

APPROVED  
MINUTES OF THE MILFORD BOARD OF SELECTMEN MEETING  
June 28, 2021

This meeting was conducted pursuant to the State of New Hampshire Emergency Order #12 pursuant to Executive Order 2020-04. As such, the meeting was conducted online and in person.

<b>PRESENT:</b>	Gary Daniels, Chairman	John Shannon, Town Administrator (Zoom)
	Chris Labonte, Vice Chairman	Tina Philbrick, Executive Assistant (Zoom)
	Laura Dudziak, Member (EXCUSED)	Nate Addonizio, Videographer
	Paul Dargie, Member	
	David Freel, Member	

**1. CALL TO ORDER, BOARD OF SELECTMEN INTRODUCTIONS & PUBLIC SPEAKING INSTRUCTIONS:**  
Chairman Daniels called the public meeting to order at 5:30 p.m., introduced Board members, and then led the audience in the Pledge of Allegiance. Chairman Daniels indicated that those people in the audience who want to speak or add to the discussion should please use a microphone in order to be heard on the PEG Access live broadcast.

Chairman Daniels welcomed members of the public accessing this meeting remotely. He intends to continue using zoom at the Board meetings because there is more participation using this tool.

**2. APPOINTMENTS – (Approximate times)**

**5:30 p.m. – Standard Veteran’s Tax Credit (2), Land Use Change Tax: Map 51 Lot 23-2, Late Filed Residences in Industrial or Commercial Zone (4), Supplemental Notice of Excavation: Map 50 Lot 4-4 and Map 42 Lot 1 and Property Abatement Applications for Denial (11) – Assessing Director Marti Noel.**

**Standard Veteran’s Tax Credit (2)** -Mr. Gagnon has had the Veteran’s Credit since 2015. He has recently changed residences within Milford. The statute does allow for the transfer of the Veteran's credit to a new residence when the Veteran has moved within the same community. Chairman Daniels asked if Mr. Gagnon had applied for the Veteran’s credit on the previous residence. Marti said yes.

**Selectman Dargie made a motion to approve Mr. Gagnon’s Veteran’s Tax Credit. Seconded by Selectman Labonte. All were in favor. The motion passed 4/0.**

Mr. Green purchased a property from his parent in August of 2020 and has lived in that home for many years before the purchase. In discussion, Marti explained to Mr. Green that a late-filed application may be approved under specific statutory reasons which include ... "accident, mistake or misfortune..." Usually, the homeowner will have to wait until the following year if there isn't a substantial reason for a late filing. Mr. Green submitted a letter explaining the reason for the late-filed application was that he was unaware of the Credit until after the deadline. Marti recommends denial, but it's up to the Board.

**Selectman Dargie made a motion to approve Mr. Green’s Veteran’s Tax Credit. Seconded by Selectman Freel.**

Selectman Dargie wants to give Mr. Green the benefit of the doubt. He never owned a home before this, and just learned about it. Chairman Daniels agreed. Selectman Freel asked why Marti recommends denial. Marti said she tells all veterans that apply late that they will have to wait until the following year, she recommends denial for consistency.

Selectman Labonte asked how many applicants are told to try the following year if they are late in applying. Marti said about 3 or 4 for this year. They can request to come before the Board, which is what Mr. Green did.

Selectman Dargie asked if the other 3 or 4 people were given the option to go before the Board. Marti said no, she tells them the same thing she told Mr. Green, and just the fact that they didn't know doesn't qualify them for the exemption. She doesn't present the option to go before the Board. If she did, they would never be able to set the veteran's credit. It would be difficult for the Tax Collector to include them after the tax bill.

Selectman Freel asked if it was typical for first-time applicants to miss the boat. Marti said this happens often, there could be multiple reasons for being late in applying. They are not denied forever, just this year. Selectman Freel said if we allow this, should we go back and allow the other 3 or 4 to also come before the Board. Marti repeated that the stipulation in the statute is ... “accident, mistake or misfortune...”, she doesn’t think “I didn’t know about it” qualifies.

Selectman Dargie said he changed his mind and will vote no to be consistent. He feels that the applicants should know that coming to the Board of Selectman is an option. Selectman Freel said you open a can of worms if you start allowing this for

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everyone. Marti said the question now becomes, “what is the cutoff date”. How long do we let late fillers file? Selectman Dargie said until the tax rate is set in the Fall. Selectman Freel said there shouldn’t be a cutoff date. If we know that they are veterans we should send something to them telling them that they qualify for this, come in and fill out the paperwork.

Selectman Labonte asked if we notify veterans. Marti said we don’t send out a letter to veterans because she doesn’t know who they are. It does say on all tax bills that these credits can be applied for. Chairman Daniels said if someone has never done this before, they should cut them some slack the first time. Marti said the veteran only needs to apply once, it isn’t an every-year thing.

Selectman Dargie changed her mind again. He will vote in favor of it. He wants to notify the other 3 or 4 about this and allow them to apply. Marti said they can only keep it open until September 1<sup>st</sup> when the MS1 is sent to the state. Marti said she has the other veteran's applications that were denied, she will bring them forward at the next meeting.

**Selectman Dargie made a motion to approve Mr. Gagnon’s Veteran’s Tax Credit. Seconded by Selectman Labonte. All were in favor. The motion passed 4/0.**

**Land Use Change Tax: Map 51 Lot 23-2** - This parcel has been disturbed for the construction of a new home. Construction on land in Current Use requires the affected areas to be removed from Current Use and a Land Use Change Tax Warrant be issued.

**Selectman Dargie made a motion to accept the Land Use Change Tax for Map 51 Lot 23-2. Seconded by Selectman Labonte. All were in favor. The motion passed 4/0.**

**Late Filed Residences in Industrial or Commercial Zone (4)** – I have reviewed the applications and I recommend that the Board of Selectman approve the attached list of applicants for Residences in an Industrial or Commercial Zone for the tax year 2021. At the last meeting Chairman Daniels noticed that there were some missing applications, these are the missing applications. This is applied for every year.

**Selectman Dargie made a motion to accept the four Late Filed Residences in the Industrial or Commercial Zone. Seconded by Selectman Labonte. All were in favor. The motion passed 4/0.**

**Supplemental Notice of Excavation: Map 50 Lot 4-4 and Map 42 Lot 1** – The warrants were approved in the last meeting this is to clean up the paperwork.

**Selectman Dargie made a motion to accept the Supplemental Notice of Excavation: Map 50 Lot 4-4 and Map 42 Lot 1. Seconded by Selectman Labonte. All were in favor. The motion passed 4/0.**

**Property Abatement Applications for Denial (11)** – This is the last of the abatement applications. She recommends that they be approved. All property owners have been notified. These property owners failed to provide evidence that their property values were too high. The deadline for response by the municipality to all abatements timely filed is July 1. If no decision has been made, the abatement is to be considered to have been denied, and the Appellants may begin filing for appeal at the state level, either the BTLA or Superior Court.

Selectman Dargie said they are required to provide an appraisal that states that the properties are too high. He asked Marti if they were looking at these in detail for the reassessment this year. Marti said yes. Selectman Dargie asked if the owners came in with a rationale for reducing the assessment, would Marti have compared it with the previous assessment or the upcoming assessment. Marti said they look at each year individually. Abatements that have been filed are for April 2020. Selectman Dargie asked how the assessment was done. Marti said it's coming along. Tables need to be updated for commercial properties. She wants to let anyone who gets letters to not use the prior year’s tax rate to calculate taxes for this year. If values go up, the tax rate typically goes down some. This revaluation is to get the values closer to market value.

Selectman Freel asked what these people are saying that their values should be. Selectman Dargie said they didn’t provide what they think their values should be. Marti said the property owner can put what they think their value should be, but they have to provide documentation of that value. Selectman Freel asked if any of these property owners have come forward in previous years for abatements. Marti said yes, Abby Land did apply before and they are going before the Tax and Land Appeal Board soon. They also applied in 2016 and their value was reduced, they are looking for additional reductions

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when their values are increasing. Chairman Daniels asked if they have an opportunity to challenge this again. Marti said yes, every year.

**Selectman Dargie made a motion to deny the eleven Property Abatement Applications for Denial. Seconded by Selectman Freel. All were in favor. The motion passed 4/0.**

Selectman Labonte asked Marti what the PA28 form is. Marti said that is a form that we get every year from the Department of Revenue. They use it to send out questionnaires to all property owners to fill out and report any changes to their property. Milford has not used this since well before her time, and she's been here for 13 years. There are maybe 6 communities in New Hampshire that use these forms.

### 3. PUBLIC COMMENTS (regarding items that are not on the agenda)

Mark Fougere, a Milford Resident, shared a complaint with the Board. He filed a complaint on April 5<sup>th</sup> against Jason Johnson, MCC Base Director, relative to his activities in displaying a Vote No sign on the Milford Oval, given that he is a public employee and a resident of Mont Vernon. It is his opinion that Mr. Johnson should no longer remain as Director of MACC Base. The complaint outlines that:

a. As Director of MACC Base, it is one thing to advocate a position during public meetings and hearings; that is certainly within his duties. It is another to actively advocate against a Warrant Article that is supported by a supermajority of both the BOS and Budget Committee when you are not a resident of the community, but an employee.

b. If not illegal, Mr. Johnson's actions are unethical and raises questions as to his ability to objectively oversee an agency that is 70% funded by Milford taxpayers. Do we want public employees who are not residents of the community activity trying to undermine the town voting process? If this action is left unchecked, similar activities from others are sure to follow.

c. Given Mr. Johnson's actions, questions can also be raised as to his activities with MACC Base subordinates. Did Mr. Johnson direct Milford residents to Vote No on 3? Did Mr. Johnson advocate put up lawn signs during working hours? What other advocacy actions took place behind the locked doors of MACC Base?

d. When a Milford Police Officer contacted MACC Base relative to the truck (with sign) that had been parked on the Oval too long, he soon heard from an "off duty" Mr. Johnson over the MACC Base radio system asking about the truck. It is obvious MACC Base personal reached out to Mr. Johnson after the police officer radioed in. Why was an off-duty Mr. Johnson reaching out to a Milford Police officer over the MACC Base radio system? Soon after this exchange, Mr. Johnson sent a text to the Officer threatening legal action showing concern over his sign. Mr. Johnson was then observed moving the truck to a new location and attempted to hide his dubious actions by covering his appearance with a hoodie. These activities demonstrate he is not fit to lead this Agency.

d. As Director of a regional communication agency, such a position must remain above politics. Mr. Johnson's actions raise serious concerns as to his clear bias against Milford and its first responders who protect the health and safety of our residents.

Mark strongly urges that the Milford Board of Selectmen take a vote of no confidence against Mr. Johnson and demand his resignation. It's clear that Mr. Johnson can no longer oversee such a critical agency in an honest and dignified manner.

A letter came from the Attorney General's Office on June 7<sup>th</sup>, filed by Kevin Kleber who happens to be Jason Johnson's roommate. He finds it highly unlikely Mr. Kleber filed that complaint against our Fire Chief, Police Chief, and EMS Director.

Chairman Daniels said since this has been filed with the AG's office we will take it under consideration until we have heard from that office.

Paul Bagley, a Milford resident, thanked the Board for continuing the zoom meetings as many can't attend in person. He would also like to wish Administrator Shannon a speedy recovery from his accident. As far as the Attorney General's letter from June 7<sup>th</sup>, he was one of the people who took issue with the subject. The decision's been made and the Board is under a mandate for a cease and desist for the electioneering behavior and a policy and procedure needs to be in place by next Wednesday. Everything also needs to be removed from all town's social media pages and employees need to be educated on such policy. Nothing has been done yet.

Selectman Labonte said he was going to bring this up later. He also passed out a document, not included in the Boards packets. He received a letter from the Town Administrator that he thought this should have gone to the Board. He also

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doesn't think some of the information in the letter, to the AG's office is accurate. He mentioned the social media policy. He would like to know the process of violating a policy. Is it appropriate to use social media for unlawful activities?

Chairman Daniels said they would have to discontinue all communication with the town regarding any elections, any avocation with any political positions, Selectman Labonte interrupted and said we can't use social media for illegal activities. Chairman Daniels said what they are talking about is putting a vote of yes on warrant articles on the website or town's facebook pages. He understood that this information was taken down. Going forward, unless the law is changed, this stops us from putting the voters guide on the town's website, the law is flawed. He's spoken to the Secretary of State about this and he agrees. You shouldn't be putting things like vote yes on certain warrant articles, but when you are trying to communicate with the town about certain things that we are doing so that they can have a heads up, and go to the polls with information to use for voting, he doesn't think the law intended for us to not be able to do that. It will take a change in statute to do it. It prohibits the use of town equipment for advocating for political positions.

Selectman Labonte reads the statute differently. Elected officials are allowed to do this. Chairman Daniels repeated, it prohibits the use of town equipment for advocating for political position. Selectman Labonte asked at what point does this type of information goes to the whole Board. It only went to the Chair. Should it go to all Board members in the future? Chairman Daniels said yes. Selectman Labonte asked if the Board needs to take action on this. Chairman Daniels said yes.

Administrator Shannon said a powerpoint was developed for training purposes. This was discussed with the AG's office and they liked the idea. Chief Viola helped to develop it. It would have been completed last week, and you will all be copied on the response. The AG's office said they would like a copy of this along with a copy of our social media policy and this will be done no later than Wednesday. This will meet our obligations in the letter. Our Town Counsel agreed that this will satisfy everything.

Selectman Labonte said there is still one post that says yes on warrant article 3 from February of 2019. Administrator Shannon said they will take care of it. Chief Viola said they did go through the past two years and obviously, they missed one. Before this all came out, this Board agreed, 4/1 that we could do this. This has been going on for years in this town and we just found we couldn't do this.

**4. DECISIONS – Selectman Dargie made a motion to accept the consent calendar. Seconded by Selectman Labonte. All were in favor. The motion passed 4/0.**

**a) CONSENT CALENDAR**

- 1) Request Approval to NOT USE the PA-28 Form for Assessing in 2022.
- 2) Approval of Two (2) Yield Tax Levy Forms: Map 38 Lots 10 and 10-1 and Map 41 Lot 40-2C.
- 3) Approval of Recommendations for Appointment of Deputy Forest Fire Warden(s) and Issuing Agent for the Milford Fire Department

**5. OTHER DECISIONS**

- 1) N/A

**5. TOWN STATUS REPORT – Town Administrator, John Shannon**

**1) Town Fireworks -**

The Town fireworks to celebrate Independence Day will take place on Friday, July 2<sup>nd</sup> at Keyes Field. Any questions or concerns can be directed to the Town Administrator's Office or the Recreation Department.

**6. DISCUSSIONS**

**1) Communications –** Captain Frye said they worked on the IMA at the last BOG meeting. There was a surplus of \$168,417 of the total surplus at MACC Base this year. They did about \$55,000 in upgrades. There is a balance of \$113,417 and of that; approximately \$86,000 belongs to Milford, Mont Vernon gets \$12,000 and Wilton gets \$19,000. We need to decide what to do with the money. There are currently no plans to spend the surplus money at MACC Base. Wilton has their meeting tonight. We need to know by June 30<sup>th</sup>.

Selectman Dargie asked if there was money somewhere that can be used in case of an emergency this year. Captain Frye said yes, \$40,000. Selectman Freel asked if the money has to go back into the general fund if it's returned to Milford. Selectman Dargie said yes. Selectman Freel asked if it's kept at MACC Base could they use it for the infrastructure of Milford. Captain Frye said no, it goes into joint MACC Base equipment. He said it could go towards our current problem like

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securing Crown Castle. It's money that the taxpayers already sent out for communications. He doesn't see a problem giving it back. He doesn't know what Wilton or Mont Vernon is going to do.

Selectman Labonte asked if all three towns were willing to leave their money with MACC Base could they go forward and continue with Crown Castle. Captain Frye said not with that small amount. They are trying to figure out the cost now. Just putting antennas up there won't fix the problem we need equipment that matches what we currently have. Selectman Labonte asked if anyone received any information from 2Way as far as the equipment list. Captain Frye said they will be coming in at the next Board meeting in a non-public meeting.

Selectman Freel clarified that if the money comes back it will be placed in the general fund and used to set the tax rate for next year or, can it be used for something else, or can it be placed into an account for use of communications. Selectman Dargie said the two options are to leave it at MACC Base and the BOG has control over that money and they can spend it however they want to, or put it in the general fund as misc. revenue and it's used to reduce the taxes. You can't put it in a special fund and allocate it for anything.

Selectman Freel said if Wilton or Mont Vernon takes their money out, there isn't any reason to keep ours in there. Chairman Daniels asked if this was anticipated, or non-anticipated revenue. Selectman Dargie said it is anticipated. Paul Calabria said we kept \$5,000 in the line item for surplus. In 2019 they had \$144,000 returned and in 2020, \$76,000 was returned.

Selectman Labonte asked if the BOG feels that there are upgrades that can be done to benefit the emergency services if all three towns are willing to keep their money at MACC Base. Captain Frye said not at \$113,000. Selectman Labonte asked if it can be carried over to the next year. Captain Frye said in 2019 there was almost \$200,000 left in there with no explanation so we could put money in there with an explanation of why it was there. It's too bad we can't use it to help us out on Crown Castle with the plan that 2Way is putting together.

Captain Frye said the town needs to decide what we want to do. Right now we don't have an out with MACC Base if there is a collapse. Selectman Labonte asked if there was a ballpark number of what it would cost for MACC Base to put an antenna site on Crown Castle? Captain Frye said no. Selectman Freel asked what the \$55,000 in upgrades were for. Captain Frye said CAD upgrades, maintenance on towers, and A/C on the roof, but nothing as far as communication. Selectman Freel said what would be the minimal amount to make any kind of change to make it better. Captain Frye said around \$500,000. These are just estimates. Selectman Freel asked if the other towns are on board with maybe giving \$200,000 to go towards that. Captain Frye said no, they won't use their money contributing to our fix. Selectman Freel asked about consoles. Captain Frye said they are around \$100,000 to \$200,000 each. We have two. They are still working but are at the end of their life span.

Selectman Labonte said we already contracted to get a license on Crown Castle. Captain Frye said yes to get our site license. Selectman Labonte asked why we didn't go through MACC Base. Captain Frye said because it will be supporting Milford and all of our problems. The other towns can benefit from the site tower if they put their equipment on the tower.

Katherine Kokko, a Milford resident, said with the history of MACC Base, Milford has repeatedly required that this money come back to the town. She's appalled at the underinvestment that we have put into the infrastructure of MACC Base. There is an interest in Milford doing its own thing. Money has gone back to the other towns as well. A comment was made by Captain Frye at the last meeting was that this board made it clear that they expected this money to come back to them. She doesn't understand why the taxpayers wouldn't be pleased with taking \$100,000 off a potential fix if there were things that could be done with that money. Historically this town has decided that they want to take their money back which is part of the infrastructure problem. Captain Frye said it could also be Mont Vernon and Wilton taking their money back and us leaving ours in there. Katherine said it's largely Milford doing that and the other towns following. Captain Frye said Wilton is making their decision tonight.

Selectman Freel said if the money is left in MACC Base can the BOG use it for anything. Captain Frye said yes. Selectman Freel asked if we could say no if we didn't like where they want to put the money. Captain Frye said yes. Selectman Labonte said if we went through MACC Base for the license for Crown Castle we would have only had to pay 71% of \$3,000. Selectman Freel asked who applied for the license. Captain Frye said we did. Selectman Labonte said it was never brought up at MACC Base.

Selectman Dargie thinks we should leave the \$80,000 in there for now. Because it's anticipated revenue, you can't re-appropriate it. Selectman Labonte said if you leave it in there, it may be able to be used if there becomes a remedy to help



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MACC Base tomorrow and you won't have to wait for the March vote. Selectman Dargie said he doesn't have a problem with MACC Base having a pot of money available for emergencies. Selectman Freel asked if we get the money back if we were to pull out of MACC Base. Captain Frye said we carry over \$25,000 per year. If we pulled out of MACC Base it's written in the IMA that it's surplus and they would get to keep it.

Selectman Freel suggests that we never have any more than \$50,000 in MACC Base and everything else come back to the town. There was more discussion about what they would do if they kept a certain amount in MACC Base and what it could be used for if they had different amounts in there. At this point, they don't know what they need to fix the problem.

Chairman Daniels said we don't know how the IMA is going to change. They didn't accept the amendment that Selectmen Freel put in so that if a town leaves, you get your surplus back. Selectman Freel said that the IMA line was only to cover the money for that current year, not for savings sitting in an account. We already budgeted for the year and we leave 6 months early, we should get the remaining money back. Selectman Labonte said you don't leave mid-year, you leave at the end of the year. Chairman Daniels said the town has no vote on the following year's budget and you won't be able to determine how the surplus is spent. The BOG needs to have something in writing on who is supposed to take care of the infrastructure, us or MACC Base.

Selectman Dargie is still in favor of the CTA's report, having a Milford-owned dispatch and having the other towns as customers if they chose to do that. If there is money to be spent to upgrade MACC Base we need to do it in a way so that it comes to us when we leave. Selectman Freel said that would leave MACC Base without equipment wouldn't work. Selectman Dargie said if we need to build a tower, Milford should do it on their own and let MACC Base use it. Selectman Freel agrees. Selectman Dargie repeated that he's okay with leaving the money at MACC Base for this year. Chairman Daniels said he would be willing to do that with the stipulation that before any of it gets spent, it comes back to this Board to decide if we want to spend it on that first. We have the two votes to stop it from being spent on something that doesn't benefit us.

Selectman Freel asked what Chairman Daniels's thoughts were on repeating this same talk next year. Selectman Labonte said they may have answers by then because we need to have a new IMA by the end of this year. Selectman Freel said let's see where the other towns are going with this. Selectman Labonte assumes that if we leave our money in and the other towns take theirs out if something needs to be upgraded, the other towns would have the opportunity to add their money back in.

Selectman Freel said if we decide to leave the money in there we are saying we are supporting MACC Base and that's it. Other than that, there is no reason to leave the money in there. Chairman Daniels changed his mind. If we don't have a direction in where we are going, let's pull the money back. Selectman Labonte wants to leave it in there, it does more for the first responders now than waiting. If there is something that comes up, we will have the money in there. There was more talk about money in the budget and surplus.

**Selectman Freel made a motion to allocate the surplus funds from MACC Base back into the general fund. Seconded by Chairman Daniels.**

Selectman Labonte asked what is the advantage of doing that instead of just leaving it in there. Selectman Freel said he knows in another 2 to 3 months there is still a surplus and we will be sitting at this table in another 12 months hearing about this again and we will be at \$160,000. Selectman Labonte said then you are not willing to do upgrades since we don't budget for upgrades and just use the surplus. Selectman Freel asked if there will be a surplus this coming year. Captain Frye said it's early, but there will be. Selectman Labonte asked if any major upgrades can be done at MACC Base for \$80,000. Captain Frye said no. Selectman Freel asked if they could do some for \$160,000. Captain Frye said yes, but we would have to wait another year. It would have to stay in there for several years to build up money. Do we have that luxury to sit around and wait at \$80,000 a year for upgrades? If this didn't have to go into the general fund, he would recommend that we put it in an account that goes directly for communications to fix and address our current problem.

Selectman Labonte said if we put it into MACC Base this year and next, we will have \$160,000. The voters have said no for 3 years in a row. We could put a warrant article out again next year and it may not pass, at least we have \$160,000 sitting there. Selectman Freel said he isn't doing this because he wants one or the other; he's doing it because he feels that the money needs to go back to the taxpayers because he doesn't see it helping while sitting in an account doing nothing. If MACC Base was a business, it would have been closed years ago. If they really needed consoles and equipment they could let us know what they need, and how much they needed from each town to get their equipment. We can then go to the tax-

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payers and tell them, this is what we need to fix the system, no one is doing that. We are leaving money in there to do nothing because no one will come to the table and tell us what we need to do.

Selectman Labonte said Selectman Freel keeps saying that MACC should come to us, we are 71% of MACC, and we can propose our things. Selectman Freel said someone is running MACC Base and that someone should be telling us what we need for equipment to make it work. Selectman Labonte agrees but it works the same way our town works. Our Town Administrator works at the direction of the Board which is the same way the Director of MACC works with the BOG. He asked Captain Frye if the Director of MACC been given the direction to fix the problem in the last 5 years. Captain Frye said yes, and but he's not come to the Board with a fixed price, it's always estimated. With that, the question comes back, is it a system or center for calls.

Selectman Labonte referenced a letter sent in April as far as cost, they were also estimates, the same as what Director Johnson sent. Captain Frye said he answered Selectman Labonte questions which are always repeaters, repeaters, repeaters. He got the quote for the repeaters. That was expensive. He spoke to 2 Way and who suggested securing Crown Castle and doing this the way we were going to do it with CTA but on a lower down level scale so we could get it through to the taxpayers. Unfortunately, we will most likely do what happened 4 years ago when Selectman Labonte was on the budget committee and we presented the \$1,600,000 for a Milford fix and that got voted down to an \$85,000 study. We have a surplus and we don't know what the other towns are doing with their surplus. We argue about everything and nothing gets done. That's the problem with MACC Base. If you want to keep the money there then do so, but he doesn't see them spending the money for several years. The prices keep going up every year. We have a problem in Milford. The \$80,000 can't do anything other than go into the general fund. It was a 4/1 vote to put \$700,000 into the warrant article. He doesn't know what it takes to remove money from the general fund but we should be doing whatever it takes to fix our serious problem now. If MACC Base falls apart, we don't have any infrastructure of our own to do anything with.

Chairman Daniels asked Paul Calabria, Finance Director, if there were provisions where that money could go back into a dedicated fund for communications instead of the general fund. Paul said no unless it was acted on at the town meeting. He will check. Selectman Freel can't believe that the leftover money can't be used to fix communications as a whole. Chairman Daniels said it could if went before the voters saying that any surplus coming back can be used for communications.

**They took a vote on the motion and it failed 2/2 with Selectman Dargie and Selectman Labonte opposed.**

**Selectman Labonte made a motion to keep the money at MACC Base as long as Milford's Board of Selectman had said in how it would be spent.**

Selectman Freel asked if they left \$20,000 in and took \$60,000 out, would they approve that. Selectman Labonte said no, we need everything in that we can get to do the now fix. Captain Frye said that would have to be spent on the MACC Base fix, not the Milford fix. Selectman Labonte said he heard from heads of emergency services that they don't care who heads this, they just want to know if they hit the button, it works. Captain Frye said that's true, and it doesn't work. We are sending two guys to every call now because we are not sure if the radios are going to work. Officer safety is an issue and the guys are going to take care of themselves.

Selectman Freel asked why in the last 2 or 3 years have we just opted to take our money back. Why didn't we leave any in? Selectman Labonte said he guesses that it's been in the mindset to have a town-owned system. Selectman Freel asked Selectman Dargie that if next year we are just sitting here what would his vote be on taking \$140,000 out and leaving \$20,000 at MACC Base. Selectman Dargie said it depends. He's hoping to do another warrant article 3. He fully supports the CTA report. Selectman Freel said if that happens, do we get our money back. Captain Frye said the way the current IMA is written, no.

Katherine Kokko asked Captain Frye how he comes up with no as getting the money back next year. At last week's MACC Base meeting they talked about changing the language to address if someone were to leave. Captain Frye said the surplus is for the prior year, we would forfeit the \$80,000.

Selectman Freel said a couple of years ago we got a big surplus back that no one knew about and we are arguing about this \$80,000 and leaving it in MACC Base. We have millions in the fund balance, if we need something we can get it. Selectman Labonte said we just don't take money out of the fund balance. Selectman Freel said if there is an emergency they might.

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Selectman Labonte repeated his motion to keep the money at MACC Base as long as Milford's Board of Selectman had say in how it would be spent. Captain Frye said according to the IMA we don't have to come back to this Board.

Selectman Dargie said he wouldn't second Selectman Labonte's motion. No one seconded Selectman Labonte's motion and therefore the motion failed. Selectman Dargie would like to reconsider the previous motion. **Chairman Daniels said there is a motion to reconsider the previous motion that resulted in a 2/2 tie and failed. Seconded by Selectman Freel.**

**Selectman Labonte made a motion to table the discussion. There was no second and the motion failed.**

**The motion to reconsider the previous motion passed 3/1 with Selectman Labonte opposed.**

**Selectman Freel made a motion to allocate the surplus funds from MACC Base back into the general fund. Seconded by Chairman Daniels. The motion passed 3/1 with Selectman Labonte opposed.**

Selectman Dargie said he's still on the fence but if there is a need to do something, they can always come up with the money. It's unlikely that \$80,000 will accomplish a lot. He's in favor of a real fix. Selectman Labonte repeated that having \$80,000 available at MACC Base if there was something that comes up would still be good. Nothing has been put forward in the past.

Selectman Labonte asked where the \$3,000 for the license on Crown Tower came from. Administrator Shannon said he will get an answer. Chief Viola said he doesn't think it came out of his budget.

### **7. PUBLIC COMMENTS. (Regarding items that are not on the agenda)**

Katherine Kokko followed up on Selectman Labonte's proposed process for investigating radio issues. No action was taken on this at the last board meeting.

Milford does not have a structured process in place to investigate radio issues. Communications issues are written up and emailed in by the first responders that experience them. Those emails are collated and sent to the Board of Selectmen, but no additional steps are taken. There is also no distinction made between identified issues that are true system failures, and those that are simply an inability to do something that the system wasn't designed to do in the first place. This "everything is a failure" approach distorts the already complicated discussion of Milford's communications problems.

In her discussions with other dispatches, she asked how they deal with localized radio issues as we have experienced here. All of them have responded that they investigate, replicate, pinpoint, then try to mitigate the issue. During our discussion at the last Board of Selectman meeting, Mr. Bartlett also confirmed that to understand an issue, it must be replicated. Selectman Labonte's proposed process begins to get to this need.

Most importantly, when there is an issue in a locale – that locale brings the issue to their dispatch for investigation. The locale in question, and the dispatch, work together to do something about it. But the process starts with the one who has experienced the radio issue. When she asked why we aren't doing this in Milford, she has been given the excuse that "MACC Base should know" about these issues – But MACC Base does not manage Milford's radios, and has not been asked by Milford to support any kind of coordinated investigative process or solution.

It is Milford's responsibility to fully understand our problems and then escalate to MACC Base when the problem is definitively identified as a potential system issue under MACC's jurisdiction.

Finally, when asked in a prior meeting what steps were being taken to address radio issues in town, a representative of the Police Department stated that "this is why we proposed the warrant article."

All of this background is concerning. The approach being taken by Milford today does not lend itself to problem-solving and is not protecting lives. A warrant article with a long lead time is not a mitigation strategy. Without a policy and a process for logging, categorizing, investigating, replicating, and escalating issues, problems will not get addressed – it doesn't matter what kind of organization we are talking about – public or private. And it abdicates responsibility completely to say "we assume they know about the problems," rather than attempting to coordinate a response with MACC Base.



## APPROVED MINUTES OF BOARD OF SELECTMEN MEETING – 6/28/2021

The BOS should be aggressively pursuing ALL options to mitigate our localized radio issues. This includes having a structured problem-solving process in place, not just waiting for a new warrant article. This is a concrete step that can be taken by our town to protect our first responders. It is also relevant to taxpayers who want to see that our elected officials are investigating ALL relevant options.

She repeated, what action will the BOS be taking on Selectman Labonte's proposed process for investigating radio problems in Milford?

Bobby Jones, the AFSME representative for the Milford Police Department, said he hasn't spoken to any other dispatch center but he does have 30 years of police, law enforcement, dispatch experience with the last 8 years being a dispatch supervisor of a much larger communications center than MACC Base. It isn't just Milford PD that has the owners tracking this down, it's MACC Base that has the owners tracking this down because they are the dispatch center. Their job is to transmit and receive. If they are constantly saying to the officers on the road that "they can't hear or understand them", then why isn't MACC Base trying to mitigate and figure out what the problem is, not just Milford PD.

Katherine Kokko said she didn't say that MACC Base doesn't have any responsibility, she is saying that it begins with the town identifying the radio issues that we have and then escalating them as needed.

### 8. SELECTMEN'S REPORTS/DISCUSSIONS

Selectman Labonte said Granite Town Media figured out the sound in the Board room, he doesn't know what is happening tonight.

### FROM PROJECTS, SPECIAL BOARDS, COMMISSIONS & COMMITTEES

#### a. OTHER ITEMS (that are not on the agenda)

Selectman Dargie said the Transfer Station doesn't support volunteers anymore. There used to be court-appointed volunteers and they may have stopped it due to COVID. Welfare also needs people to help out. He would like to have this restarted. Administrator Shannon will speak to Public Works about it.

**9. APPROVAL OF FINAL MINUTES - Selectman Dargie moved to approve the minutes of June 14, 2021, as amended. Seconded by Chairman Daniels. All were in favor. The motion passed 4/0.**

### 10. INFORMATION ITEMS REQUIRING NO DECISIONS.

1. N/A

**11. NOTICES.** Notices were read.

**12. NON-PUBLIC SESSION** a motion made by Selectman Dargie to enter into a non-public session for in accordance with (RSA 91-A:3, II(e)) Legal. Seconded by Selectmen Labonte. A roll call vote was taken with Selectman Dargie yes, Selectman Labonte yes, Selectman Freel yes, and Chairman Daniels yes. All were in favor. The motion passed 4/0.

In non-public, the Board made no decisions.

**13. ADJOURNMENT:** Selectman Dargie moved to adjourn at 8:15 pm. Seconded by Selectman Freel. A roll call vote was taken with Selectman Dargie yes, Selectman Labonte yes, Selectman Freel yes, and Chairman Daniels yes. All were in favor. The motion passed 4/0.

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Gary Daniels, Chairman

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Paul Dargie, Member

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Chris Labonte, Vice-Chairman

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David Freel, Member

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Laura Dudziak, Member

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JANE E. YOUNG  
DEPUTY ATTORNEY GENERAL

June 7, 2021

Milford Police Department  
Milford Fire Department  
Milford Ambulance Service  
c/o John Rattigan, Esquire  
Donahue, Tucker & Ciandella, PLLC  
16 Acadia Lane  
P.O. Box 630  
Exeter, NH 03833

Re: **CEASE AND DESIST ORDER** (2021147840)  
Violation of RSA 659:44-a

Dear Attorney Rattigan:

On March 3, 2021, Kevin Kleber submitted a complaint to this Office, alleging that the Milford Police Department violated RSA 659:44-a, which prohibits electioneering by public employees.<sup>1</sup> Mr. Kleber alleged the Department violated this statute through its posts on its official Facebook page. On March 7, 2021, this Office received another complaint from Paul Bagley, indicating that Facebook pages belonging to the Milford Fire Department and Milford Ambulance Service, both similarly published electioneering material in violation of RSA 659:44-a. This investigation followed.

**I. FACTUAL BACKGROUND**

a. **Milford Police Department**

The first post was published on January 13, 2021, containing a message asking voters to vote "YES" on Warrant Article 3. The post also contained images of pamphlets with the message, "Vote YES to Warrant Article 3." On January 27, 2021 another post was published, and depicts an image with the message "Vote YES to Warrant Article 3." On February 10, 2021,

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<sup>1</sup> Mr. Kleber also provided links to a post by Tim Finan, Chairman of the Milford Town Media Advisory Committee, as well as the minutes from the Milford Board of Selectmen's January 25, 2021 meeting. He alleged both were in violation of RSA 659:44-a. On March 10, 2021, this Office attempted to review the webpages attached to those links, however they did not work. Attempts to independently access the Town of Milford's website – the source of both of Mr. Kleber's links – were also unsuccessful.

a post was published containing the following message: "As we continue to provide information to gain your support of Warrant Article 3 for a yes vote on March 9th we have added documents to our Town webpage under the First Responders Communications Network. As we add new information we will keep you posted. Thank you." This post included a link to the referenced webpage.

There were also posted YouTube videos that appear to be a recording of a Zoom meeting hosted by Milford resident Tim Finan, and attended by Police Chief Mike Viola, Fire Chief Ken Flaherty, Ambulance Service Director Eric Shelberg, and Public Works Director Rick Riendeau. The four department heads each take a turn answering questions from Mr. Finan on Article 3. Segments of this meeting were also posted as individual videos on the Milford Police Department's Facebook page.

At the end of each video is a photo of four individuals, one representative each from the Milford Police, Fire, Ambulance Service, and Public Works departments. At the bottom of that photo are two messages displayed in succession: "Support our First Responders They Keep Us Safe, Let's Keep Them Safe" or "PLEASE VOTE YES on #3", which is followed up by a photo of a sign that reads "Vote Yes on Article #3."

On March 5, 2021, this Office forwarded a copy of Mr. Kleber's complaint to Chief Mike Viola from the Department. We requested a response from the Department to Mr. Kleber's complaint.

On March 8, 2021, you responded on behalf of the Department. You indicated that as soon as the Town of Milford and the Department became aware of the January 27 Facebook post, it was immediately taken down and removed from the Department's Facebook page. You also explained that the Department's Facebook page can be accessed by four different police officers. However, you were not aware of who was responsible for the January 27 post. It was also unclear whether the posting was done as part of the responsible individual's official duties.

You have represented that none of the four police officers were aware of the electioneering prohibitions under RSA 659:44-a. You indicated that the Department will be "promptly reviewing with those who have access to the Police Department's Facebook page the electioneering prohibitions set forth in RSA 659:44-a."

On March 18, 2021, this Office spoke with Chief Viola, Captain Craig Frye, and Captain Shawn Pellitier from the Milford Police Department.

Chief Viola, explained that Police Department uses its Facebook page to post up-to-date information that is beneficial to the Town. For example, information relating to accidents and fire scenes to avoid. He explained as a result, five supervisors have been granted administrative privileges over the Facebook page, because one or more of them are likely to be working at the time, and may need to post information in real-time. Chief Viola identified Captains Frye and Pellitier as the supervisors with primary administrative access to the Facebook page.

The Police Department sent photos to CTA including a photo of a department cruiser and the front of the police department building. CTA was the company hired by the Town of Milford to complete a study on the Town's need for a new communication center. The Police Department later learned that these photos were used by CTA to make the informational pamphlets. There was no cost to the Police Department or the Town for the pamphlet. Captain Frye explained that he was sent a copy of the draft pamphlet by a CTA intern for review. CTA provided the Police Department with the final versions of these pamphlets, which were displayed in the Police Department's January 13 and January 27, 2021 Facebook posts. Captain Frye and Captain Pelletier stated that they were responsible for posting copies of the pamphlets to the Police Department's Facebook page.

With respect to the videos, Captain Pelletier explained they were shared from Mr. Finan's Facebook account to the Police Department's Facebook page. In order for private citizens to post on the Police Department's Facebook page, an administrator must approve the post before it is published. Captain Pelletier indicated he had approved Mr. Finan's posts containing the above-described videos.

b. Milford Fire Department

The Milford Fire Department's Facebook page similarly published images of the pamphlets created by CTA, with the message "Vote YES to Article 3." On March 18, 2021, this Office spoke with Chief Flaherty from the Milford Fire Department. He explained that he obtained these images by copying them from the posts that appeared on the Police Department's Facebook page.

Chief Flaherty indicated that he is the administrator of the Fire Department's Facebook page, and decides what to post, as well as approves postings from private citizens. He stated that he accepted and authorized the posting of Mr. Finan's videos to the Fire Department's Facebook page.

c. Milford Ambulance Service

The Milford Ambulance Service's Facebook page similarly published images of the pamphlets created by CTA, with the message "Vote YES to Article 3." On March 19, 2021, this Office spoke with Director Shelberg of the Milford Ambulance Service. He stated that he published the images of the pamphlets.

Director Shelberg stated that he is the administrator of the Ambulance Service's Facebook page and decides what to post, as well as approves postings from private citizens. He approved the posting of the videos to the Ambulance Service's Facebook page.

d. Pre-Election Meetings with Private Citizens

The videos posted by Mr. Finan are recordings of a Zoom meeting held prior to the Milford town election. On March 19, 2021, this Office spoke with Mr. Finan.

He explained that the Zoom meetings were actually part of his podcast called “Granite Talk.” The podcast is not associated with nor subsidized by the Town. The content of the videos and the statements from the four department heads was all informational in nature, and did not direct the viewer to vote in a particular way on Article 3.

However, at the end of the video, words did appear on the screen asking for a “Yes” vote on Article 3. Mr. Finan explained that he added these messages himself. None of the Departments were aware that he had added these messages to the final video or any of the associated clips.

When this Office spoke with the Departments, none of them were aware that these electioneering messages were added at the end of the videos when they approved Mr. Finan’s Facebook posts to their respective Facebook pages.

e. Town Administrator John Shannon

On March 18, 2021, this Office spoke with Administrator Shannon. Administrator Shannon stated that after learning about the social media posts he directed all department heads on March 3, 2021 to remove all references to “support” or “vote yes” to Article 3 from town departments’ Facebook pages.

Administrator Shannon apologized for the mistake, stating that neither he nor the department heads were aware of the electioneering statute. To ensure that this error does not happen again, he stated he held a department head meeting, at which they discussed updating the Town’s social media policy to prohibit private citizens from posting material on department Facebook pages. They also discussed providing training for all town employees on the prohibition against electioneering under RSA 659:44-a.

## **II. APPLICABLE LAW**

RSA 659:44-a provides that “[n]o public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties or use government property, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering.” The statute also defines electioneering as “to act in any way specifically designed to influence the vote of a voter on any question or office.” A public employee is defined as “any person employed by a public employer” with some limited exceptions. RSA 273-A:1, IX. Those exceptions are:

- (a) Persons elected by popular vote;
- (b) Persons appointed to office by the chief executive or legislative body of the public employer;
- (c) Persons whose duties imply a confidential relationship to the public employer; or
- (d) Persons in a probationary or temporary status, or employed seasonally, irregularly or on call. For the purposes of this chapter, however, no employee shall be determined to be in a probationary status who shall have been employed for more than 12 months or who has an individual contract with his employer, nor shall any employee be



determined to be in a temporary status solely by reason of the source of funding of the position in which he is employed.

### **III. ANALYSIS**

With respect to Captain Frye, Captain Pelletier, Chief Flaherty, and Director Shelberg, none of the “public employee” exceptions under RSA 273-A:1, IX are applicable. We therefore conclude that these individuals, who had access to and administrative privileges over their respective departments’ Facebook pages, are subject to the electioneering prohibition under RSA 659:44-a.

Given its broad construction, and the potential First Amendment implications associated with this statute’s regulation of speech, this Office will exercise its powers under RSA 7:6-c, authorizing the Attorney General to enforce election laws, to interpret RSA 659:44-a narrowly. Specifically, to construe the term “electioneer” under RSA 659:44-a, in conjunction with the definition of “electioneering” under RSA 652:16-h.

Although the language of RSA 659:44-a appears to have been constructed broadly, interpreting it in conflict with RSA 652:16-h would be in error.<sup>2</sup> The language of RSA 659:44-a was last updated on January 1, 2017. RSA 652:16-h was enacted on January 1, 2020. RSA 652:16-h defines “electioneering” as “visibly displaying or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted.” (emphasis added).

“When interpreting two statutes which deal with similar subject matter, we will construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statute. To the extent two statutes conflict, the more specific statute controls over the general.” EnergyNorth Nat. Gas, Inc. v. City of Concord, 164 N.H. 14, 16 (2012).

Therefore, we conclude that in order to qualify as “electioneering” under RSA 659:44-a, the conduct in question must explicitly advocate for a question or office being voted upon consistent with RSA 652:16-h.

The Facebook posts appearing on the Police Department’s, Fire Department’s, and Ambulance Service’s pages, that displayed images containing and messages stating, “Vote YES to Article 3” constitute impermissible electioneering for the purposes of RSA 659:44-a. Additionally, the videos accepted and approved by the administrators of these pages, and bearing a similar message to vote “Yes” on Article 3, similarly constitute impermissible electioneering.

### **IV. CONCLUSION**

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<sup>2</sup> See also Stenson v. McLaughlin, 2001 WL 1033614 (D.N.H. Aug. 24, 2001) (Holding that statutes can regulate political communications without violating the First Amendment “only if the communications used explicit words of advocacy of election or defeat of a candidate.”).

Pursuant to RSA 659:44-a, and based upon the investigation conducted by our office, the Milford Police Department, Fire Department, and Ambulance Service and their employees are hereby ordered to **Cease and Desist from engaging in further electioneering by public employees**. Failure to do so could constitute a violation of RSA 659:44-a and result in further enforcement action by this Office.

Any remaining social media posts on these departments' Facebook pages or publications on the Town of Milford's website constituting electioneering material pursuant to the analysis outlined above must be removed immediately.

In addition, the Town of Milford shall submit to this Office a remediation plan, outlining the steps its departments will take to educate current and future personnel on the prohibition of RSA 659:44-a as well as appropriate protocols to prohibit electioneering by public employees in the future. A copy of the Town's social media policy described by Administrator Shannon shall also be provided to this Office. We request that your remediation plan and the social media policy be sent to us within 30 days of the date of this letter.

This matter will be closed contingent upon receipt within 30 days, of an acceptable remediation plan. Please contact me if you have any questions.

Cease and Desist Order Issued

By Authority of:

John M. Formella  
Attorney General



Nicholas A. Chong Yen  
Assistant Attorney General  
(603) 271-3650  
nicholas.chongyen@doj.nh.gov

cc: Kevin Kleber  
Paul Bagley

# TOWN OF MILFORD

## TOWN ADMINISTRATION



June 30, 2021

Nicholas A. Chong Yen  
Assistant Attorney General  
Department of Justice  
33 Capitol Street  
Concord, NH 03301

Re: Cease and Desist Order (2021147840) Violation of RSA 659:44-a

Dear Mr. Assistant Attorney General:

On June 10, 2021, the Town of Milford received a letter from your office concerning electioneering of public employees. This letter and the other documents are in response to the further enforcement action required by your office.

The Town's staff has gone through our Town Facebook pages mentioned in your letter and removed any and all posts that were in violation of the electioneering RSA. I am also including the remediation plan as requested as well as the Town's policy dealing with social media. All current staff members have already been provided with power point slides for training purposes. This training will help avoid this issue in the future and will be a point of emphasis by the department heads.

Please contact me at (603) 249-0601 or [jshannon@milford.nh.gov](mailto:jshannon@milford.nh.gov) if you require anything else.

Sincerely,

John Shannon  
Town Administrator

# RSA 659:44-a Electioneering by Public Employees

Overview and Training on the RSA  
and how it Effects Municipal  
Employees

## RSA 659:44-a – Electioneering by Public Employee

- **2020 New Hampshire Revised Statutes**  
**Title LXIII - Elections**  
**Title 659 - Election Procedure**  
**Section 659:44-a - Electioneering by Public Employees.**
- **Universal Citation:** NH Rev Stat § 659:44-a (2020)
- **659:44-a Electioneering by Public Employees. –**
  - I. No public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties.
  - II. No public employee shall use government property or equipment, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering.
  - III. For the purposes of this section, "electioneer" means to act in any way specifically designed to influence the vote of a voter on any question or office.
  - IV. Any person who violates this section shall be guilty of a misdemeanor. **Source.** 2003, 172:2, eff. June 18, 2003. 2016, 176:1, eff. Jan. 1, 2017.



# Public Employee

- A public employee is defined as “any person employed by a public employer” with some limited exceptions. RSA 273-A:1, IX, Those exceptions are:
- Persons elected by popular vote.
- Persons appointed to office by chief executive or legislative body of the public employer.
- Persons whose duties imply a confidential relationship to the public employer.
- Persons in a probationary or temporary status, or employed seasonally, irregularly or on call.
- For the purpose of this chapter, however, no employee shall be determined to be in a probationary status who shall have been employed for more than 12 months or who has an individual contract with his employer, nor shall any employee be determined to be in a temporary status sole by reason of the source funding of the position in which he/she is employed.

# Town of Milford Social Media Policy

- Current Town of Milford's Electronic and Telephone Communication Policy for all town employees is located in the Town of Milford Employee Handbook.
- The Electronic and Telephone Communication Policy can be accessed by town employees on the Town of Milford website under the Human Resources section.
- During new employee orientation meeting with HR Director, employees are given information on town policies and where to retrieve them from.
- Section 7 – Personal Use, subsection D, states:
- Employees may not divulge information gained by reason of their authority, make any statements, speeches, appearances, and endorsements; or publish materials that could reasonably be considered to represent the views or positions of the Town without expressed authorization.

# Remediation Plan Moving Forward

- Review and Update Current Social Media Policy for the Town of Milford
- Include information pertaining to RSA 659:44-a in the updated policy to ensure that employees are aware of this statute.
- Review with Department Heads to ensure that they are aware of the new policy and RSA 659:44-a and how it can effect their employees.
- Department Heads or designee will conduct training within their departments that pertains to the town's social media policy and RSA 659:44-a Electioneering by Public Employees statute.
- Any changes to the Town of Milford Social Media Policy will be documented and forwarded to each town department and the HR section of the Town of Milford website.

# **TOWN OF MILFORD POLICY ON ELECTRONIC AND TELEPHONE COMMUNICATION**

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## **PURPOSE**

To describe the Town of Milford's policy on the use and monitoring of its electronic and telephonic communications systems, including E-mail, voice mail, and social media sites.

## **POLICY**

All electronic and telephonic communication systems and all communications and stored information transmitted, received, or contained in the Town's information system are the property of the Town of Milford. The use of any software and business equipment for private purposes that could result in personal gain or profit, without prior permission from your Department Head, the Town Administrator, or the Board of Selectmen, is strictly prohibited. Town of Milford business equipment includes, but is not limited to, facsimiles, telecopiers, telephones, computers, copy machines, etc. It is the opinion that, at the time of this writing, no such activities are ongoing. Such equipment also may not be used to solicit other individuals for any purpose or to transmit sexually or other offensive messages. All passwords and pass codes are the property of the Town of Milford and no employee may use passwords or pass codes that are unknown to the Town.

Violations of this policy are subject to the progressive disciplinary process as outlined in the current Town of Milford Employee Handbook of Personnel Rules and/or any applicable Collective Bargaining Agreement. To ensure that the use of electronic and telephonic communication systems and business equipment is consistent with the Town's interests, the Town – or its authorized representative(s) – may, from time to time, monitor the use of such equipment and may print out and read all E-mails entering, leaving, or stored in these systems.

## **PROCEDURE**

Current employees will acknowledge receipt of this policy and its intent in a meeting with their Department Head. Said policy is hereby incorporated by reference into the current Town of Milford Employee Handbook of Personnel Rules and/or any applicable Collective Bargaining Agreement.

New employees will be required to sign for a copy of the Town of Milford Employee Handbook of Personnel Rules or applicable Collective Bargaining Agreement upon acceptance of employment with the Town of Milford.

## **SOCIAL MEDIA GUIDELINES**

### **1. PURPOSE**

The Town of Milford endorses the secure use of social media to enhance communication and information exchange; streamline processes; and foster productivity with its employees. These guidelines establish the Town's position on the use and management of social media and provide guidance on the management, administration, and oversight of social media. These guidelines are not meant to address any one particular form of social media but to apply to all forms of social media including emerging technologies.

### **2. SCOPE**

These guidelines shall apply to all employees and department volunteers of the Town of Milford.

### 3. PHILOSOPHY

Social media provides a valuable means of assisting the Town in providing community education, community information, emergency preparedness, and other related community objectives. It also provides citizens with a valuable tool for communicating with the Town. The Town also recognizes the role that social media tools may play in the personal lives of its employees. However, employees and volunteers must be aware that their use of social media, even in their personal lives, can have an effect on the performance of their duties and could negatively impact the Town. These guidelines provide specific restrictions and prohibitions on the use of social media when acting as a representative of the Town of Milford as well as guidance of a precautionary nature as to the use of social media by Town personnel in both their personal and professional lives.

### 4. DEFINITIONS

- Blog:** A self-published diary or commentary on a particular topic that may allow visitors to post responses, reactions, or comments.
- Post:** Content an individual shares on a social media site or the act of publishing content on a site.
- Profile:** Information that a user provides about himself or herself on a social networking site.
- Social Media:** A category of Internet-based resources that enable the user to generate content and encourage other user participation. This includes, but is not limited to, social networking sites: Facebook, MySpace, Twitter, YouTube, Wikipedia, blogs, and other sites.
- Social Networks:** Platforms where users can create profiles, share information, and socialize with others using a range of technologies.
- Speech:** Expression or communication of thoughts or opinions in spoken words, in writing, by expressive conduct, symbolism, photographs, videotape, or related forms of communication.
- Town Personnel:** Refers to employees and department volunteers of the Town of Milford.

### 5. PROCEDURES

- A. Prior to creating a social media site, departments should consider the need and value of a department or program dedicated site versus relying on the Town website to disperse department or program information. Department staff should calculate the time and effort it will take to maintain a site such that the information posted will remain current and that visitors will continue to find the site useful over time.
- B. Department Heads must obtain approval from the Town Administrator and the Director of Community Media prior to creating a social media account.
- C. Department Heads must approve the creation of social media accounts within their departments and appoint specific staff members to maintain the sites. Department Heads are responsible for ensuring that their staff follows the procedures set forth in these guidelines and monitoring the sites for appropriate use by their employees.
- D. All approved uses of social media must be reported to the Town's Director of Community Media. The Director of Community Media will maintain a list of all active Town social media sites, *including login and password information*. Passwords must not be changed without first informing the Director of Community Media of the change. The Director of Community Media must be informed if the department intends to stop operating its social media site.



- E. Department staff is responsible for monitoring comments, immediately removing any prohibited content, and saving content as required by the NH Right-To-Know law (RSA 91-A). In addition, when staff removes content that they deem to be inappropriate, they need to include their name, the date and time the content was removed, and a brief explanation as to why the content was removed.

## 6. CONTENT

### Town Posted Information

- A. The most appropriate uses of Town social media sites are:
- Time-sensitive and emergency information such as road closures and weather emergencies.
  - As a communications/marketing tool which increases the Town's ability to broadcast its messages to the widest possible audience. Specifically this would include such things as advertising upcoming Recreation Department events, or upcoming meetings of the various Town committees, boards or commissions.
- B. Information posted to the Town's social media sites is subject to the New Hampshire Right-To-Know law (RSA 91-A).
- C. Wherever possible and reasonable, content posted to the Town's social media sites will also be available on the Town's main website.
- D. Social media sites shall clearly indicate that they are maintained by the official department and shall have the department logo and contact information prominently displayed.
- E. Each social media site shall include an introductory statement that clearly specifies the purpose and scope of the Town's presence on the site.
- F. Social media sites should contain links directing users back to the Town's website for in-depth information, forms, documents, or online services necessary to conduct business with the Town of Milford.
- G. Social media sites shall clearly indicate that any articles and any other content posted or submitted for posting are subject to public disclosure.
- H. Information posted on social media sites must be related to official Town business.
- I. Town employees shall be professional in all social media outlets, especially when responding to criticism or negative posts.
- J. Town Employees are expressly forbidden to misuse any social media access privileges in any way that may include, but are not limited to:
- a. Using social media accounts for unlawful activities, including violations of copyright law, or for activities that are malicious or have the effect of harassing other users.
  - b. Violating the terms of service policies of any network to which they are utilizing. For example, when maintaining a Town Facebook page, Facebook's published Terms of Service must be adhered to.

- c. Misrepresenting the Town's programs or policies in their communications.
- d. Conducting political activities or private business.

### **Information Posted by Outside Individuals**

For all Town social media sites that allow posts and/or comments, those sites are limited public forums that are moderated by Town staff to ensure content posted by outsiders is appropriate.

- 1. Posted content (including comments, photos and links) must be related to the topic posted by the Town to be considered appropriate.
- 2. Information posted to the Town's social media sites is subject to the New Hampshire Right-To-Know law (RSA 91-A).
- 3. Inappropriate and prohibited content is subject to immediate removal from the site. This includes, but is not limited to, content that:
  - Is not topically related to the particular article being commented upon.
  - Promotes or advertises commercial services, entities or products.
  - Supports or opposes political candidates or ballot propositions.
  - Is obscene
  - Discusses or encourages illegal activity.
  - Promotes, fosters, or perpetuates discrimination on the basis of creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability, or sexual orientation.
  - Provides information that may tend to compromise the safety or security of the public or public systems.
  - Violates a legal ownership, including, but not limited to, copyright law.
  - Spam

## **7. PERSONAL USE**

The following section provides guidance of a precautionary basis on the use of social media by Town personnel in both their personal and professional lives.

- A. Employees are free to express themselves as private citizens on social media sites to the degree that their speech does not impair or impede the performance of their duties, impair discipline and harmony among coworkers, or negatively affect the public perception of the department.
- B. As public employees, department personnel are cautioned that their speech either on or off duty, and in the course of their official duties on matters of public concern, may not necessarily be protected speech under the First Amendment.
  - a. This speech may form the basis for discipline if deemed detrimental to the Town or department and the speech is not protected by the First Amendment.
  - b. Employees should assume that their speech and related activity on social media sites will reflect upon their position within the Town.
- C. Employees shall not post, transmit, or otherwise disseminate any information to which they have access as a result of their employment without written permission from the appropriate Board or Commission or their designee.

- D. Employees may not divulge information gained by reason of their authority; make any statements, speeches, appearances, and endorsements; or publish materials that could reasonably be considered to represent the views or positions of the Town without expressed authorization.
- E. Employees shall, at all times, exercise diligence to avoid holding themselves out as spokespersons for their department except when duly authorized to do so. For this reason, the use of titles, department logos, Town-owned images, or identification as an employee of the department when using social media sites is prohibited.
- F. Employees and volunteers engaged in patient care are prohibited – while on or off duty – from posting federal HIPAA-defined, patient-identifiable information or information that can reasonably be used to identify a patient in any form that relates to the past, present or future physical or mental health of an individual. Additionally, employees and volunteers are prohibited from releasing scene or patient photographs or from discussing patient care, transport and activities on personal social media sites or the department's social media site without the expressed written permission of the department Privacy Officer.

## **8. DISCIPLINARY ACTION**

Any disciplinary action for violations of these guidelines will follow, and be consistent with, the Town of Milford Employee Handbook, the Town of Milford Ethics Policy and/or any applicable collective bargaining agreements.

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JANE E. YOUNG  
DEPUTY ATTORNEY GENERAL

July 8, 2021

**SENT VIA EMAIL ONLY**

John Shannon, Town Administrator  
Town of Milford  
[jshannon@milford.nh.gov](mailto:jshannon@milford.nh.gov)

Re: Cease and Desist Order (2021147840)

Dear Administrator Shannon:

On July 1, 2021, this Office received the Town of Milford's remediation plan. We have reviewed the Town's plan and it is acceptable.

This matter is closed.

Sincerely,

Nicholas A. Chong Yen  
Assistant Attorney General  
Election Law Unit  
(603) 271-3650  
[nicholas.chongyen@doj.nh.gov](mailto:nicholas.chongyen@doj.nh.gov)

cc: John Rattigan, Esquire