

**Mayor and Council of Federalsburg
Monday, November 21, 2022
Executive Session and Workshop @ 5:30 P.M.**

This Meeting is being held at the Mayor and Council Meeting Room located at 118 North Main Street. Citizens who wish to participate by video shall follow directions listed below:

Join Zoom Meeting

<https://us02web.zoom.us/j/87923326179?pwd=cEV5NVZiK2FzM0lwQnFsaU9hcGRTdz09>

Meeting ID: 879 2332 6179

Passcode: TOFWork

Agenda

- I. Executive Session – Personnel 5:30 – 6:00**
- II. Call to Order**
- III. Public Comment**
- IV. Presentation – Caroline County Council of Arts by Mr. Nicholas Tindall, Executive Director**
- V. Follow Up Review of Town Code of Ordinance Sections 239-8 and 239-12 (Private Well for Industrial Use)**
- VI. Review of Town Charter Chapter C Article IV – Officers and Employees**
- VII. Update – Street Paving Projects**
- VIII. January 2023 Meeting Dates**
- IX. Mayor & Council Action Items**
 - * Councilmember Windsor**
 - * Councilmember Sewell**

- * **Councilmember Phillips**
- * **Councilmember Willoughby**
- * **Mayor Abner**

X. Executive Session – Personnel

XI. Adjournment

NOTES:

THE MEETINGS ARE BEING RECORDED, PLEASE TURN OFF ALL CELLULAR DEVICES AND PAGERS DURING THE MEETING, PLEASE REMAIN QUIET, UNLESS ADDRESSING THE COUNCIL.

Please Note: Pursuant to the Annotated Code of Maryland, State Government Article Section 10-508(a), the Council by majority vote may retire to executive or closed session at any time during the meeting. Should the Council retire to executive or closed session; the chair will announce the reasons and a report will be issued at a future meeting disclosing the reasons for such session. Meetings are conducted in Open Session unless otherwise indicated. All or part of Mayor and Council meetings can be held in closed session under the authority of the state open meetings law by vote of the Mayor and Council.

Rules for Public Comment

The Mayor and Council invite and welcome comments at public meetings. The Mayor or presiding officer will recognize you. Please introduce yourself at the podium (spelling your last name, for recording purposes) and give the name of your street and block number (e.g., 100 block of Main Street).

Time limits for speaking are indicated on the meeting agenda. While speaking, please maintain a courteous tone and avoid personal attack.

TO: Mayor & Council Members
FR: Larry DiRe, Town Manager
DT: November 21, 2022
RE: Follow up Review of Town Code of Ordinance Sections 239-8 and 239-12
(Private Well for Industrial Use)

The proposed AquaCon industrial salmon grow and processing facility project raised a great deal of interest in the town's water and sewer utilities' processes and regulations. While all this information is posted on the town's website (www.townoffederalburg.org) finding the information may not be easy for those unfamiliar with the site or with municipal services in general. Indeed, residents of other jurisdictions would not need to visit the town's website except for a particular reason or interest. And that proposed development certainly classified as a particular reason or interest.

Staff brought forward the town's water and sewer ordinance sections as an informational report at the October 3, 2022 meeting. At that time staff stated the purpose was to provide a general overview of existing language without making specific recommendations for text amendment. Staff also stated at that time that such text amendment process was a worthwhile activity. To that end, at the November 7, 2022 regular monthly meeting staff provided the Town Code sections regulating the use of private wells for industrial use. Specifically, staff is recommending review and proposed text amendment to the following two sections.

Attachment A cites sections specific to the role of the mayor and town council in issuing a groundwater use permit for private wells as water source for industrial process. These are from the Code Chapter 239 (sections 239-12 and 239-8) defining the requirement for a town permit, the process involved and the permit fee structure. For consistency, staff recommends removing the specific fee cited in 239 – 8 and replacing it with language along the lines of “a fee set by the Mayor and Council” which will be reviewed annually as part of the budget process and can be revised through that process rather than through ordinance text amendment. The current fee of \$25.00 seems arbitrary and recent experienced has shown not close to recovering staff time costs involved in the process. Likewise, the referencing of 239 – 8 in 239 – 12 cites a similarly arbitrary multiplier and ignores the cost of professional engineering and other services in determining the accuracy of the data provided in the permit application. Staff recommends language allowing for full cost recovery of any professional services incurred by the town or any town contractor or agent in the application review process.

While the current language of section 239-12.A is descriptive, it remains somewhat procedurally ambiguous. As written the section speaks to “hearing thereon at one or more regular meeting of the Mayor and Council.” Specifics such as a pre-application hearing, or hearing at the completion of the application process are absent and could make for a process which treats different applicants differently simply due to ambiguity of language. An applicant should understand what would require more than one hearing. Likewise, the interested and impacted public should have clarity on the documentation available for review and comment, the duration of a comment period, the process(es) to

file comment as part of the public record, and information on what constitutes standing to appeal any decision. In fact, the ordinance would benefit from language defining an appeal process and standing to request appeal of the mayor and council's decision. As the recent experience demonstrated, by state and local law groundwater withdrawals are regulated by multiple jurisdictions. The town's ordinance is silent on the timing of application, review, and decision within the context of state permitting processes. While that silence provides discretion to allow an applicant to move forward ahead of, contemporaneously with, or only after the state's process the silence again can create a situation over time where different applicants are treated differently and can create a procedural due process conflict. Clarification of timing relative to the state permitting is advised.

Provided for information only at this time. Pending further discussion, provide direction to staff.

Attachment A

§ 239-8. Application; fee; drawings and specifications. Any person contemplating the construction of a private well for domestic use, outside irrigation purposes, refrigeration cooling purposes or the filling of swimming pools shall, previous to the beginning of any construction, make a formal application. The permit fee shall be ~~\$25 for each well set by the Mayor and Council, and adopted as part of the Town's fee schedule.~~ Applications for such permit, except wells referred to in Subsection C of this section, shall be in a form provided by the Codes Inspector. Whenever in the opinion of the Codes Inspector complete plans and specifications are needed to show ~~definitely~~ the desired installation for which the application is made, the applicant shall furnish such drawings and specifications. These drawings and specifications shall be drawn to scale and submitted in duplicate. If approved, one set shall be returned to the applicant marked approved, and one set shall be retained and filed as a permanent record in the office of the Codes Inspector.

§ 239-12. Use of private wells for industrial purposes.

A. Notwithstanding any of the provisions of this chapter, the use or replacement of existing private wells for industrial purposes may be permitted only upon specific prior approval of the Mayor and Council after formal application thereto and hearing thereon *the content of said application at the time of application, and the findings of the town's engineering firm at the conclusion of the application review* at one or more regular meetings of the Mayor and Council. *Mayor and Council may extend a public review and comment period up to fifteen (15) calendar days past the hearing date. The applicant is responsible for all costs incurred by the town and any of its agents in reviewing the application materials, on-site visits to the proposed well site, and advertising of said hearings.* ~~Such~~ Mayor and Council approval shall be evidenced by a resolution adopted by the Mayor and Council and spread upon its minutes. Such resolution shall set forth in precise terms the exact size, location, depth, use or uses and all other pertinent details with respect to the particular private well approved.

B. It shall be the intent of this section to permit the use of an existing well or to replace an existing well with one of equal depth, size and capacity but not to permit increased well capacity, except for uses permitted by this section. In the Mayor and Council's sole discretion, such resolution also may specify initial permit fees and annual permit renewal fees greater than those provided in § 239-8, ~~but such fees in no event shall exceed five times the amounts specified in such section.~~

C. No well shall be permitted nor used, if in the judgment of the Mayor and Council based upon the advice of its engineering firm, the use of the well shall adversely affect the public water supply, and operation of the water system of the Mayor and Council of Federalsburg.

TO: Mayor & Council Members
FR: Larry DiRe, Town Manager
DT: November 21, 2022
RE: Review of Town Charter Chapter C Article IV – Officers and Employees

Reviewing and when necessary, amending an organization's governing documents is an essential part of having an organization current on its requirements and obligations to the public. It is also an important exercise in aligning the governing documents with the contemporary operations, policies, practices, and procedures of the organization. To that end, staff is bringing this Town Charter Chapter Article to the mayor and council for review. Staff is also recommending amending the article for the sake of alignment with current town practices and reconciling operational efficiencies into the language.

The section below was last amended in January 6, 2020 by adopting Resolution 2019-06. That Resolution, passed by a four to one vote, clarified that the Mayor, with confirmation by the majority of the Council, may appoint specific town official on the first Monday of October after a Mayoral Election. Otherwise, the section was amended in 2004, 1930, and 1929. Staff is recommending three amendments to this section.

First, staff recommends removing the reference to the first Monday in October for several reasons. There is the likelihood that the Charter will be amended to reflect changes in the election process including the date of Election Day and potentially the duration of the mayoral term. The specific date requirement is removed for that purpose and replaced with a sixty-day time period. Appointing certain staff positions is an executive prerogative tied to legislative consent. The proposed text amendment does not restrict that executive power, nor does it remove or limit the role of the Council. Instead, a longer period of time is proposed to ensure that an orderly transition and/or continuity of administrative function exists regardless of the incumbency status of any particular elected or appointed positions.

The second text amendment strikes the listing of specific and seemingly random organizational positions. Based on review of operational needs, efficiency goals, and financial availability generating staff line positions should be an administrative matter brought to the Mayor and Council during budget preparation and removed from the town Charter. There are limited exceptions that need to be specified in the Charter, and those positions remain in the proposed text amendment. In no way is it either appropriate or desirable to list occupational duties in the Charter document due to the fluid nature of work tasks and corresponding skill sets needed to perform those tasks.

The third and final amendment strikes redundant language at the conclusion of the section. Compensation is managed through the grade and step table for all staff positions, which is amended every budget cycle and staff salary and benefits are approved with each respective fiscal year's budget. Duties are addressed administratively through the approved job descriptions and administrative updating of those descriptions to keep employees' knowledge, skills, and abilities aligned with the organization's operational needs.

ARTICLE IV Officers and Employees

§ C4-1. Officials appointed by Mayor. [P.L.L., 1930, Art. 6, sec. 206. 1929, Ch. 21, sec. 29; Res. No. 2004-03, 3-1-2004; 1-6-2020 by Res. No. 2019-06]

The Mayor, ~~on the first Monday of October~~ *not less than sixty days* after a Mayoral election, may appoint, subject to confirmation by a majority of the Council, a Town Manager, Town Attorney, ~~Building Inspector, Public Works Director, Main Street Manager, Grants Administrator,~~ and Chief of Police, ~~and a Code Enforcement Officer,~~ who shall serve at the pleasure of the Mayor and Council, subject to removal for cause. The Mayor and Council may provide for the appointment of such other officers or employees of said Town as it may be deemed necessary for the interests of said Town ~~from time to time and to prescribe the terms, compensation and duties of such other additional officers and employees.~~

The section below has not been amended since 2004, and otherwise remained in tact for a period approaching seventy-five years. While a case can be made for striking the entire section from the Charter and relying on defining language in the employee personnel manual, staff is recommending a text amendment to put a time-certain action requirement on the filling of vacancies, and flexibility to fill said vacancy for either part of or the entirety of the remaining term.

§ C4-2. Filling of vacancies. [P.L.L., 1930, Art. 6, sec. 208. 1929, Ch. 21, sec. 31; Res. No. 2004-03, 3-1-2004]

In the event that a vacancy shall occur in any office created under this Charter or which shall be created by the Mayor and Council of Federalsburg pursuant to the power conferred in this Charter by death, removal, resignation, failure to qualify or otherwise, the Mayor shall ~~as soon as convenient~~ *not more than sixty days* thereafter appoint another person to fill said office so vacated for *all or part of* the unexpired term, which appointment shall be submitted to the Council for confirmation and when confirmed the new appointee shall take office in the same manner as is heretofore provided, and shall have the same powers and duties as if he/she or she had been appointed in the first place and serve out the balance of said term.