), below, are met.
- C. A user who intends to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - 1. An upset occurred and the user can identify the cause(s) of the upset;
  - 2. At the time being of the upset, the facility was operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  - 3. The user has submitted the following information to the Superintendent within twenty-four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):
    - a. A description of the discharge and cause of noncompliance;
    - b. The period of noncompliance, including exact dates and times or, if not corrected, the amount of time the noncompliance is expected to continue; and
    - c. Action being implemented and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- E. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with pretreatment standards.
- F. Users shall control all discharges to the extent necessary to maintain compliance with pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

## **12.2 Prohibited Discharge Standards**

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 2.3(A) of this Ordinance or the specific prohibitions in Sections 2.3(B) of this Ordinance if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- A. A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- B. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the Town of Newmarket was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

## **12.3 Bypass**

- A. For the purposes of this section,
  - 1. "Bypass" means the intentional diversion of waste streams from any portion of a user's treatment facility.
  - 2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- B. A user may allow any bypass to occur that does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this section.
- C. If a user knows in advance of the need for a bypass, it shall submit prior notice to the Superintendent, at least ten (10) days before the date of the bypass, if possible.

A user shall submit oral notice to the Superintendent of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the amount of time it is expected to continue; and steps implemented or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Superintendent may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.



- D. Bypass is prohibited, and the Superintendent may initiate enforcement action against a user for a bypass, unless:
1. Bypass was required to prevent loss of life, personal injury, or severe property damage;
  2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
  3. The user submitted notices as required under paragraph (C) of this section.
- E. The Superintendent may approve an anticipated bypass, subsequent to considering its adverse effects, if the Superintendent determines that it will meet the three conditions listed in paragraph (D)(1) of this section.

## **SECTION 13 - SEPTAGE DISPOSAL**

No person shall discharge hauled septage at the Town of Newmarket's wastewater POTW who does not hold a septage hauler permit issued pursuant to RSA 485-A:4, XVI-a.

A copy of such permit shall be filed by the permit holder with the Town of Newmarket. Upon renewal or revocation of such permit, the hauler shall be responsible for notification of such renewal or revocation to the Town of Newmarket.

The Superintendent may limit the quantities of septage that can be received or refuse to receive septage to ensure proper operation of the treatment facility pursuant to RSA 486:13.

### **13.1 Septage Hauler Requirements**

- A. A permitted hauler may discharge septage to the facilities provided at the Town of Newmarket's wastewater treatment facility only after paying the charges as set forth in Appendix A of this Ordinance.
- B. Those persons, firms, corporations, municipal subdivisions or institutions that conform to state definition of "RVs" shall dispose of such septage as human excrement or other putrescible materials at the dates, times, and locations designated by the Superintendent.
- C. No person, firm, corporation, municipal subdivision or institution shall discharge any toxic, poisonous, radioactive solids, liquids or gases, or the contents of grease, gas, oil and/or sand interceptors into the Town of Newmarket's wastewater treatment facility without specific authorization of the Superintendent.

### **13.2 Temporary Septage Permits**

The Superintendent may issue a temporary permit to allow the discharge of septage at a point of discharge other than the wastewater treatment facility in a situation where such temporary discharge point is necessary to protect the health and welfare of the Town of Newmarket. The Superintendent shall issue such permit upon such terms and conditions as the Superintendent deems to be in the best interests of the Town of Newmarket. The temporary permit shall not be valid for a period exceeding twelve (12) months. The Superintendent shall have the right to revoke or suspend the temporary permit in the event that the terms and conditions are not met.

### **13.3 Septage Permits**

- A. Any septage hauler who intends to dispose of septage within the limits of the Town of Newmarket shall first obtain a permit therefor from the Town of Newmarket.
- B. Such permit as issued by the Town of Newmarket shall identify:
  - 1. The motor vehicle;
  - 2. The capacity of the tank;



3. The DES Permit Number; and
  4. Any other details of compliance with DES rules.
- C. The following conditions shall constitute conditions precedent to the issuance of each permit by the Town of Newmarket:
1. Each septic tank truck shall be equipped with either a sight level by which the quantity of the contents of each tank may be ascertained by sight or an access port through which the quantity of the contents of each truck may be ascertained by depth measurements.
  2. Prior to discharging the load, the hauler shall record the following information in a log at the POTW:
    - a. The hauler's name;
    - b. Date;
    - c. Time of disposal;
    - d. Volume disposed;
    - e. Origin of load (property owner's name, address, and telephone number); and
    - f. Nature of the waste (i.e., grease or septage) being disposed.
  3. Such log as described in Section 14.3(C)(2) shall be located in the office of the Superintendent.
  4. Owners of "RVs" who intend to discharge the contents of holding tanks are exempt from the permitting process.

#### **13.4 Septage Disposal Charge**

There shall be a Septage Disposal Charge as established by this Ordinance for the receipt of septage into the Town of Newmarket's POTW for treatment. In the event that the permittee has either a defective sight level, no sight level attached to the truck, and/or no access to the contents of the truck for depth measurement, the permittee shall be charged according to the full tank capacity at the time of discharge or by other method determined by the Superintendent. Septage Fees shall be established by Town Council and are included in Appendix A.

## **SECTION 14 - ABATEMENTS**

- A. A written request for abatement will be reviewed by the Superintendent according to the following:
  - 1. Errors in meter readings,
  - 2. Meter malfunctions,
  - 3. Water that did not enter the sewer system
  - 4. Errors in billing.
- B. Abatements will only be retroactive for one (1) billing period.
- C. Abatement requests that are denied by the Superintendent may be appealed by the owner to the Town Administrator. An appeal to the Town Administrator must be submitted in writing.



## **SECTION 15 - VALIDITY**

- A. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.
- B. The validity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance that can be given effect without such invalid part or parts.

## **SECTION 16 - INTERPRETATION OF REQUIREMENTS**

### **16.1 Interpretation**

The provisions of this Ordinance with respect to the meaning of technical terms and phrases, the classification of different types of sewers, the regulations with respect to making connections to sewers or drains, and other technical matters shall be interpreted and administered by the Superintendent acting in and for the Town of Newmarket, New Hampshire through the Town Council.

### **16.2 Appeals**

Any party aggrieved by any decision, regulation or provision under this Ordinance, as amended, from time to time, shall have the right of appeal within thirty (30) calendar days of said decision to the Superintendent, who shall issue a decision within thirty (30) calendar days. If said appeal is denied by the Superintendent, then the aggrieved party shall have the right to appeal to the Rockingham County Superior Court for equitable relief, provided that said appeal is entered within thirty (30) calendar days from the issuance of the decision of the Superintendent.

## **SECTION 17 – USER FEES**

To defray the costs of operating and maintaining the sewer system, payment of any principal or interest on bonds, or other indebtedness, a schedule of charges shall be set established by the Town of Newmarket for all classes of service and defined in the Sewer User Charge system.

Changes to the schedule of charges shall be approved by Town Council resolution after public notice and discussion at a Town Council Workshop meeting. Appendix A includes the schedule of charges, rates, fees, fines and penalties that have been established by the Town Council.



## SECTION 18 - EFFECTIVE DATE

This Ordinance shall be in full force and effect immediately following its passage, approval, and publication, as provided by law.

Duly enacted and ordained this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ by the \_\_\_\_ Town Council of the Town of Newmarket in Rockingham County, State of New Hampshire, at a duly noticed and duly held session of the said Town Council.

This Ordinance is hereby authenticated as required by Section \_\_\_\_\_ of the Town Charter.

By:

---

Dale Pike, Chair

---

Toni Weinstein, Vice Chair

---

Kyle Bowden, Councilor

---

Amy Burns, Councilor

---

Casey Finch, Councilor

---

Gretchen Kast, Councilor

---

Amy Thompson, Councilor

## **Appendix A – Sewer User Fees**

## **Appendix B – Residential/Commercial Sewer Connection Applications**



## **Appendix C – Industrial Sewer Connection Application**

## **Appendix D – POTW Screening Levels**

## Town of Newmarket, NH Sewer Use Ordinance



---

---

---

---

---

---

---

## Sewer User Ordinance Overview

- Introduction
- History
- Regulatory Framework
- General Overview
- Questions



---

---

---

---

---

---

---

## Sewer User Ordinance Overview

### History

- 1<sup>st</sup> Ordinance adopted in 1977
- Adoption of a Sewer Use Ordinance is a requirement of accepting Federal and State grants and low interest loans



---

---

---

---

---

---

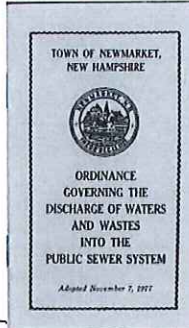
---



## Sewer User Ordinance Overview

The following ordinance is adopted to regulate the use of public and private sewers and drains, private wastewater disposal, the installation and connection of building sewers, and the discharge of waters and wastes into the public sewer system and to provide penalties for violations thereof, in the Town of Newmarket, Rockingham County, New Hampshire.

Be it ordained and enacted by the Board of Sewer Commissioners of said Town, pursuant to RSA 252 and adopted July 1, 1970, as follows:




---

---

---

---

---

---

---

---

## Sewer User Ordinance Overview Regulatory Framework

This Ordinance sets forth uniform requirements for users of the Town's Publicly Owned Treatment Works (POTW) and enables the Town to comply with all applicable State and Federal laws, including:

- the Clean Water Act (33 United States Code § 1251 et seq.),
- the General Pretreatment Regulations (40 Code of Federal Regulations Part 403),
- State RSA 149-I and RSA 485-A:5 III
- and for accomplishing the purposes of the Town Ordinance




---

---

---

---

---

---

---

---

## Purpose of Sewer Use Ordinance

- Protect wastewater treatment facility from damaging pollution
- Protect environment from pollution
- Protect general public and wastewater treatment facility staff
- Promote sludge reuse
- Comply with federal and state regulations.




---

---

---

---

---

---

---

---

### Sewer User Ordinance Overview

- Defines uniform requirements for design, construction, and use of the sewer collection system
- Provides for the enforcement of these requirements and establishes penalties for violations
- Defines responsibility for sewer collection system maintenance
- Establishes User Charges



---

---

---

---

---

---

---

### Sewer User Ordinance Overview

Major changes from 1977 include:

- Expanded and updated the general sewer use policies
- Added Industrial Pretreatment and Industrial User Permit requirements
- Added Reporting Requirements



---

---

---

---

---

---

---

### Sewer User Ordinance Overview

Major changes (continued):

- Added Administrative, Judicial and Supplemental enforcement remedies
- Added septage disposal regulations



---

---

---

---

---

---

---

### Sewer User Ordinance Overview

#### Other Town Ordinances:

- Exeter Chapter 15 Sewer Ordinance
- Portsmouth Chapter 11, Article 2
- Durham Chapter 106



---

---

---

---

---

---

---

### Newmarket Sewer Use Ordinance

- Questions



---

---

---

---

---

---

---



**Town of Newmarket, New Hampshire**

By the Newmarket Town Council

**ORDINANCE NO. 5-2016/2017**

Amendments to **Chapter 32 Zoning, Article I. Section 32-2 Purposes and Article IV Signs** of the Municipal Code of the Town of Newmarket and Zoning Ordinance, adopted 02/14/1996, as amended through March 1, 2017.

The Town of Newmarket ordains that:

**WHEREAS**, the Town of Newmarket has adopted a Master Plan and Zoning Ordinance to guide the character of growth, development, and change in order to provide for the public health, safety and general welfare; and

**WHEREAS**, the Planning Board has formed a sub-committee to evaluate current zoning, including its Purpose (Sec 32-2) and Sign (Sec 32-121) regulations and has suggested changes to the Town's zoning regulations in order to implement sections of the Town's newly adopted Future Land Use Chapter of the Master Plan and recent changes in state and federal case law, the State's RSAs, which govern and enable the adoption of municipal planning and zoning regulations; and

**WHEREAS**, the subcommittee met, reviewed possible changes and drafted recommendations for consideration by the full Planning Board; and

**WHEREAS**, these proposed amendments are intended to: (1) more clearly state the Town's authority under its zoning powers to advance aesthetic values, as recognized by the NH Supreme Court; and (2) Update and enhance the Town's signage regulations and bring them into conformance with recent U.S Supreme Court case law (Reed v. Gilbert, AZ), which requires regulations to be content neutral; and

**WHEREAS**, the Planning Board conducted a formal public hearing on May 9, 2017 to solicit citizen input and modifications to draft zoning amendments; and

**WHEREAS**, the Planning Board voted unanimously on May 9, 2017 to recommend and bring forward these proposed amendments to the Town Council for consideration and adoption.

**NOW THEREFORE BE IT RESOLVED** that **Chapter 32 Zoning** of the Municipal Code of Newmarket is amended as follows:

## **ARTICLE I. IN GENERAL**

1. Amend **Sec. 32-2 Purpose.** by adding the following as a new Subsection (9) that Reads as follows:

“(9) To advance aesthetic values through design and architecture, because the preservation or enhancement of the visual environment may promote prosperity and the general welfare.”

2. Add new definitions to **Sec. 32-11 Definitions.** for “*Sign, Electronic Message Board*” and add language to clarify what a “*Sign, Neon/LED style*” sign is, as read below:

**Section 32-11 Definitions.** As used in this Ordinance, the following terms shall have the meanings indicated:

*Sign.* Any display of lettering, logos, colors, lights, or illumination visible from the property lines, which either conveys a message to the public, or intends to advertise, direct, invite, announce, or draw attention to, directly or indirectly, a use conducted, goods, products, services or facilities available, either on the lot or on any other premises. For purposes of this Ordinance, “sign” shall exclude: merchandise display; federal, state, county or municipal property of any sort; necessary highway traffic control or parking control devices on public or private rights-of-way; and municipally assigned structure numbers.

*Sign, Electronic Message Board.* A sign that is capable of displaying words, symbols, figures and images that can be electronically or mechanically changed by remote or automatic means.

*Sign, Freestanding.* A self-supporting sign not attached to any building, wall or fence, but in a fixed location. This does not include movable signs.

*Sign Height.* The measure from undisturbed ground directly under the sign to the top of the message area.

*Sign Message Area.* The total area used to display a sign’s message including all lettering, designs, symbols, logos, together with but not including the support framework, bracing and base, provided that these features remain incidental to the sign itself. Where the message area consists of letters, symbols, logos or devices affixed to the surface of a structure, wall, awning or window, the message area shall be measured by a single, continuous,



rectangular perimeter drawn to enclose the extreme limits of the sign elements. The message area of one side of a double faced sign shall be regarded as the total message area of the sign, provided that each of the double faces is parallel to, and attached directly to the other.

*Sign, Movable.* A sign capable of being readily moved or relocated, including portable signs mounted on a chassis and wheels, or supported by legs.

*Sign, Neon/LED Style.* Used in the colloquial sense, to indicate the type of sign generally made with shaped glass tubes filled with gas (typically a noble gas such as neon or argon) which radiate colored light when an electric current is added. For purposes of this Ordinance, a neon sign is not considered an internally illuminated sign but is defined separately. A LED (light-emitting diode) style sign is one that utilizes a two lead semiconductor light source, which emits light when activated.

*Sign, Off-Site.* A sign, which is not located on the lot to which its message refers.

*Sign, Off-Site Commercial.* A sign with a commercial message relating to a commercial activity not conducted on the lot on which the sign is located.

*Sign, Projecting.* A sign which is affixed to the wall of a building and which extends more than 12 inches beyond the surface to which it is affixed.

*Sign, Wall.* A sign affixed to the wall of a building or to an awning, provided the sign does not extend more than 12 inches beyond the surface to which it is attached.

*Sign, Window.* A window, or portion thereof, on which sign message is displayed whether by permanent or temporary attachment, but exclusive of merchandise

## ARTICLE IV. SIGNS

### Sec 32-120 PURPOSE.

Consistent with the overall purpose of this Ordinance, it is the Town's intent to require signs, which enhance the character of the community and protect its visual environment. Businesses need identification and the public needs direction, so the Town must balance these needs with the protection of community. Excessive signs shall be prevented. Sizes, materials, mounting locations and other such factors shall be consistent with the public objectives in the area in which a sign is located. Signs shall be readable and clear, and properly maintained. Signs shall not cause



safety problems.

3. Amend **Sec. 32-121 Application Process** to clarify that:

- (a) Neon style/LED window signs are exempt provided they meet the provisions of Sec 32-123 (b).
- (b) Yard sale signs are exempt provided the yard sales don't occur more frequently than 4 days per year.
- (c) Real estate non-projecting signs, unless otherwise permitted, shall not be allowed within the public right-of-way and that all such signs must comply with the Sign Height and Message Area Table under Sec. 124 (1) (B).
- (d) Directional ADA signs shall not exceed 2 square feet.
- (e) Awning signs with messages within the M-2 and M-2A zones are exempt and shall not be made of translucent material.
- (f) One (1) subdivision identification sign, not to exceed twelve (12) square feet in size and six (6) feet in height, at the entrance of a subdivision denoting the name of the development, is exempt provided the signage is located out of the public right-of-way and is approved by the Planning Board.
- (g) Permits are not required for the normal maintenance of a sign.

**Sec. 32-121. Application process. (Changes in Red)**

Except as listed below, all new signs or modifications to signs shall require a permit from the Code Enforcement Officer. A written application and a \$50 fee shall be submitted to the Town. The request shall have sufficient information to determine compliance with these requirements, and shall include drawings.

- (1) *Exempt Signs.* The following signs do not require a sign permit from the Town, and are not subject to the setback requirements:
  - a. Sign with a message area of one square foot or less, which bears only property numbers, post office box numbers, names of occupants, other non-commercial identification, or with a message of the following type: "open", "closed", "now hiring", "vacancy", "no vacancy", etc.

- b. Directional sign, with no commercial message, indicating entrance and/or exit to a site, with a message area of two square feet or less.
- c. Legal notice, such as “no trespassing” signs, with a message area of two square feet or less.
- d. Business name and/or directional sign with a message area of three square feet or less which are located over doorways.
- e. Government or religious flags.
- f. Window sign, unless a neon style/LED sign per Sec 32-123 (b).
- g. Sign identifying lawn, garage or barn sales, with a message area of six square feet or less, and displayed not more than one day prior to the event and removed not more than one day following the end of the event, providing such sale does not occur on more than four days per calendar year.
- h. Sign for a government election, with time limits as specified in State law, or if no State law applies, then erected no more than 45 days prior to the election and removed within 10 days following the election, except for primaries where the winners signs may remain until 10 days after the final election (see RSA Chapter 664 for further information).
- i. Real estate sign for the sale or lease of the property on which the sign is located, with total message area not to exceed the permitted message area for other freestanding signs on the property. Real estate signs, being temporary, shall be permitted in addition to other permitted signs. Off-site real estate signs shall be limited to directional signs, with a maximum message area of two square feet, Indicating directions to properties for sale and/or open houses. Non-projecting signs, unless otherwise permitted, shall not be allowed within the public right-of-way. Real estate signs must comply with the Sign Height and Message Area table under Sec. 124 (1) (B).
- j. Promotional sign for public or institutional events, as authorized by the Town Council.
- k. Directional sign to help locate facilities for persons with disabilities, with the message area not to exceed two (2) square feet, as required for compliance with the Americans with Disabilities Act of 1990.
- l. Announcement/message board, with a message area not to exceed 12 square feet, on the property of public service organization, or religious institution,



because such activities are vital to the civic function of these properties.

- m. For construction in progress, one or more signs per lot with a total combined message area not to exceed 24 square feet, identifying the owner, architect, contractors, and/or developer, to be removed within one month of the completion of the project.
  - n. Sign for fraternal or social clubs, local service agencies, and philanthropic organization, which identified meeting times and locations, with a message area of three square feet or less.
  - o. Awnings with messages, as permitted in Sec. 32-46 (c) (4) ((4) in the M-2 and M-2A District. Awnings shall not be of translucent material.
  - p. One (1) subdivision identification sign, not to exceed twelve (12) square feet in size and six (6) feet in height, at the entrance of a subdivision denoting the name of the development, provided the signage is located out of the public right-of-way and is approved by the Planning Board.
- (2) *Permitted Maintenance.* No permit shall be required for normal maintenance of signs, which shall include repainting and other surface renewal.

#### **Sec 32-122 Sign content.**

The town has no intention of restricting individual free speech, but the Town does recognize its right to place reasonable restrictions upon commercial speech. Further, the Town wishes to prevent excessive or unnecessary signs along road corridors. In keeping with this reasoning, off-site commercial signs shall be prohibited. The Town, however, may develop and install a standardized system of municipally owned business directional signs, similar to the State system, to better index the community for people.

**4. Amend Sec 32-123 General Design Standards.** to clarify that:

- (a) Internally illuminated signs are only allowed in the B-1 District.
- (b) Only one neon/LED-style window sign shall be permitted in each business in the B-1, B-2, M-2 and M-2A Districts and that such signs shall not blink or flash.
- (c) Blinking, flashing or digital type lighting signs including electronic message centers, shall be prohibited, including time/temperature signs.
- (d) Plastic materials on signs are prohibited and wood, natural materials, stone, brick are encouraged.



(e) Movable signs, including vehicles used for advertising are prohibited.

(f) Feather Flags and pennants, as permanent fixtures, are not permitted in any zone.

**Sec. 32-123. General design standards.**

(a) *Illumination.*

(1) Each light source shall be located, directed and/or shielded such it is not visible at any point along the property boundary, nor from any right-of-way or neighboring property; and

(2) Internal illumination of signs is permitted only in the B-1 Districts. The method of internal illumination shall be limited to the following techniques:

a. Backlighting of non-translucent letters, characters and/or symbols surface mounted on a non-translucent background.

b. For signs with a translucent message face and an internal light source, letters, characters and/or symbols shall be light colored against a darker colored background.

(b) Neon/LED-style. One neon/LED-style window sign shall be permitted in each business in the B-1, B-2, M-2 and M-2A Districts. Message area shall not exceed four square feet. Neon/LED-style signs shall be prohibited in all other districts. Such signs shall not blink or flash.

(c) *Motion*. Moving and/or animated signs, or signs which give the appearance of motion, shall be prohibited.

(d) *Flashing/Blinking*. Flashing, blinking, alternating type, electronic message centers, or digital type lighting shall be prohibited, ~~except that alternating time/temperature signs shall be permitted as part of the freestanding or wall sign.~~

(e) *Materials*. Except for the sign face of a permitted, internally illuminated sign, the use of plastic shall be minimized prohibited on the exterior of signs and their supporting structures. Wood, wrought iron, metal, stone, brick, and other natural materials, which are more traditional building materials in the region, shall be used to the maximum extent feasible. High

Density Urethane (HDU) signs, giving the appearance of wood, are permitted; however other forms of plastic are not allowed.

- (f) *Projection.* Signs shall not project over a public street, but projecting signs as permitted herein may project over Town sidewalks, and over other sidewalks with the sidewalk owner's consent. A minimum of eight feet of clearance underneath shall be provided.
- (g) *Placement.* Signs shall not be placed in such a position as to endanger vehicular, bicycle or pedestrian traffic by obstructing a clear view, by causing confusion with governmental signs and signals, or by any other means.
- (h) *Movable Signs.* Movable signs shall be prohibited. No vehicle, including parts thereof, trailers, and other accessories, shall be used as a means of circumventing the purpose and intent of this Ordinance. ~~However, a ——— vehicle displaying a commercial message which is licensed, registered and inspected shall be exempt from these sign regulations if it is regularly and customarily used to transport people or property for the business.—~~
- (i) *Temporary items.* The following shall be allowed for one week per calendar year by permit from the Code Enforcement Officer: search lights; balloons or other gas-filled figures; and banners and/or pennants. Feather Flags and pennants, as permanent fixtures, are not permitted in any zone.
- (j) Message boards. Message boards (whether digital, electronic, manual and/or with interchangeable letters) are not permitted in any zone.
- (k) Sandwich board signs. Sandwich board signs may be placed on sidewalks in the M-1, M-2, and M-2A Districts. They must be less than 2 feet wide and less than 3 feet high. Sandwich board signs may not obstruct a sidewalk to less than 48 inches of clear travel path. Such signs may only be placed on the sidewalk while the business is open. Sandwich board signs shall be made of wood and shall be designed so they are not affected by less than storm force winds.

5. Amend Sec. 32-124 Regulations by district as follows:

- (a) Change Maximum Message Areas sq. ft. for *Free-standing Signs*.

M-1 District:	from 24 sq. ft. to 16 sq. ft.
M-2/M-2A District:	from 24 sq. ft. to 16 sq. ft.
M-3 District	from 24 sq. ft. to 16 sq. ft.
R-2 District	from 12 sq. ft. to 8 sq. ft.



R-3 District	from 12 sq. ft. to 8 sq. ft.
R-4 District	from 12 sq. ft. to 8 sq. ft.

- (b) Change the Message Areas sq. ft. for *Projecting Signs* in the M-1, M-2, M-2A, and B-1 Districts from 24 square feet to 8 square feet.
- (c) Allow *Wall Signs* in the M-2A district.
- (d) Change the *Message Areas* for *Wall Signs* not to exceed 3% (or 5% with a Special Use Permit approved by the Planning Board) of the area of the wall upon which it is attached.

**Sec. 32-124. Regulations by district.**

Specific restrictions regarding the type, message area, height, setback, and illumination are as follows:

- (1) *Freestanding Signs.* One freestanding sign per lot shall be permitted in all districts as follows:
  - a. Setback. All freestanding signs shall be set back a minimum of 5' from the property boundary.
  - b. Sign Height and Message Area. Maximum sign height and message area shall be limited as follows:

Zoning District	Maximum Sign Height (ft.)	Maximum Message Area (sq. ft.)
M-1	12	24 <del>16</del>
M-2/M-2A	12	24 <del>16</del>
M-3	8	24 <del>16</del>
M-4	12	32
B-1	12	32
B-2	12	32



B-3	8	32
R-1	8	12
R-2	8	<del>12</del> <u>8</u>
R-3	8	<del>12</del> <u>8</u>
R-4	8	<del>12</del> <u>8</u>

(Editorial note: B3 District added 05/07/03)

- c. In the M-1, M-2, M-2A, and B-1 Districts, a projecting sign may be substituted for a freestanding sign. The message area shall not exceed 8 square feet, and no part of the sign or its supporting mechanisms shall extend above the top of the wall to which the sign is attached.
- d. In the B-3 district signs must be made of wood or other natural materials. Any lighting shall be directed from above and shall be installed and maintained so that no light is directed onto roadways or abutting properties.  
(Editorial note: Amended 05/07/03)

(2) *Wall Signs.*

- a. *Districts.* In addition to freestanding signs, wall signs shall be permitted on primary buildings in the following districts: M-1; M-2; M-2A; M-3; M-4; B-1; B-2; and B-3. In all other districts, wall signs shall be permitted only as an alternative to a freestanding sign. (Editorial note: Amended 05/07/03)
- b. *Height.* The top of the wall sign shall not extend above the top of the wall to which it is attached.
- c. *Number of Wall Signs.* Not more than one wall sign shall be permitted per lot, except for: a lot with multiple businesses, in which case each business shall be permitted its own wall sign; or a lot adjoining two or more streets, in which case a wall sign facing each street shall be permitted.
- d. *Message Area.* The message area of a wall sign shall not exceed 3% (or 5% with a Special Use Permit approved by the Planning Board) of the area of the wall to which it is attached. Where the wall may include two or more off-set sections parallel to one another, the area of the wall shall include the area of all the sections parallel to and facing the same direction as that

portion of wall to which the sign is attached. Where multiple wall signs are permitted, the sum of the message areas shall not exceed 3% (or 5% if approved by Special Use Permit approved by the Planning Board) of the area of the front wall of the primary structure on that lot.

**Sec. 32-125. Signs in platted right of way.**

Except as otherwise provided herein, no sign shall be permitted within any platted right-of-way.

6. Change **Sec. 32-126 Maintenance** changing “slightly” to well-kept and aesthetically pleasing.

**Sec. 32-126. Maintenance.**

All surfaces and supporting structures of signs, whether erected prior to the effective date of this Ordinance or not, shall be maintained in a safe, sightly well-kept and aesthetically pleasing condition to the satisfaction of the Code Enforcement Officer.

**Sec 32-127 Nonconforming signs.**

Signs lawfully in existence before the adoption of regulations, which make them non-conforming, shall be permitted to continue in existence and be maintained. No change in type, size of message area and/or support structure, height, location, message, illumination, number, or material shall be permitted without application to and approval from the Town. Non-conforming aspects of the sign may continue, but no additional types of non-conformity shall be created by any change. Permitted changes may allow reduction in any one or more non-conforming aspects, but shall not allow any non-conforming aspect of the sign to become increasingly non-conforming. If a non-conforming sign is abandoned, the grandfathered rights shall terminate and any replacement shall comply with the requirements of this Chapter.

**Secs. 32-128-32-152 Reserved.**

This ordinance shall become effective upon its passage.

Introduction Date: June 7, 2017

First Reading June 7, 2017

Second Reading/Public Hearing

Final Action by Council

Approved: \_\_\_\_\_  
Dale Pike, Chair Newmarket Town Council

A True Copy Attest: \_\_\_\_\_  
Terry Littlefield, Town Clerk





TOWN HALL  
186 MAIN STREET  
NEWMARKET, NH 03857  
TEL: (603) 659-3617  
FAX: (603) 659-8508

FOUNDED DECEMBER 15, 1727  
CHARTERED JANUARY 1, 1991

## TOWN OF NEWMARKET, NEW HAMPSHIRE


# STAFF REPORT

**DATE:** May 31, 2017

**TITLE:** **Ordinance 2016/2017-5:** Amendments to Chapter 32 Zoning of the Newmarket Municipal Code regarding purpose statement and signage regulations.

**PREPARED BY:** Diane Hardy, Town Planner

**TOWN ADMINISTRATOR'S COMMENTS – RECOMMENDATION:**

As the Planning Board has recommended adoption of this ordinance, I recommend its passage. 

**BACKGROUND/DISCUSSION:** The attached changes are being recommended by the Town's Legal Counsel and Planning Board to: (1) more clearly state the Town's authority under its zoning powers to advance aesthetic values, as recognized by the NH Supreme Court; and (2) Update and enhance the Town's signage regulations and bring them into conformance with recent U.S Supreme Court case law (Reed v. Gilbert, AZ), which requires regulations to be content neutral.

**FISCAL IMPACT:** There are no direct fiscal impacts associated with these changes. Positive indirect fiscal impacts will result from the improvement of property values resulting from higher quality design standards and the construction of site improvements and signage.

**RECOMMENDATION:** Recommend that a public hearing be scheduled for June 21, 2017 and approval following the public hearing.

**DOCUMENTS ATTACHED:**

1. Letter from January 10, 2017 from John J. Ratigan of Donahue, Tucker, and Ciandella, PLLC>
2. "Explanation of Municipal Sign Ordinances" after Reed v. Town of Gilbert, AZ prepared by the New Hampshire Municipal Association, November 2015

STAFF REPORT



CELEBRATING OVER 30 YEARS OF SERVICE TO OUR CLIENTS

MICHAEL J. DONAHUE  
CHARLES F. TUCKER  
ROBERT D. CIANDELLA  
LIZABETH M. MACDONALD  
JOHN J. RATIGAN  
DENISE A. POULOS  
ROBERT M. DEROSIER  
CHRISTOPHER L. BOLDT  
SHARON CUDDY SOMERS  
DOUGLAS M. MANSFIELD  
KATHERINE B. MILLER  
CHRISTOPHER T. HILSON  
JUSTIN L. PASAY  
HEIDI J. BARRETT-KITCHEN  
NICOLE L. TIBBETTS  
ERIC A. MAHER  
DANIELLE E. FLORY

OF COUNSEL  
NICHOLAS R. AESCHLIMAN

ROBERT A. BATTLES  
(1951-2010)

January 10, 2017

Diane Hardy, Town Planner  
Town of Newmarket  
186 Main Street  
Newmarket, NH 03857

**Re: Zoning Interpretation Question**

Dear Diane:

I understand that the Planning Board is having a work session tomorrow to address zoning changes, and one of the issues that has arisen is the idea of possibly clarifying and broadening the Planning Board's authority with respect to adopting specific design and architectural review standards through zoning, site plan and subdivision regulation, beyond the B-1 zoning district.

I suggest the Board begin by considering an amendment to the Purpose section of the zoning ordinance, section 1.02, and add the following as a new subsection 1.02 (I): "To advance aesthetic values through design and architecture, because the preservation or enhancement of the visual environment may promote prosperity and the general welfare." This suggested amendment to the purpose section more clearly states the authority recognized by the NH Supreme Court that municipalities may validly exercise zoning power solely to advance aesthetic values. The Court recognized that the preservation or enhancement of the visual environment may promote the general welfare. Asselin v. Town of Conway, 137 N.H. 368, 371-72 (1993).

I have enclosed a concept of what a set of design regulations could begin to look like for the New Village neighborhood. It includes elements taken from the report prepared by the Preservation Company that was presented to the Planning Board during the Real Estate Advisors, LLC application. I do not suggest this is anything more than a draft to give the Board food for thought on how you might want to consider framing more specific standards to address a particular historic neighborhood like New Village. I think it makes sense to call out the particular lots that are included in what might be called the New Village Character Protection

DONAHUE, TUCKER & CIANDELLA, PLLC  
225 Water Street, P.O. Box 630, Exeter, NH 03833  
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801  
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253  
83 Clinton Street, Concord, NH 03301

1-800-566-0506

www.dtcclawyers.com

District architectural design standards. You could regulate new permits by a conditional use permit, and use the conditional use permit to give yourself room to work with an applicant on building design, subject to the applicable standards.

As for the Board's Site Plan and Subdivision regulations, I think it makes sense for the Board to call out with specificity in the regulations the type of building elevations or renderings that you have been looking for, including building materials. The issue came up in the Real Estate Advisors case about whether the site plan review regulations set forth clearly your authority to ask for such design information. While I imagine that for most areas of Newmarket, you will not want to exert design review control over residential development, but for commercial and business zones, you may want to give direction and calling out what you expect as part of a submission so that you will receive what you expect.

Should you have further questions, please do not hesitate to contact me.

Very truly yours,

DONAHUE, TUCKER & CIANDELLA, PLLC

A handwritten signature in black ink, appearing to read 'J. Ratigan', with a stylized flourish extending to the right.

John J. Ratigan

[jratigan@dtclawyers.com](mailto:jratigan@dtclawyers.com)

JJR:nes

Enclosure

S:\NA-NEWMARKET\Corres & Memos\2017 01 10 Hardy ltr.zoning changes.docx



**Building Materials** -- Exterior siding shall be brick, stucco clad or wood framed. The choice of exterior shall be consistent with the materials used in the adjacent homes. For example, the first six houses are a row of identical duplexes on the east side of Beech Street, with stucco walls and distinctive gable on hip roofs. On Elm Street, and parallel Elder and Forest Streets are ten similar wood-frame two-family houses with wide front gables originally detailed with half timbering, now mostly vinyl sided. When northern Beech and Cedar Streets were developed, with Grape Street between, they were laid out in a curvilinear fashion with rows of brick houses in the Colonial Revival or English Cottage styles. All are two or 2 ½ stories with hip or gable roofs, divided down the middle with entries on the ends or paired in the middle. No two houses are alike, with different combinations of simple entry trim, arched window lintels, dormers, central or end brick chimneys and entry porches.

## NEW VILLAGE CHARACTER PROTECTION DISTRICT:

### ARCHITECTURAL DESIGN STANDARDS

**Purpose and Intent** – To provide for harmonious and compatible development of the built environment with the existing character of New Village as expressed in its indigenous architecture, by regulating the design and aesthetic quality of structures built to contain land uses allowed by this ordinance and the land on which such homes are sited, including the following Lot located on Cedar, Beech, Grape, Forest, Elder and adjacent portions of Elm Street: (Insert Map/Lot references).

**Design Standards** – All structures in the New Village Character Protection District shall be constructed in accordance with this section. The Planning Board, in reviewing and acting upon site plan applications, shall give consideration to relevant visual features and prevailing land uses of the immediate neighborhood and such other visual elements as are consistent with the purpose and intent of this section.

**Building Scale** – Scale is the proportional relationship between buildings, landscaping and other vertical elements of site development. Building elevations shall be designed to provide and maintain traditional scale in residential structures that relate to the existing structures and the site. Development should respect and relate to residential buildings in the neighborhood. Whenever possible, new development should maintain traditional residential forms and scale, based on adjacent or nearby homes.

**Architectural Design** – The architectural design of structures, consisting of the composite effects of building shapes, materials, finish, decorative elements, site grading and landscaping shall be compatible with the neighborhood. In particular, the following standards shall be applied:

**Roofs** – Gable or hip roofs.

**Windows** – Window glazing should be sized in proportion to the building. Frame material and color shall be compatible with existing materials used in the neighborhood.

**Entrances** – All entries of buildings shall be clearly defined, employing at least three of the following design details:

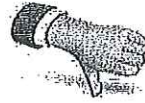
- (a) Porticos
- (b) Canopies
- (c) Porches



## Municipal Sign Ordinances after *Reed v. Town of Gilbert*



### DO'S & DON'TS



Because the Town of Gilbert sign code placed stricter limits on temporary events signs but more freely allowed ideological and political signs—despite the fact that all three sign types have the same effect on traffic safety and community aesthetics—the code failed the narrow tailoring requirement of strict scrutiny.

As a result of *Reed*, a sign code that makes *any* distinctions based on the message of the speech is content based. Only after determining whether a sign code is neutral on its face would a court inquire as to whether the law is neutral in its justification.

Municipalities should review their sign codes carefully, with an eye toward whether the code is truly content neutral. If the sign code contains some potential areas of content bias—for example, if the code contains different regulations for political signs, construction signs, real estate signs, or others—consider amending the code to remove these distinctions.

In cases where a sign code update might take time, local planners and lawyers should coach enforcement staff not to enforce distinctions which might cause problems.

Check to be sure your sign code has all of the “required” elements of a sign code.

- The code should contain a purpose statement that, at the very minimum, references traffic safety and aesthetics as purposes for sign regulation.
- The code should contain a message substitution clause that allows the copy on any sign to be substituted with noncommercial copy.
- The code should contain a severability clause to increase the likelihood that the code will be upheld in litigation, even if certain provisions of the code are not upheld.
- In preparing the purpose statement, it is always best to link regulatory purposes to data, both quantitative and qualitative. For example, linking a regulatory purpose statement to goals of the local master plan, such as community beautification, increases the likelihood that the code will survive a challenge.
- If traffic safety is one of the purposes of the sign code (it should be), consult studies on signage and traffic safety to draw the connection between sign clutter and vehicle accidents.

In conducting the review of the sign code recommended above, planners and lawyers should look to whether the code contains any of the sign categories that most frequently lead to litigation. For example, if the code creates categories for political signs, ideological or religious signs, real estate signs, construction signs, temporary event signs, or even holiday lights, it is likely that the code is at greater risk of legal challenge. As a general rule, the more complicated a sign code is—i.e., the more categories of signs the code has—the higher the risk of a legal challenge.

### Sign Code Guidance from the Court (*Alito's Concurrence*):

A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses—well might survive strict scrutiny.



The requirements of your ordinance may distinguish among signs based on any content-neutral criteria. Here are some specific standards the Court might uphold:

- Rules regulating the size of signs.
- Rules regulating the locations in which signs may be freestanding signs and those attached to buildings.
- Rules distinguishing between lighted and unlighted signs.
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
- Rules that distinguish between the placement of signs on private and public property.
- Rules distinguishing between the placement of signs on commercial and residential property.
- Rules distinguishing between on-premises and off-premises signs.
- Rules restricting the total number of signs allowed per mile of roadway.
- Rules imposing time restrictions on signs advertising a one-time event.

In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.

#### **Possible Sign Code Changes:**

Increase the overall allotment of temporary signs to accommodate the maximum demand for such signage at any one time, and allow that amount of temporary signs. A regulation that singles out off-premises signs that does not apply to a particular topic, idea, or viewpoint is probably valid because it regulates the locations of commercial signs generally, without imposing special burdens on any particular speaker or class of speakers.

Define government signs and Traffic Control Devices as signs, but specifically authorize them in all districts. Provide a base allotment of signs, and allow additional signs in relation to activities or events. Every property has a designated amount of square feet of signage that they can use for any temporary signs on their property, year round. For example: [x] square feet per parcel, in a residentially-zoned area, with a limit on the size of signs and perhaps with spacing of signs from one another. All properties get additional noncommercial signs at certain times, such as before an election or tied to issuance of special event permit. The key is to tie the additional sign allowance to the use of the property, rather than the content of the sign. Consider the following:

- Allow an extra sign on property that is currently for sale or rent, or within the two weeks following issuance of a new occupational license (real estate or grand opening signs).
- Allow an extra sign of the proper dimensions for a lot that includes a drive-through window, or a gas station, or a theater (drive thru, gas station price, and theater signs).
- Allowing additional sign when special event permit is active for property (special event signs). Key: not requiring that the additional signage be used for the purpose the sign opportunity is designed for, or to communicate only the content related to that opportunity.
- Grant an exemption allowing an extra sign on property that is currently for sale or rent.
- Grant exemptions allowing an extra sign (<10 sq. ft., < 48 inches in height, and < six feet from a curb out), for a lot that includes a drive-through window.

Every parcel shall be entitled to one sign <36 sq. inches in surface area to be placed in any of the following locations: On the front of every building, residence, or structure; on each side of an authorized United States Postal Service mailbox; on one post which measures no more than 48 inches in height and 4 inches in width.

Provide a content-neutral application process: Citizens can apply, by postcard or perhaps online, for seven-day sign permits, and receive a receipt and a sticker to put on the sign that bears a date seven days after issuance, and the municipality's name. The sticker must be put on the sign so that enforcement officers can determine whether it's expired. Because the expiration date is tied to the date of issuance, there is no risk of content-discrimination. The sticker itself would be considered government speech.