Town Council Meeting Minutes

Thursday July 16, 2015, at 7:00 PM, in the Matthew Thornton Room

Chairman Harrington called the meeting of the Town Council to order at 7:00 p.m. Present at the meeting were Vice Chairman Mahon, Councilor Boyd, Councilor Dwyer, Councilor Koenig, Councilor Rothhaus, Town Manager Eileen Cabanel, and Assistant Town Manager/Finance Director Paul Micali. Councilor Vaillancourt was excused.

Pledge of Allegiance

Chairman Harrington led in the Pledge of Allegiance.

Announcements

The Town Council Retreat /Work Session will be held on Thursday, July 23, 2015 from 9:00 a.m. - 4:00 p.m. at the SERESC Conference Center located at 29 Commerce Drive in Bedford. Regular meetings of the Town Council will be conducted on Thursday, August 20th, September 10th, and September 24th at 7:00 p.m. in the Matthew Thornton Room.

The next Household Hazardous Waste collection will be held on Saturday, August 1st at the Nashua Public Works garage located at 9 Stadium Drive from 8:00 a.m. - Noon. For a list of acceptable materials please check the Solid Waste Division page on the Town website. The $10 fee covers 10 gallons or 20 pounds of material.

Kinder Morgan – Proposed Northeast Energy Direct (NED) Pipeline Project

- **Informational Reports and Updates**

  - Scoping Meetings with the Federal Energy Regulatory Commission (FERC) have been scheduled for: July 29th, Radisson Hotel, Nashua and July 30th, Milford Town Hall, 3rd floor. Both meetings are scheduled for 6:30 - 11:00 p.m. Chairman Harrington noted the Milford Town Hall is small in size, and believed to be without air conditioning. All citizens are encouraged to attend the meetings and provide testimony. Chairman Harrington will represent the Town Council providing both verbal and written testimony. A majority of the Town Council will likely be present.

  - The Council's packet included the recommended language for the Survey Access Agreement, which continues to be negotiated.

  - At the June 25, 2015 meeting, Councilor Vaillancourt provided a draft of a letter to the FERC, and requested the Council give it consideration. The letter states the Town of Merrimack supports the positions and concerns relayed to the FERC by the Town of Amherst in its June 8th letter, and offers additional and supplementary comments and concerns specifically related to Merrimack.

MOTION made by Councilor Boyd and seconded by Councilor Mahon that the Town Council authorize the Town Manager to affix her signature to the letter dated July 16, 2015, as presented.
MOTION CARRIED 6-0-0

- Chairman Harrington thanked Governor Hassan for the strong letter she addressed to the FERC requesting additional scoping meetings.

- Town Manager Cabanel informed the Council, on June 30th, she and Assistant Town Manager/Finance Director Micali attended a meeting of the New Hampshire Municipal Pipeline Coalition (Coalition) in the morning hours and a meeting between the Town of Amherst and representatives of Kinder Morgan in the afternoon. During the afternoon meeting new routes were proposed. Copies of the map presented at that meeting are available in the Town Manager's Office.

- On July 7th, Assistant Town Manager/Finance Director Micali attended a meeting with the Coalition and Congresswoman Kuster. A meeting is scheduled with Congressman Guinta on July 19th. A proposed settlement agreement has been drafted between the New Hampshire Public Utilities Commission (PUC) staff and Liberty Utilities regarding capacity need. The proposed agreement basically states PUC staff agrees with the statement made by Liberty Utilities that 115,000 dekatherms is needed. The next step is for the draft agreement to be ratified by the PUC.

- Kinder Morgan has responded to questions posed by the Town and members of the public (can be viewed here).
- Town Manager Cabanel received a telephone call from a representative of Kinder Morgan stating interest in conducting an Open House. The event will be held during the month of September at the James Mastricola Upper Elementary School.

- Senator Shaheen left a voicemail message for the Chairman of the Coalition stating she has reached out to the FERC requesting scoping meetings be delayed.

- Earlier in the day Kinder Morgan announced its Board of Directors approved proceeding with the NED Pipeline project at a 30" diameter pipe (rather than 36"). The anticipated cost of the project is $3.3 billion.

- **Action Items**

- Continue to press Kinder Morgan for a Public Meeting in Merrimack - **Meeting held 3/26/15**
- Place an action item on Feb 12th agenda requesting the council to take no action regarding request from Kinder Morgan to survey town-owned parcels until Merrimack Public Meeting - **Completed**
- Place NED Pipeline Update on future council agendas - **Completed 2/12/15**
- Update list of properties that directly about proposed pipeline route with a list of properties that fall into pipeline hazard zone - **Completed**
- Consider consultant to:
  - Research communities' property value effects of recent pipeline installations - **Engaged Avitar**
  - Evaluate impacts on the sewer line - **Engaged Wright Pierce**
    Reviewed first draft. Final Report should be provided by 6-5-15.

- Support Conservation Commission's efforts to update data for environmental impacts on HHNP and Gilmore Woods - **Ongoing**
- Support Merrimack Village District's efforts to protect Wellhead Protection Zone and Aquifer Protection Zone - **Ongoing**
- Request Kinder Morgan list of abutters notified of project and requests for permission to survey – **At the 4/28/15 meeting, Town Manager Cabanel asked Jim Hartman, Kinder Morgan Principal Land Specialist, for map and lot numbers of affected land owners and was denied the request.**

- Work with property owners to develop a list of who has been notified of the project and requests for surveys - **Completed**
- Maintain contacts at FERC and NH Congressional delegation - **Ongoing** (NH delegation attends Managers meetings)
- Consult with PSNH (Eversource) regarding where they are in the process with Kinder Morgan and Public Utilities Commission - **No response - No contract between parties (4/23/15)**
- Consult and share information with large companies (A-B/lnBev, Elbit, Premium Outlets, Fidelity, PanAm, PSNH, Pennichuck, etc.) - **Meeting held 2/26/15; will be ongoing**
- Section 106 of the National Historic Preservation Act of 1966 (NHPA) - **Pending formal application**
- Council voted to stand in strong opposition to the NED pipeline - Send letter to Governor/Federal Delegation
    - Letter to Governor - **Letter sent 4/14/15**
    - Letter to Congressional Delegation - **Letter sent 4/14/15**
    - Letter to Local Reps - **Letter sent 4/14/15**
- Council to continue attempts to settle on the Survey Access Agreement with Kinder Morgan – **Ongoing (between the Town's legal counsel and Kinder Morgan's legal counsel)**

Comments From the Press and Public

Debra Huffman, 60 Amherst Road

Commented the scoping meeting likely most convenient for Merrimack residents is the one being conducted in Nashua on the 29th of July. She spoke of the importance for Merrimack residents to attend even if not intending to provide testimony, as the level of participation indicates the level of interest/concern. Ms. Huffman thanked the Town departments for the questions posed to Kinder Morgan and the Town Manager for following up and obtaining a response.

Carol DiPirro, 10 Cambridge Drive

Remarked it sounds as if things are changing, e.g., proposals from the Town of Amherst now being proposed by Kinder Morgan. Chairman Harrington responded the information will likely be included in the next Resource Report. It is not known if that will be discussed at the scoping meeting. Ms. DiPirro stated she has requested the project be postponed if a new route is proposed. Chairman Harrington stated the Town Council will be sending a letter requesting a postponement for a number of reasons; that being one.

Recognitions, Resignations and Retirements

1. Recognition of the Retirement of Town Employee [Tabled at the June 25, 2015 Town Council Meeting]

Submitted by Human Resources Coordinator Sharon Marunicz

The Town Council will present a recognition award to Roger L. Descoteaux in recognition of his retirement from the Wastewater Division of the Town of Merrimack Public Works Department, effective June 30, 2015, with more than 32 years of full-time service.

James Taylor, Assistant Director/Wastewater, commented on having met Mr. Descoteaux in a night class at the University of Lowell in the early '80s. At the time, Mr. Descoteaux was working at the Manchester Wastewater Treatment Facility in the Industrial Pretreatment Program. Mr. Taylor informed

him Merrimack had just created a new Industrial Wastewater Pretreatment Manager position. Now, 32 years later, Mr. Descoteaux is retiring from that position.

Assistant Director Taylor stated Mr. Descoteaux took the program from inception and created a model program. In 1999, the EPA recognized the pretreatment program as one of the best run programs in the country. In 2010,
Mr. Descoteaux was recognized for a New England regional award. Assistant Director Taylor thanked Mr. Descoteaux for his dedication and years of service to the Town of Merrimack. Mr. Descoteaux was presented with an award recognizing his retirement after more than 32 years of full-time service to the Town of Merrimack.

2. **Recognition of Town Committee Members**
   Submitted by Town Council Chairman Nancy Harrington and Vice Chair Tom Mahon
   The Town Council will present recognition awards to the following individuals for their service to the Town of Merrimack:

   Kristen Newhall – Heritage Commission
   Lon S. Woods – Town Council

Chairman Harrington presented Kristen Newhall with a certificate recognizing her service to the community as a member of the Merrimack Heritage Commission.

Chairman Harrington presented Lon Woods with a plaque recognizing his service to the community as a member of the Merrimack Town Council.

Appointments - None

Public Hearing

1. **Public Hearing - NH Department of Homeland Security Grant Acceptance**
   Submitted by Captain Peter Albert
   The Town Council to hold a public hearing to consider the acceptance and expenditure of a grant from the New Hampshire Department of Homeland Security in the amount of approximately $35,250 for 5-day training of the Department's Containment Team, pursuant to Charter Article 8-15 and RSA 31:95-b.

Chairman Harrington stated the Public Hearing Notice identified the grant amount as $35,250. Although the Council was subsequently notified the grant would likely include additional funding for ammunition, the Council could only address what was publicly noticed. The additional $3,450 can be publicly noticed and addressed at a future meeting.

Lieutenant Matthew Tarleton, Merrimack Police Department, informed the Council the grant opportunity was brought to Captain Albert's attention by Emily Martuscello, Exercise Training Officer, New Hampshire Department of Safety & Homeland Security and Emergency Management. The department worked with Ms. Martuscello for the better part of last year developing policy around and discussing active shooter response. A live scenario was recently conducted at the high school, which concluded the year-long training.

Training is conducted by the Oguntz Group; a Veteran-owned business based in New Hampshire, which provides specialized training to police departments. The group tailors training to specific needs. The focus the department has been working on is active shooter. The week long training consists of two days at the Dalton, NH range for firearm training and the remaining three days on building related training. The old Merrimack Hotel is at their disposal for that purpose. The training will conclude at the James Mastricola Elementary School.

Chairman Harrington declared the Public Hearing open at 7:32 p.m.

No one from the public addressed the Council.

Chairman Harrington declared the Public Hearing closed at 7:33 p.m.

<u>MOTION</u> made by Councilor Boyd and seconded by Councilor Rothhaus to accept and authorize the expenditure of a grant from the New Hampshire Department of Homeland Security in the amount of approximately Thirty Five Thousand Two Hundred and Fifty Dollars ($35,250) for 5-day training of the Department's Containment Team, pursuant to Charter Article 8-15 and RSA 31:95-b, and furthermore that the Town Manager and/or her proxy be authorized to sign any and all paperwork necessary to perfect the grant. <u>MOTION CARRIED</u> 6-0-0

2. **Public Hearing – Zoning Ordinance Amendments**
   Submitted by Town Council Vice Chair Tom Mahon
   The Town Council will hold a public hearing to consider amendments to the Zoning Ordinance (Sections 1, 2, and 17), pursuant to RSA 675:6 & 675:7 and Charter Article V.

Chairman Harrington stated the item was incorrectly posted as a Public Hearing. Legal counsel has advised proper procedure would be for the proposed amendments to be introduced and the Ordinance receive a first reading. A Public Hearing will be conducted at a later date. The first reading will take place under Item #4 under New Business.

<u>Legislative Updates from State Representatives</u> - None

<u>Town Manager's Report</u>

The Governor and Council has approved the Transportation Alternatives Program (TAP) grant, which will be used towards the construction of approximately 2,500 linear feet of non-motorized multi-use path that will connect Watson Park to the pedestrian crossing of the Souhegan River that was installed adjacent to the F.E. Everett Turnpike Merrill's Marauders Bridge. The new path will connect the town center area to residential and recreational areas including Wildcat Falls Conservation Area and Merrimack High School. The consultant selection process has begun, and the Town is ready to move as fast as the Department of Transportation will allow.

The Manchester Street Bridge over Pennichuck ponds is now open. Vice Chairman Mahon noted the road has closed due to an ongoing water project.

Town-wide paving is progressing. For the latest updates check out the Town website or the Public Works Department's Facebook site.

The new waterfront parking area at Wasserman Park is now open. This parking is available only to Merrimack residents and requires proof of residency; current Town of Merrimack Transfer Station sticker or one of the rear view mirror hangtags valid for 2015. This new parking area features 20 parking spaces located at the bottom of the hill (on the site of the former Camp Dining Hall), making it convenient for residents to access the Town beach and eliminate the long climb uphill after enjoying a day at the lake.

Consent Agenda - None

Old Business

1. **Kinder Morgan Survey Agreement**
   Submitted by Town Manager Eileen Cabanel
   Latest updated version of the survey agreement to be discussed.

A copy of the draft Agreement with proposed changes was attached to the agenda. The first change, which has been agreed to, amends the dates of access from May 1, 2015 - November 30, 2015 to June 3, 2015 - November 30, 2015.

The second change proposed by the Town would amend the first sentence on page 3 to read: "The Town shall receive and have reasonable opportunity to review and request amendment of any report or other documentation of the results of TGP activities under the Agreement prior to submission to the FERC." Kinder Morgan has not expressed agreement with this amendment.

Chairman Harrington informed the viewing audience, the Council was informed, prior to the start of the meeting, that Kinder Morgan has made additional requests. Some were deemed acceptable to the Council and some were not. The final Agreement will be presented/available when complete.

New Business

1. **Art in the Park Event – Abbie Griffin Park & Town Hall Parking Lot**
   Submitted by Town Center Committee Member Jackie Flood
   Town Council to consider the request from the Town Center Committee to invite The Artists Association of Manchester to hold their annual event in Abbie Griffin Park on Saturday, September 26th.

Ms. Jackie Flood, Town Center Committee (Committee), stated the Manchester Artists Association (Association) draws artists from within and outside the State. In the past, the Committee has casually discussed an Art in the Park Event; however, there never seemed to be a real opportunity. Hearing that the Association was seeking another venue, the Committee reached out, and learned the Association would be interested in coming to Merrimack.

Lori LeFleur, Vice President, Manchester Artists Association, stated the Association has averaged between 20-30 artists, which are accommodated by pop-up tents. During events held in Manchester, the Association has been responsible for providing all necessary items, e.g., portable toilets, etc. There has not been a need for a police presence or traffic control. All that is required to put on the event is use of the park.

Town Manager Cabanel questioned if the event would consist of displaying and selling of art or simply displaying, and was informed the hope is to sell. When asked if there would be contests conducted, Ms. LeFleur stated judging takes place for 1st, 2nd, and 3rd place prizes, which is conducted by a professional artist. When asked, she stated they typically stick with two-dimensional art, e.g., drawing, photography, and digital art.

Ms. Flood referred to the schematic included with the agenda material, and commented on the number of artists the location could accommodate. She noted the date requested would coincide with the Merrimack Rocks event. This event should not overlap or compete for parking with the Merrimack Rocks event. Councilor Dwyer commented it is believed to be a good cross-over event in that people attending will learn of the fireworks scheduled for that evening. In the event of rain, the event would be postponed until the following day.

Councilor Koenig questioned the type of traffic anticipated. Ms. LeFleur stated the event would run from 9:30 a.m. to 5:00 p.m. The number of attendees can be unpredictable, particularly given a new venue. The Association is working towards providing music. Last year's event included a guitarist. It was noted the schematic includes a food booth. Ms. Flood questioned if the Council would object to a group/organization providing food at the event. Councilor Koenig stated he would not object, he was looking to understand the size of the event and whether it would be disruptive to people. It does not appear it would be. Ms. Flood stated she has attended similar events in Keene and Nashua in prior years, and witnessed a good deal of coming and going.

The suggestion was made that the Parks & Recreation Department might be able to provide a means for projecting music during the event, e.g., speakers, etc. Councilor Rothhaus stated his support of the event, and his hope the turnout is such that the event returns to Merrimack.

<u>MOTION</u> made by Councilor Rothhaus and seconded by Councilor Dwyer to allow the Art in the Park Event, sponsored by the Town Center Committee and The Artists Association of Manchester, to be conducted in the Abbie Griffin Park on Saturday, September 26th and that any associated fees be waived. <u>MOTION CARRIED</u> 6-0-0

2. Designation of Economic Revitalization Zone (ERZ) for Anheuser-Busch and Space Optics Research Labs

Submitted by Community Development Director Tim Thompson

Request Town Council authorization to submit application to the New Hampshire Department of Resources & Economic Development to designate the parcels located at 15 Caron Street and 221 D.W. Highway as Economic Revitalization Zones.

Tim Thompson, Director, Community Development stated, in 2012, he came before the Council along with representatives from the Economic Development Citizen's Advisory Committee. At that time, the Council authorized the designation of the former Zylas and Shaws parcels as Economic Revitalization Zone (ERZ) Districts through the State of New Hampshire. In addition to that, are several properties along Continental Boulevard, most notably Atrium Medical, as well as the parcels at 57 and 59 D.W. Highway (Nanocomp Technologies and the former Nashua Corp.), which are also existing ERZs in the community.

An ERZ is a State tax credit to the Business Profits and Business Enterprise Tax that businesses are eligible to apply for if their parcel is in a designated ERZ. There is no local impact in terms of taxation. Both Anheuser-Busch and Space Optics have expressed interest to the New Hampshire Department of

Resources & Economic Development (DRED) to consider designation as ERZs. Director Thompson stated he was contacted by Michael Bergeron, NH DRED, and has prepared the applications with the exception of signing them. Should the Council approve the request, the applications would be finalized and sent to the State. A response would be anticipated within a month's time.

The application requires approval from the Council allowing Director Thompson to sign the application along with the meeting minutes reflecting the Council has authorized that action.

Director Thompson stated the property at 15 Caron Street is approximately 15 acres in size, and encompasses a vacant facility. Space Optics has been working with NH DRED to move from Massachusetts into New Hampshire. Space Optics is an optical manufacturer dealing with aerospace technologies, laser sighting, etc. They are a complimentary business to a lot of different businesses in the area such as Kohlsman, Nanocomp, Insight Technology in Londonderry, etc.

Town Manager Cabanel questioned if Space Optics would be expanding its business into New Hampshire or would be relocation existing staff to New Hampshire. Director Thompson stated they would be moving from Massachusetts. He was unsure of the exact number of existing staff. The owner has indicated the likelihood of adding 3 additional staff if making the move to New Hampshire. The space would allow for future expansion possibilities.

Michael Bergeron, NH DRED, stated Space Optics has approximately 15 current employees and anticipates 3 new employees. They have struggled with finding the right type of building. He stated it to be a good example of a family run company looking to move to New Hampshire and establish roots.

Councilor Dwyer questioned why Caron Street is not a through street. Director Thompson did not have the information readily available. Mr. Nelson Disco stated the street used to go all the way to Route 3. The State rebuilt that section of Route 3 shortly after Anheuser Busch arrived (around 1972), and cut it off and made it go around. The intent was to limit the number of cuts into Route 3 and also the steepness of the hill. After Route 3 was relocated it came closer to properties and resulted in a steep drop-off to get down to Caron Street.

MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to authorize the Community Development Director, Tim Thompson, to submit an application to the New Hampshire Department of Resources & Economic Development to designate the parcels located at 15 Caron Street and 221 D.W. Highway as Economic Revitalization Zones

ON THE QUESTION

Councilor Boyd commented he thinks this is exciting. Solar Optics coming into Town speaks a lot about Merrimack making a commitment to promoting not only economic development, but some of the entrepreneurial spirit that exists. He thanked Mr. Bergeron and Director Thompson for introducing Solar Optics to the 8th largest community and the 16th safest community in the United States.

MOTION CARRIED 6-0-0

There being no objection, the Council went out of the regular order of business to take up Item #4.

4. Proposed Zoning Ordinance Amendments [First Reading]
Submitted by Town Council Vice Chair Tom Mahon
The Town Council to consider proposed amendments to the Zoning Ordinance (Sections 1, 2 and 17), pursuant to RSA 675:6 & 675:7 and Charter Article V.

Tim Thompson, Director, Community Development Division, stated, at the request of the Town Manager and members of the Council, he put together three different sections of zoning amendments as they relate to Alternative Treatment Centers (ATC) for the distribution of medical marijuana as has been recently authorized by State law and regulations from the State Department of Health & Human Services. He stated his awareness there is interest in the Town of Merrimack as a potential location for a dispensary. There are four different regions within the State that have been designated by Health & Human Services. There can be one dispensary in each of those four regions. He stated his belief Merrimack's region includes Nashua through to Bedford. In consultation with the Town's legal counsel it was determined, under the current zoning ordinance, if no amendments were to be made, the closest existing use would be retail pharmacy. This type of facility would have to be permitted anywhere where retail pharmacies are permitted currently, which is in the commercial districts and by Conditional Use Permit (CUP) in the industrial district.

Director Thompson stated, after meeting with the Town Manager and Vice Chairman Mahon, he put together a series of definitions, conditional use criteria, and sign requirements. There is a mix of ordinance language from ordinances that have been adopted in the cities of Concord, Dover, and Laconia. The proposed amendment in Section 1 (page 1-2) would create a definition for ATC and sub-definitions of ATC for cultivation location and non-cultivation location. Those definitions are modeled primarily off the City of Concord's Ordinance. The rest of that section would be renumbered.

The second set of amendments would be in Section 2.02.2 (page 2-12). That would be to set up CUP criteria that the Planning Board would need to consider. The proposal is to allow these by CUP in the same districts where they would be permitted today. Instead of it being a permitted use, it would require an extra level of scrutiny; they would have to meet the criteria from this section in order for the Planning Board to grant a CUP. This language is modeled primarily after the City of Dover's Ordinance.

The final proposed amendment would be within Section 17 (last page); to add signage requirements for ATCs. The requirements are modeled after those adopted by the City of Laconia.

Director Thompson stated should the Council wish to move forward with the Ordinance, it would move to a Planning Board Public Hearing, which would be posted the following day for the August 18th meeting of the Planning Board. The Town Council would meet on September 20th, at which time the Council could conduct its Public Hearing and second reading of the Ordinance.

Councilor Boyd questioned why no hours of operations are alluded to. Director Thompson responded that would be something the Planning Board could stipulate as part of the conditions of their approval and part of the CUP process. He remarked he would not think it unreasonable if the Council wished to add that into the proposed conditions applicants would have to meet. He believes the Planning Board would be amenable to discussing that. In general, he tries to avoid including hours of operation in a Land Use Ordinance as much as possible as he believes they are likely better suited for a general Code of Ordinances for the community.

Councilor Boyd noted the proposed Ordinance does not speak to growing. He questioned if the word "cultivate" or "manufacture" would allow ATCs to grow cannabis onsite. Director Thompson stated it

would not. He went on to state there are two different types of CUPs that would be allowed; in the Commercial District, what is proposed is that it would have to be a non-cultivation location. The proposed language does state that a potential cultivation location could be located, but only in an Industrial District. Per the State rules and regulations, it has to be internal to a building, and it really lends itself to more of a manufacturing type of operation. He stated his understanding, based on the information he is aware of, Merrimack is not being considered for a cultivation location; there is another community in the region being considered for that. When asked specifically about what is being considered, Director Thompson stated it to be a dispensary in a non-cultivation location.

Councilor Boyd questioned the issue of signage; whether it would be at the discretion of the Planning Board to work with the applicant to identify a name that would be fitting of a location within our community. Director Thompson stated his belief that would be the case. He noted he modeled the language regarding signage requirements after the model used by Laconia, however, given a recent U.S. Supreme Court case dealing with content based signage regulations, it is something he will want to review with the Town Attorney to ensure we are on safe legal grounds, and not going too far with the proposed language.

Councilor Dwyer commented whether pro or against, the State has taken a step in making it legal for medical purposes at this time. He believes it good for the Town to be proactive in having Ordinances in place. He noted it is not inevitable that such a facility would be located in Merrimack. Director Thompson stated many communities across the State have enacted similar ordinances over the past 6-8 months. Councilor Rothhaus questioned why such a facility would not be treated as a pharmacy. The cultivation component and identifying the appropriate zoning of that makes good sense; however, the Statute allows for the regulatory authority. He questioned why the Council would go through the additional effort. Director Thompson responded the primary reason, which he has learned through research is security. Given the type of materials at the facility, it would potentially be more susceptible to theft, vandalism, etc. The security aspect of it is a key component of the CUP criteria. Councilor Rothhaus commented it would be regulated to the extent a pharmacy is, e.g., you cannot buy Sudafed without showing a Driver's License. Chairman Harrington remarked that is only a component of the business of a pharmacy, and in the instance being discussed, it is the business. Councilor Rothhaus questioned if that has been addressed by the State agency responsible for regulation. Director Thompson replied he has not read the hundreds of pages of the Health & Human Services requirements. Councilor Rothhaus remarked the information provided the Council noted regulation by a State organization, and he was imagining that they would have rules in place regarding security, etc.

Chairman Harrington stated she would suspect that would be left up to the individual cities/towns to identify through Ordinance. Councilor Dwyer stated his suspicion it would be based on a pharmacy; it is a medical dispensary of a legal drug. He stated his assumption the security and hours of operation would reflect a typical pharmacy. Chairman Harrington commented with a pharmacy there is a particular section that has high security. In this instance, the entire facility would have to have high security. Director Thompson stated the criteria being proposed is that they need to have a security plan that takes into account the measures that will be taken to ensure the safe delivery of any product to the facility (including permitted times for delivery), how the product will be secured on site, and how patient transactions will be facilitated in order to ensure safety. The security plan shall be reviewed and approved by the Merrimack Police Department.

Chairman Harrington commented pharmacies have been around a long time and narcotic controls have been in place for a long time. This is relatively new, and perhaps we are being a little overly cautious, but better to err on the side of caution. Director Thompson stated his general philosophy with these

types of ordinance amendments is something that is new to a State or region is to be on the conservative side as it is easier to waive or grant waivers to the requirements than it is to retroactively add additional requirements to something that comes forward.

Chairman Harrington commented, because this legislation is so new, the public may be nervous. It is her belief the Council demonstrating concern and controls as much as possible might help in terms of those concerns. Councilor Boyd questioned whether Chairman Harrington, in her position as a Nurse, has ever been to a pharmacy that deals with compounded drugs. He spoke of having been to such a pharmacy in Littleton that was in a secure location and required visitors to be buzzed in. Councilor Boyd questioned whether the Council would like to establish hours within the body of the Ordinance or leave that to the jurisdiction of the Planning Board. Chairman Harrington stated her comfort with leaving that to the Planning Board.

Chairman Harrington reiterated the need for the Council to amend the language of the Ordinance to identify the criteria by which such facilities can be reviewed and considered by the Planning Board.

<u>MOTION</u> made by Councilor Boyd and seconded by Councilor Mahon to accept the first reading, refer the proposed amendments to the Zoning Ordinance to the Planning Board, and move to a second reading and Public Hearing to be scheduled for the Council's August 20, 2015 meeting.
<u>MOTION CARRIED</u> 6-0-0

The Council returned to the regular order of business.

3. Application and Membership Agreement with HealthTrust
Submitted by Town Manager Eileen Cabanel
The Town Council will consider amendments to the Application and Membership Agreement proposed by HealthTrust, to consider adopting the Certificate of Authorizing Resolution, and to authorize the Town Manager to sign any necessary paperwork.

Town Manager Cabanel noted receipt of a boilerplate Membership Agreement, Bylaws, and stand-alone agreements for COBRA Administration and Retiree Billing Services from the HealthTrust. As she took exception to some of the language included in the Agreement and the Bylaws regarding the return of surplus, she took it upon herself to recommend modifications to the Agreement. With regard to insurance, the Town of Merrimack is primarily rated on its own experience. The Bylaws that were provided included language stating the Town concurs with language within the Bylaws that states if the Town were to leave the Trust any monies remaining from previous years' surplus (of our own experience) would be forfeited. As an example, this year the Town anticipates receipt of $500,000 in surplus. If the language were not changed, a decision not to continue as a member of the Trust would result in the loss of that $500,000.

She requested the Agreement language be modified noting the matter is currently being adjudicated and the Town would accept the court's final decision on the matter.

Councilor Rothhaus remarked, his reading of the letter provided by Peter Bragdon, Executive Director, HealthTrust, Inc., suggests the language has been in place for a long time. Town Manager Cabanel responded she and Mr. Bragdon discussed that. He was of the opinion the Town is bound by it because it had agreed to the Bylaws in a previous agreement. Her response was they are a new organization with new bylaws, and as such, the Town would not be obligated under prior agreements with an old business and old bylaws.

Councilor Rothhaus remarked it appears as though they don't trust their own product, and they are trying to lock you in. He thanked the Town Manager for her diligent review of the documentation and subsequent request for modification. Councilor Dwyer commented five years ago he was amazed when suggesting the Council drop HealthTrust and shop around for another insurance carrier. The response had been there are no other options; other insurance companies do not sell the products to municipal employees, etc. It may be that situation remains. Town Manager Cabanel remarked the only issue she had was with that language hidden within the Bylaws and a clear statement within the Agreement indicating the Town's concurrence with the Bylaws.

Vice Chairman Mahon commented past agreements did not include language relative to retention of surplus within the Bylaws, it stated that within the body of the Agreement. Part of the reason for the requirement is the insurance is what is loosely known as a self-funding pool. The rationale was you would be leaving the other members of the pool on the hook if you were to depart taking your surplus with you, and there were subsequent claims. The other rationale was to hold onto you.

Town Manager Cabanel responded over the years, things have changed. In the past, smaller communities (under 100 employees) were in a pool and they all shared the same rate. That has been changed to communities having fewer than 50 employees. The larger the municipality the less they use of the pooling aspect. They primarily rate the larger municipalities on their own experiences.

Councilor Rothhaus questioned, and was told this came to light due to lawsuits. Vice Chairman Mahon stated they HealthTrust was sued by Salem, Portsmouth, and Dover. This language was one of the points of contention with the investigation by the Securities Division of the Secretary of State's Office, e.g. the retention of the surplus and how it was allocated for redistribution. Vice Chairman Mahon stated he would recuse himself from the vote because of who he had been employed by for many years.

Councilor Boyd questioned the downside to opposing the language. Town Manager Cabanel stated she is unaware. She stated she posed that question of Mr. Bragdon. He stated he would get back to her, but has not as of yet. She believes it to be harmless in the way it is written in that the Council would be stating the Town does not, as a philosophy, agree with the language. If the Court says we must, we will abide by it.

Councilor Boyd questioned the need to act quickly, and was told the Town has to if the desire is to belong to the HealthTrust. If making a decision to discontinue membership, the Town would have to acquire health insurance from another entity within the next few weeks. Councilor Dwyer questioned if the result would be that the Town continues its membership while taking the position of not agreeing with the philosophy. Town Manager Cabanel stated that is pretty much the result. The agreement would be modified, and if, in the future, the Court decides against the HealthTrust, the Town would have already taken the position of not agreeing to the terms outlined within the Bylaws.

<u>MOTION</u> made by Councilor Koenig and seconded by Councilor Rothhaus to accept the amendments to the Application and Membership Agreement as stated. <u>MOTION CARRIED</u> 5-0-1

Councilor Mahon Abstained

The following Certificate of Authorizing Resolution was read into the record:

"I hereby certify to HealthTrust, Inc. ("HealthTrust"), that the following is a true copy of a resolution adopted by the Governing Body of Town of Merrimack at a meeting duly held on July 16, 2015:

RESOLVED: That Town of Merrimack shall participate as a Member in the HealthTrust pooled risk management program for the provision of group medical and/or other benefit plans in accordance with the "Application and Membership Agreement" and NH RSA 5-B.

RESOLVED: That Eileen Cabanel, Town Manager, is hereby authorized and directed to execute and deliver to HealthTrust, on behalf of Town of Merrimack, the "Application and Membership Agreement" in substantially the form presented to this meeting.

RESOLVED: That Eileen Cabanel, Town Manager, is hereby authorized and directed to execute and deliver to HealthTrust a certificate of this resolution.

I further certify that the foregoing resolution remains in full force and effect without modification."

<u>MOTION</u> made by Councilor Dwyer and seconded by Councilor Koenig to adopt the Certificate of Authorizing Resolution as read

<u>ON THE QUESTION</u>

It was stated the language within the Resolution, which states "in substantially the form presented to this meeting" refers to the amended version presented to and accepted by the Council. Vice Chairman Mahon stated concern there could be confusion between the certificate provided by HealthTrust and the amended language accepted by the Council. Chairman Harrington stated the discussion of the Council captured in the minutes of the meeting will provide clarification of the intent of the Council to first amend the Application and Membership Agreement, and then adopt the Certificate of Authorizing Resolution.

Assistant Town Manager/Finance Director Micali suggested amending the Resolution to read as follows:

"I hereby certify to HealthTrust, Inc. ("HealthTrust"), that the following is a true copy of a resolution adopted by the Governing Body of Town of Merrimack at a meeting duly held on July 16, 2015, with the following modifications to #s 4, 8, and 14:

"*It is understood that this issue is currently being adjudicated. It should be noted that the Town does not agree to be bound by the section of Article V, Section 5.1 of the HealthTrust Bylaws regarding the definition of eligibility to participate in a return of surplus. The Town maintains that the surplus should accrue to the members who participated in the HealthTrust in the year in which the surplus was derived. It should further be noted that should the court ultimately determine that this provision is legal, the Town shall agree to be bound by it."

RESOLVED: That Town of Merrimack shall participate as a Member in the HealthTrust pooled risk management program for the provision of group medical and/or other benefit plans in accordance with the "Application and Membership Agreement" and NH RSA 5-B.

RESOLVED: That Eileen Cabanel, Town Manager, is hereby authorized and directed to execute and deliver to HealthTrust, on behalf of Town of Merrimack, the "Application and Membership Agreement" in substantially the form presented to this meeting.

RESOLVED: That Eileen Cabanel, Town Manager, is hereby authorized and directed to execute and deliver to HealthTrust a certificate of this resolution.

I further certify that the foregoing resolution remains in full force and effect without modification."

AMENDED MOTION made by Councilor Dwyer and seconded by Councilor Koenig to adopt the Certificate of Authorizing Resolution as modified

ON THE QUESTION

Councilor Boyd asked for clarification of his understanding the agreement is date certain, July 1, 2015, but there is no end date. It is all predicated on the language in the Bylaws should we wish to terminate membership notification has to be provided within 60 days of the date of termination, and that, once terminating membership, the Town cannot rejoin for a period of two years.

Assistant Town Manager/Finance Director Micali responded that is stated; however, the requirement can be, and has in the past, been waived.

Councilor Boyd questioned if it is known how often HealthTrust has changed its Bylaws, and if so, have they provided notification and sought acceptance of applicable changes. Town Manager Cabanel stated they do not. This is the first time she has seen a document like what was presented. Her past history has been receipt of a single sheet of paper stating rates, plans, etc., which would be agreed to. Assistant Town Manager/Finance Director Micali had stated this has come before the Council in the past in some other form, but she has never seen it in her experience.

Councilor Boyd questioned if other Councilors were bothered by language in the Bylaws that suggests membership is in perpetuity until a determination is made to terminate membership. Vice Chairman Mahon remarked it is a matter of automatic renewal. The only requirement is a 60-day notice of termination. Chairman Harrington and Councilor Koenig responded they are not bothered by that particular language. Town Manager Cabanel remarked it is a good point; if they were to change the Bylaws during our involvement, we would have concurred with them in whatever form they may take. Councilor Koenig clarified what was concurred with is the Bylaws that were presented. If changes are made, concurrence would be required.

Assistant Town Manager/Finance Director Micali noted 2011 was the last time a change was made to the Bylaws. At that time, the changes were brought before the Council, and the Council signed off on them. What is before the Council again is a new Bylaw change. Every time a change is made the information is provided to the membership.

MOTION CARRIED 5-0-1
Councilor Mahon Abstained

5. Protocol for Scoping Meetings
Submitted by Town Manager Eileen Cabanel
Discussion and review of protocol for scoping meetings.

Chairman Harrington reiterated Scoping Meetings with the FERC have been scheduled for July 29th, Radisson Hotel, Nashua and July 30th, Milford Town Hall, 3rd floor. Both meetings are scheduled for 6:30 - 11:00 p.m. Chairman Harrington will represent the Town Council in verbal and written testimony.

Legal counsel has prepared a set of FERC Scoping Meeting Tips, which were included as part of the Council's packet, and will be posted on the Town's website. It was suggested those providing testimony should focus remarks on the purpose of the meetings; environmental, safety, and economic impacts. Vice Chairman Mahon commented written remarks can be much more extensive and amplifying than verbal remarks.

Minutes

Approve the minutes from the June 25, 2015 Town Council meeting.

The following amendments were offered:

In all instances where it appears; replace "Dipirro" with "DiPirro"
Page 14, Lines 16 and 38; replace "Devons" with "Devens"
Page 15, Line 12; replace "quested" with "questioned"
Page 17, Line 5; replace "mic" with "microphone"
Pages 6, 7, and 9; replace "Chairman Harrington" with "Vice Chairman Mahon"
Page 17, Line 18; add "repair" between "system" and "makes"

MOTION made by Councilor Boyd and seconded by Councilor Koenig to approve the minutes of the June 25, 2015 Town Council meeting as amended. MOTION CARRIED 5-0-1
Councilor Harrington Abstained

Comments from the Press - None

Comments from the Public

Kimberly Dinsmore, 4 Whittier Road

Remarked listening to the comments regarding the upcoming scoping meetings, she is grateful the Council is putting as much information as possible on the Town's website. She spoke of the need for the public to be educated on the importance of the meetings and participation. She questioned if there are other venues through which the information could be presented to the public, and suggested the possibility of a letter in the Merrimack Journal even if timing would only allow for it to be posted on the online version.

Chairman Harrington stated that could be taken under advisement. It was suggested a Press Release could be a means of getting the information out.

Comments from the Council

Chairman Harrington expressed her deep concern for the events of the day, and expressed her condolences to the families of the Marines who were murdered in Chattanooga, TN.

Adjourn

MOTION made by Councilor Mahon and seconded by Councilor Boyd to adjourn the meeting.
MOTION CARRIED 6-0-0

The July 16, 2015 meeting of the Town Council was adjourned at 8:53 p.m.

Submitted by Dawn MacMillan

DRAFT