

Approved: September 25, 2014

Posted: September 30, 2014



## Town Council Meeting Minutes

Thursday, September 11, 2014, at 7:00 PM, in the Matthew Thornton Room

Chairman Harrington called the meeting of the Town Council to order at 7:07 p.m. Present at the meeting were Vice Chairman Mahon, Councilor Boyd, Councilor Dwyer, Councilor Koenig, Councilor Rothhaus, Councilor Woods, and Finance Director Paul Micali.

### Pledge of Allegiance

Councilor Rothhaus lead in the Pledge of Allegiance.

### Announcements

On behalf of the Merrimack Town Council, Chairman Harrington expressed heartfelt sympathy to the family, friends, and colleagues of Sergeant Edward Pane of the Merrimack Police Department. Sergeant Pane passed away on September 1, 2014. He was a 19 year veteran of the department; retiring in 2012 after being diagnosed with ALS. Ed was known for his strength of character and spirit in battling this disease, and the courage he demonstrated was an inspiration to all. Ed will forever be remembered, and he will always be missed.

Thirteen years ago today the tragedy of September 11<sup>th</sup> spurred a sequence of events that have challenged the United States and resulted in thousands of lost lives. On that day, almost 3,000 victims and first responders died including those in the Twin Towers, the Pentagon, and a Pennsylvania field. In addition, thousands of service men and women in the subsequent wars, four Americans in Benghazi, and most recently the two American journalists were a direct result of the terrorism started on that day. We all remember where we were 13 years ago, and how we felt during and after all of these tragic events. May the memories of all of these lives motivate us to regain our sense of unity for the common good and protection of our country. Never forget.

The Council observed a moment of silence in memory of Sergeant Ed Pane and the innocent souls that were taken as a result of September 11<sup>th</sup>, and the loved ones they left behind.

Regular meetings of the Town Council will be held on Thursday September 25th, October 9th, and October 23rd at 7:00 .m. in the Matthew Thornton Room.

A Joint meeting of the Town Council and the School Board will be conducted on Monday, September 29<sup>th</sup> at 7:00 p.m. in the Matthew Thornton Room.

The Police Department will once again be participating in the National Prescription Drug Take-Back Day on Saturday, September 27, 2014 between the hours of 10:00 a.m. and 2:00 p.m. Please visit the Police Department and dispense of your unwanted prescription medication in the lobby anonymously.

The Parks & Recreation Department will be hosting a Community Blood Drive on Thursday, October 2, 2014 from 2:00 - 7:00 p.m. in the Function Hall at Wasserman Park. To schedule an appointment to donate, please call the department at 882-1046.

## **Comments from the Press and Public**

Wendy Thomas, 10 Wildcat Falls

Read the following into the record: “I teach the Chicken Workshops for Merrimack’s Adult Education. I own a flock of chickens, and write about chickens for various magazines including Grit, Mother Earth News, and Backyard Poultry. I absolutely agree with the intent of the proposed Ordinance concerning roosters; however, the way it is written causes me not to support it. One thing that I stress in my chicken classes is that if you live in a residential area you have no business having a rooster. I advise my class participants to only consider roosters if they have 5 or more acres of land. Chickens are a thrifty way to get clean food. It is a way to reestablish our connection to food. These days many people raise chickens as pets and because chicks do not have external genitalia, unless they are sex linked, you might not know you have a rooster until literally the cock crows. There are ways to keep roosters quiet. In an article I wrote for Backyard Poultry I outlined various techniques that some people are willing to use including taking the bird into a garage at night, surgically removing vocal cords, which is a very drastic operation with an 80% mortality rate, and wearing something called a no crow collar.

If you are able to keep your rooster quiet then he should be allowed in your flock. There are other various special conditions regarding fowl. It is not unheard of where an alpha hen can become a rooster. They begin throwing off testosterone and exhibit male behavior and plumage. Sometimes these hens even start crowing. Technically this is not a rooster. The ordinance would not cover this potentially noisy situation. Guinea fowl are great for eating ticks, but they are very loud birds; male and female. The way this Ordinance is written the females would be allowed but the males wouldn’t, which is not too helpful for close neighbors. I had one neighbor who went out of her way to tell me that she loved our rooster crowing; it reminded her of her youth. Should you have to get rid of your rooster if your neighbors don’t mind? Likewise if you own a significant amount of land is it really fair to say that you can’t have roosters? In our town you are allowed to raise chickens and livestock, however, your neighbors have an absolute right to peace and quiet in their homes. Just like parents can be more tolerant of their children’s behavior, chicken owners tend to be more tolerant of their flock’s behavior including crowing. But make no mistake roosters in a residential area are a problem.

How do we find a happy medium? One way is through education. People need to know that you do not need a rooster to get eggs. You only need a rooster to get chicks. People who want to get chickens should have a local repository of information they can use and/or contact for information on chickens. Including fowls in a noise ordinance is fair, but if you have a noisy bird I would hope that any kind of penalty would come with a warning for the owner to find a home or to ethically dispose of the bird. Without such a grace period I fear that owners may panic and many roosters will be abandoned in the woods, drowned in the river or inhumanely killed in order to comply.

We want to eliminate and reduce the noise, but we certainly don’t want any animals to have to suffer as a result. I would suggest that a list of resources to help the owner remove the birds be provided. These resources can include links to Craigslist, a chick network, a humane society, or culling services. Anyone who has taken my class has access to my culling services. It is not something that I like to do, but I would rather put a bird down humanely whether it is sick, injured, or a rooster than to let it suffer.

In summary, I believe that the wording of the proposed Ordinance should be changed to the following: The term noisy, fowl, or simply birds be used instead of roosters/male birds, make no mention of a town-wide ban, a grace period should be instituted to allow proper removal of any noisy bird, and a process be put in place to give chicken owners information on ways to remove birds.”

**Recognitions, Resignations and Retirements** - None

**Appointments**

**1. Annual Review with the Technology Committee**

*Submitted by Technology Committee Chairman Brian McCarthy*

Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review with the Technology Committee. This agenda item is to highlight the committee’s significant actions, current projects, anticipated actions, and to raise any concerns the Council should know or could act on.

Brian McCarthy, Chairman, Technology Committee, stated the Committee has met on 6 occasions since last before the Council. During that time the Committee has gained a member and lost a member. Membership remains at 5 with one open position.

Over a year ago, the Committee approved a vendor to redo the Town website. The Committee has reviewed information provided and will be discussing forward movement at its meeting later this month. The Economic Development Department, desiring a new website, put out an RFP, which the Committee reviewed. With the passing of the budget and forward movement on the redo of the Town website, the efforts geared specifically to the Economic Development Department have been tabled.

The Welfare Department was looking to revamp/replace software. The Committee met on several occasions to discuss this. Review of the initial contract lead to the conclusion the Town could not engage in a contract where there were concerns with the software itself and issues of liability. The Committee eventually made its recommendation the Town not sign the contract in the form presented. Since that time, contract language has been amended, and the Town is now in a position to sign. Mr. McCarthy commented it had appeared the vendor did not wish to change the language until the City of Nashua came forward citing the same issues.

Chairman Harrington spoke of the Committee’s value. Vice Chairman Mahon commented back in ’91 or ’92 there was an effort to require cities and towns to settle on one particular software program, which would have been at a minimum cost of \$15,000. Mr. McCarthy spoke of issues of privacy, etc., which were not initially addressed in the contract.

**Public Hearing**

**1. Public Hearing – Changes to Chapter A198, Administrative Code**

*Submitted by Town Manager Eileen Cabanel*

The Town Council will hold a public hearing to consider the changes to Chapter A198, Administrative Code of the Merrimack Town Code to incorporate Assistant Town Manager title and duties added to the Finance Director position, pursuant to Charter Article V.

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*Chairman Harrington declared the Public Hearing open at 7:22 p.m.*

*Chairman Harrington opened the floor for public comment. No one from the public addressed the Council.*

*Chairman Harrington declared the Public Hearing closed at 7:23 p.m.*

**MOTION made by Councilor Mahon and seconded by Councilor Woods to move the item to the Consent Agenda at the Council's next regular meeting. MOTION CARRIED 7-0-0**

**Legislative Updates from State Representatives** - None

### **Town Manager's Report**

The Fire Department has utilized the AutoPulse CPR devices approved by the Town Council five times since they've been placed in service, and have transported three patients to area hospitals with a return of spontaneous circulation. We are grateful to Catholic Medical Center for their generous donation.

### **Consent Agenda**

**1. Zoning Ordinance Amendments (Self-Storage Facilities) (Final Reading)**

*Submitted by Community Development Director Tim Thompson*

The Town Council to consider the Planning Board's recommended amendments to the Zoning Ordinance (Sections 1.03, 2.02.3 & 2.02.4(B)) regarding Self-Storage Facilities, pursuant to RSA 675:2 and Charter Article V, Section 5-4.

**MOTION made by Councilor Boyd and seconded by Councilor Mahon to move the Consent Agenda. MOTION CARRIED 7-0-0**

Councilor Boyd thanked Community Development Director, Timothy Thompson, for his efforts in this regard.

### **Old Business**

**1. Highway Garage Discussion**

*Submitted by Town Council Chairman Nancy Harrington*

Discussion on the status of the Highway Garage initiative

Chairman Harrington noted, at its retreat, the Council identified the highway garage as one of the top priorities/goals. She questioned the will of the Council with regard to placing the highway garage on the ballot for this coming April.

Councilor Boyd questioned under what context; bonding or other opportunity in Town that may cause the Council to reevaluate whether owning is advantageous versus leasing/renting. Vice Chairman

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Mahon responded earlier in the week the Fairpoint facility was toured. Part of the reason for that was to look at the construction/layout and see if it would provide any ideas that could be used to reduce cost or make the facility more efficient for our use. There was no thought to use that facility for anything else as a retrofit would be pretty expensive. The building is in a mild state of disrepair. He stated his belief the desire is to sell the property rather than lease it, and the price is rather high. Councilor Rothhaus stated his opinion it is an important project, and he would be pleased to see it on the ballot again this year. He spoke of the discussion at the last meeting, which was sobering. At the time of the Retreat the project was viewed highly and the necessity could be seen, but the commentary received of just throw it back out on the table again without any change other than the price tag, might be hazardous. He commented when having the ability to see the project and understand it, people embrace it. All who attended the open house agreed with the necessity. The only concern heard was the overlapping of bonds.

Councilor Dwyer stated he was a member of the team that put the proposal together, and the team could not have done better. He is uncertain whether or not placing the project back on the ballot would be wise. A few have spoken of the bond issue. The Town has a paid expert who has advised if considering waiting a year or two the numbers are too close to argue about. In the big picture of things, that should not be considered a high priority part of the discussion.

Councilor Dwyer stated, if the project is not placed on the ballot, he intends to motion for the purchase of paint. We should not impact the property values of the surrounding area because the highway garage looks like a mess. He added, if no highway garage, there is the need to examine the workings of what occurs onsite; perhaps vehicles belonging to the police and fire departments are sent elsewhere for oil changes and other maintenance.

Councilor Koenig stated his agreement a great job was done in presenting the needs; however he believes there to have been a few areas that could have been improved upon. One area is that of the visual presentation. Another area that he does not believe was managed correctly was the cost and financial impacts. Overlapping bonds is a small change issue that the Council needs to make the citizenry understand. The increasing cost of bonding is a big cost factor, and the longer we wait, as the economy improves, that cost factor could wipe out any savings that could be achieved over finishing off another bond at a small amount. He stated his belief the Town is at a low bond rate at this point as far as the amount of financing being carried, and could easily handle that effort.

He stated bonding makes financial sense. We are talking about paying for something as we use it instead of collecting money in the bank and paying for it after we have collected it. The advantage is the overall cost is less as you would not be paying interest on the bond. The disadvantage is you would be charging people who would get no benefit from it. The desire is to get the garage fixed so that everybody in Town can get the benefit of the improved highway maintenance, snow removal, etc. He suggested those and perhaps other areas could be improved upon to provide an understanding and/or market the project.

He noted a few Councilors met with a program manager who had some other ideas. In the prior discussion of funding, consideration was given to hiring a program manager to help put the presentations together in a more finished and complete package. That effort was not funded; however,

could be. We could help the citizenry understand the necessity, cost factors, and exactly what is being brought forward so that we could get it to move forward.

Vice Chairman Mahon stated his desire to first see an analysis on some of the points that have been made regarding the potential increase in the cost of bonding as well as increased construction costs over time. He would like to see an analysis brought forward for public consumption. He remarked the reason the project did not come to fruition is because it did not meet the threshold for a bond (2/3).

Councilor Dwyer stated concern with expending funds on additional drawings, etc. He remarked the numbers were there. He stated a concern a better presentation would be made with the same result. He would not want to see additional money spent on the presentation. He stated he is in favor of placing the project back on the ballot; however, if not successful, the Council should be prepared to look at the facility in a different way.

Chairman Harrington stated her belief, after two unsuccessful attempts to gain approval for bonding, on a fairly unchanged proposal, people begin to become annoyed. Vice Chairman Mahon remarked we are cursed with the SB2 balloting. When you are on the floor of a Town meeting people can get up and explain why they were not in favor of something or they would be talking to each other, and you could gain a sense of the sentiment. It also enabled people to look around and sense that there was some way to reach consensus on a number.

Councilor Boyd suggested putting out the word that another subcommittee would be formed. If unable to get 8 volunteers to put the time and energy into another committee that would be very telling. Councilor Boyd stated that he is very reticent about putting this back on the ballot so soon. He has heard the same concerns regarding bonding. He suggested it is not the work the committee did about coming up with something utilitarian, it is explaining to the people we are not going to break the bank. The finance team has done a good job to put us in a position where we can bond for something like this. He got the impression some might equate a bond with a mortgage and look at it as taking on a fourth mortgage. The education piece on bonding and its impact to the community was not communicated. He suggested it is not taking the cover page off of the document that will make a difference, but going out and explaining the numbers and how it all works.

Vice Chairman Mahon remarked there is no way to gauge the reason the project did not pass. He reiterated the proposal was supported by a great many; however, all of the other things come into play. He stated his personal opinion there are times when enough voters aren't comfortable with a decision and they will grasp at any reason as to why it didn't go forward. He stated his opinion the discussion is premature and should occur as part of the budget process, and staff should be asked to provide a finer analysis.

Councilor Boyd questioned the timeframe required for a decision in order to make a commitment to place the project on the ballot. Chairman Harrington remarked, if intending to place the item on the ballot, preparation should not wait until January to begin. There is the need to get a committee together to evaluate what was done, what can be done better, etc. Councilor Dwyer reiterated if unable to get a robust committee of 8 committed to this work, it is a dead issue. Chairman Harrington stated agreement, if deciding to place on the ballot, there is the need to get those 8 individuals onboard and get the facts updated for those individuals so they can make a different kind of presentation.

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**MOTION made by Councilor Dwyer and seconded by Councilor Boyd to form a committee to study the proposal for the highway garage and associated bonding with the intent of placing it on the ballot in April**

ON THE QUESTION

Vice Chairman Mahon questioned what was being asked of the committee. Chairman Harrington suggested a motion to pursue whatever is necessary to have the project placed on the ballot in April. Councilor Rothhaus suggested committee size, charge, etc. could be worked out at a later meeting. Councilor Dwyer suggested that would be putting the cart before the horse; the committee will make that recommendation. Councilor Boyd stated a desire for a committee to make a recommendation. Vice Chairman Mahon stated if that is to occur the committee would have to make a recommendation by about the 1<sup>st</sup> of December.

Councilor Rothhaus suggested, if Councilor Dwyer were willing to withdraw his motion, the item could be placed on the agenda for the next meeting. At that time, the makeup and charge of the committee could be identified.

Councilor Dwyer suggested if not getting a committee off the ground now, there will not be sufficient time for the committee to conduct the work requested of it. Councilor Boyd stated agreement. Chairman Harrington remarked, if the consensus of the Council were not to proceed, there would be no need to establish a committee. Councilor Boyd stated his belief putting together the committee expresses the intent the Council is desirous of a highway garage. Vice Chairman Mahon stated his view establishing the committee would be requesting the information be put together and brought before the Council to evaluate and make the decision as to whether or not the project is put before the voters. Going through the exercise does not signify the project will be placed on the ballot. The Council should have the freedom to make that decision one way or the other. The Committee would simply be asked to gather the information and determine if there is further financial analysis that will be helpful.

Chairman Harrington stated her personal opinion, at this point, would be not to place the project on the ballot in April. Therefore, she has no interest in the formation of a committee. She would vote against the formation of a committee, not on the face value of the committee, but because she does not believe there to be sufficient time and resources to do the work well enough to be properly prepared for April. Councilor Dwyer stated he is neither in support of or opposed to the project being on the ballot in April.

Councilor Rothhaus questioned when the makeup and charge of the committee would be determined. Councilor Dwyer stated there to be 7 weeks. He believes there would be the need for 10-14 meetings in order to get the work accomplished. He stated it to be vital to come to a decision right away to get the committee off the ground.

Director Micali stated if the Council so chooses, advertising for committee members could begin the following day. The names of volunteers willing to serve on the committee could be presented at the Council's next regular meeting. The timeframe is tight; November is a short month with the holiday,

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work on the CIP, and budget. He spoke of having met with the Construction Manager who has stated you would want to be ready to go and hit the ground December 1<sup>st</sup> with presentations and getting the constituency on board. It is late in the process at this time to get an architect to do any kind of rendering of a facility.

Councilor Woods commented if he were a member of the public viewing the meeting and having just heard the remarks of Director Micali, his first reaction would be it is another rush job, the Council is not taking its own advice in terms of being sure that what they are presenting has had the benefit of the time for a myriad of people; not only a citizen committee or the best budget sense of the Council, but contractors, architects, etc. to really put a quality product forward. He stated his mind has not been changed by the discussion. He will not support putting the project on the ballot, at this time.

Vice Chairman Mahon stated he has changed his mind. The time constraint is too much. It would come across as trying to shove something down people's throats.

### **MOTION WITHDRAWN**

Councilor Boyd stated his agreement with the remarks made by Councilor Woods; however, questioned whether there is any harm in the formation of a committee at this time to achieve forward movement. He stated that he would not want to come across as jamming something down the voters' throats. Councilor Koenig remarked, "Did the need for the garage go away because the garage didn't pass; the answer is clearly no, the need is still there." The discrepancies are still there and will not go away. He stated his disappointment and belief it is important to move forward with things that are urgent. He remarked we would not be starting at ground zero. A lot of the information on hand is very valuable, and he believes half of the time stated would be needed to clean up, enhance, and ensure the message of the needs comes across even stronger.

Councilor Koenig commented he understands the concern around rushing, and from listening to what people have said, if he were in the public he would say the Council has no interest in this. He remarked, just by the negativity presented during this discussion, the Council has probably lost whatever percentage of the public we wanted to get. This absolutely needs to go forward. It is a need in this Town, and we have to find a way to address that. He stated there is no option of not doing it. He suggested the Council would find itself in a bind financially, employment wise, etc. The State could come down and shut us down, and then we would really be in deep water trying to figure out how to maintain vehicles and roads.

Councilor Koenig stated he did not wish to scare anyone; the last thing he would want to do is say if they shut us down we are in deep trouble, but we are. The fact is the situation is bad and gets worse on a daily basis instead of better. It will not improve itself, and a coat of paint will not fix the problem. Councilor Dwyer stated the Town is not bound by OSHA rules. A Public Works garage can do what it wants and cannot be shut down. Vice Chairman Mahon commented you are giving the impression they are working in an unsafe environment, and he does not believe that to be the intent.

Councilor Woods stated he is not against accomplishing the task of a new highway garage as he also recognizes the need. However, sometimes it is best to make haste slowly. He stated his belief that is where we are at. He commented he is not suggesting the need went away because not enough votes were gained to bond for it. It needs to get done in the fashion the Council has talked about and, he



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believes, all have agreed upon. Councilor Koenig stated his comments were based on the entirety of the discussion of the Council. He stated his point was to bring back the fact there is a need and a reality. We can't just say we weren't happy so we will walk away from this. It has to be resolved.

**MOTION made by Councilor Koenig and seconded by Councilor Dwyer to proceed with the intent to place the issuance of bonds for the highway garage on the ballot in April**

**ON THE QUESTION**

Councilor Koenig noted the motion is made with the understanding the information that comes back to the Council may cause it to reconsider.

**MOTION CARRIED**

**4-3-0**

*Councilors Mahon, Harrington, and Woods voted in opposition*

Councilor Koenig volunteered to serve on the committee.

**New Business**

**1. Noise Ordinance Proposal**

*Submitted by Steven Tomasso*

To request a noise ordinance (specifically to roosters) to be incorporated in our Town ordinances and/or regulations.

Mr. Steven Tomasso spoke of being before the Council a few weeks prior in reference to very noisy roosters. He spoke of the level of frustration that resulted from weeks of trying to deal with a neighbor to eliminate the noise, to no avail. He approached the Police Department and was informed there was no means of enforcement, e.g., ordinance. He also approached the Town Manager and was informed there is no means of enforcement. As a result, he is seeking assistance from the Town Council. He stated he has asked for nothing more than control of the noise, specifically with regard to roosters.

Mr. Tomasso spoke of the previous public speaker and information she provided. He spoke of the level of frustration he and his family has endured, their inability to utilize their deck/yard beginning at 5:00 a.m. and the continual noise of a rooster throughout the day. He stated it was the level of frustration that resulted in the language he put forward as a proposed ordinance. He stated a willingness to discuss/debate. He noted the proposed language includes captions from noise ordinances in Manchester and Nashua, which he believes would satisfy the issue.

Mr. Tomasso commented there are a few in Town who own roosters and are keeping them quiet. However, there are others that have roosters causing this disruption to quality of life for the surrounding residents with the knowledge there is no consequence. He stated the desire for an ordinance to be adopted in some fashion. Councilor Rothhaus questioned whether there were other difficulties experienced prior to the rooster issue. Mr. Tomasso responded there were issues with dirt bikes and motorcycle noise a few years back.

Councilor Koenig commented he did not see an ordinance in the draft language provided. He noted there are a lot of thoughts included, some of which go a little to the extreme. He noted a letter received

from Bob McCabe, Chairman of the Agricultural Commission stating the Commission would not endorse this type of ordinance. What he is not clear about is whether the position of the Commission is based upon specific language suggested, the extent, or if there is a compromise that could be reached. Councilor Koenig noted an ordinance such as this could impact all of the small farmers, etc. in Town, and the Council needs to understand the far reaching impact.

He remarked there have been discussions of noise ordinances in the past, and it has always been extremely difficult to determine how to manage something like that and the subsequent impacts. He stated he was open to discussion although believes some of the language suggested by Mr. Tomasso to be extreme. He questioned, of the information provided, what language was being suggested for the ordinance. Mr. Tomasso responded the two sentences that are bolded are what he was proposing for language. The remaining information was intended as backup. Councilor Koenig stated his opinion that is clearly not enough information for the Council to be able to enforce anything.

Mr. Tomasso reiterated his willingness to compromise on language. He added, if the Council does nothing more than complement the existing noise ordinance for barking dogs, he would be very pleased. Councilor Koenig noted roosters are not the only problem with respect to birds. There is the need to ensure the Council does not discriminate or limit itself to the point where it will have to continually amend the ordinance for angry hens, hawks, etc.

Councilor Dwyer if the language: “No person shall: keeping of any animal or bird by which causing frequent or long continued noise shall disturb the comfort or repose of any person in a neighboring premises.” were codified in ordinance, should the police be called they could make a judgment call; is it a dog that is barking for 6 hours straight, did the crow just crow at 5:30 a.m. and has not been heard from since, etc.

Chairman Harrington noted the lack of consequence. Vice Chairman Mahon agreed what was presented as a draft ordinance is a collection of thoughts. He remarked this goes back to difficulties experienced in the past with other noise ordinance proposals. The issue comes down to who makes a judgment, how that judgment is made, and what the sanction is. Chairman Harrington commented any proposed language should be vetted by the police department. Vice Chairman Mahon noted counsel would determine whether or not it would be legally enforceable.

Councilor Rothhaus spoke of noise complaints in the past relative to construction noise. He understands Mr. Tomasso’s interest is in a noise ordinance to address roosters; however, if addressing the issue of noise, it should be comprehensive and all encompassing. Noise ordinances have been discussed in the past, and are a mighty task to bring to conclusion and result in a document that is enforceable. Councilor Koenig remarked it seems like a somewhat trivial thing; put a statement in that says don’t have noisy animals on your property or something like that, but it becomes much more complicated. He provided the example of what has occurred with the sign ordinance, it is incredible how difficult it is to get some to agree this is an enforceable and actionable ordinance. He agreed there would need to be involvement by the police department and legal counsel.

Mr. Tomasso questioned how to go about accomplishing the task. Councilor Dwyer stated a member of the Council would have to motion to form a sub-committee. That motion would have to be seconded and pass by a majority vote of the Council. Once a sub-committee is in place its deliberations would take several months. At conclusion, the sub-committee would make a

recommendation to the Council for consideration. Vice Chairman Mahon suggested the process could be as simple as directing the Town Manager to contact the Town Attorney to develop a draft ordinance for consideration by the Council.

Mr. Tomasso questioned how he would persuade the Council to take such action. Councilor Rothhaus stated he would require input from the Town Manager prior to making a decision on moving forward particularly in light of the magnitude of the task. He remarked legal counsel could be asked to prepare something, but it would likely be basic or perhaps boilerplate from another community. He suggested review of noise ordinances adopted by communities with similar characteristics as Merrimack. Councilor Dwyer suggested such ordinances are rare in towns in New Hampshire.

Councilor Rothhaus reiterated a desire to receive input from the Town Manager. Councilor Dwyer stated he is not opposed to seeking input from the Town Manager and having a further discussion once that input has been received. Chairman Harrington stated the Council would seek advice from the Town Manager regarding feasibility, e.g., what would be involved in such an effort. Director Micali requested clarification if the Council was seeking information on a comprehensive ordinance or one specific to a particular noise. It was suggested recommendations be provided as to whether an ordinance should be all encompassing or specific to this particular issue, and what would be involved in developing an ordinance. Chairman Harrington stated her only parameter is that comparisons be with a comparable community.

Vice Chairman Mahon reminded the Council of a planned absence of the Town Manager. Chairman Harrington stated the Council would have to await her return. Vice Chairman Mahon suggested a request be made for a legal opinion, providing parameters, backup information, and concerns with utilizing language found in city ordinances as opposed to a comparable town.

***The consensus of the Council was to seek a legal opinion.***

Councilor Koenig stated his belief the Council would not be able to incorporate language suggested with regard to grandfathering. Councilor Rothhaus stated he takes issue when a use was in place prior to an ordinance prohibiting it. He remarked he does not believe that to be the particular situation being discussed as he believes Mr. Tomasso has resided at his location longer than the use he is opposed to. Mr. Eber Currier, Agricultural Commission, stated taxpayers pay for the UNH Cooperative Extension. George Hamilton works for the Cooperative Extension and is an advisor who visits local farms. Mr. Currier suggested the individuals contact Mr. Hamilton to see if he can be of assistance. His contact information is 641-6060. Mr. Currier stated his belief Mr. Hamilton would be able to come out and inform those involved of how to properly address the noise the roosters are making. He suggested this route be considered as opposed to developing a noise ordinance for the Town. He remarked Gale McWilliam Jellie, Director, Department of Agriculture, has stated a desire for the Town to be cautious, and if establishing a noise ordinance to be specific about it, e.g., addressing only the noise roosters are making as opposed to noise from farming equipment, etc.

Mr. Currier commented in the 30 years he has been farming in Merrimack, this is the first time he has heard of a noise from a fowl impacting another neighbor. Should the Council determine the need for an ordinance, he requested it be restricted.

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Wendy Thomas, 10 Wildcat Falls

Stated surprise with Mr. Currier's remarks regarding it being a rare occasion for complaints to be received. That is contrary to her experience. With the popularity of backyard poultry, more and more people are getting roosters. A lot of the times they have a rooster and don't even know they have it. By the time they find out it is a rooster it has become a pet. With respect to Mr. Tomasso, a rooster crows to warn the flock, e.g., at night if there is a dog walking by the coop the rooster will crow, if a skunk walks by the rooster will crow, if a branch falls on the coop the rooster will crow, etc. She commented she has had roosters, and it sounds and feels like somebody is putting a drill into your head. Roosters are a problem when in close proximity to neighbors.

Peter Gagnon, Agricultural Commission, commented he does not believe the issue has been clearly established to be related to agriculture in the sense that agriculture is a permitted use in the Town of Merrimack and is governed by State law (RSA 21:34-a). Anyone growing or selling products has to meet certain State standards. In order to maintain licenses with the State individuals are required to take courses and be certified every 3 years.

He stated his opinion what is before the Council is an issue of land use or nuisance ordinances. If it were to become an issue of agriculture, language within the zoning ordinances speaks to change of land to one or more agricultural use as defined herein or the expansion of an existing agricultural use shall be subject to non-residential site review by the Planning Board. The language dates back to the late '80s when the laws were established. Any existing use that is agricultural must conform to best management practices dealing with noise, smoke, odor, applications of pesticides, etc.

Chairman Harrington questioned if what was being suggested was that if someone were to obtain a flock of chickens that puts them into a situation where they would have to come before the Planning Board, and was informed that is not what was being stated. Mr. Gagnon noted additional language included in the Zoning Ordinance, which reads: "No use of any kind shall be permitted in any district, if it in any way would be injurious, noxious, or offensive by way of odor, fumes, smoke, dust, vibrations, noise, light, or other objectionable features or if it would be hazardous to the community on account of fire or explosion or any other cause. The Planning Board shall adopt such standards and regulations as it may deem necessary in order to help ascertain conformance with the above regulations."

The regulations have been applied to blasting, stone crushing, noises that were affecting neighborhoods, etc., and have been successful. He stated the Town does have regulations. The regulations address the issue quite comprehensively. Standards can be adopted in accordance with that, which would be enforceable under the Town zoning ordinances.

Chairman Harrington questioned if what was being suggested was that it would be wise for Mr. Tomasso to speak with the Community Development Department in terms of existing regulations? Mr. Gagnon responded there is an issue that seems to surface that the Town of Merrimack does not have noise regulations, and the fact is it does through its zoning ordinances. Councilor Dwyer agreed with the comments made; however noted there is no enforceability. Although Mr. Gagnon is

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technically right that prohibitions are identified within the zoning ordinance, there is no enforcement aspect.

Vice Chairman Mahon remarked that is not quite true, and provided the example of blasting conducted for the outlet malls. The Planning Board was quite active in dealing with the constraints and went to great lengths during the site review process to determine some pretty detailed methodologies on how they would determine whether or not the blaster was within the established requirements. Councilor Dwyer noted that was taken on as a separate construction zone project. Vice Chairman Mahon stated that came under the purview Mr. Gagnon was discussing; that they have control over. Councilor Dwyer noted the fire department enforced the requirements. Vice Chairman Mahon stated the fire department is the regulator of that in the Town. Complaints went through the fire department.

He remarked as the language states “adopt such standards and regulations as it may deem necessary in order to help ascertain conformance with the above regulations.” he wonders how they will deal with farm animals; what standards and regulations might they have to deal with that. While there are applications in the zoning ordinances where they do have some control and authority over them, it is not as all-encompassing as some might think. When asked if he agreed with the statements, Mr. Gagnon responded not exactly, the reason being the board developed standards and regulations to address noise; had to wrestle with the issue of decibels, the distance between where the noise is coming from, etc. When asked where those standards could be found, Mr. Gagnon stated the standards are referenced in the regulations. Chairman Harrington questioned whether the best advice to Mr. Tomasso would be to pursue the matter with zoning rather than through a noise ordinance.

Mr. Gagnon stated that could be. He pointed out this has no direct relationship to an agricultural use so it is a non-conforming use that is creating noises or situations in a neighborhood.

Mike Malzone, 8 E. Chamberlain Road

Stated he has had noise issues, and has been before the Council begging for help. He has been to the Planning Board at the initial planning stages to beg for help. He has been to the Zoning Board and Community Development. Nobody can help you in the Town if there is a noise problem. He offered to volunteer on a committee should one be formed. He stated there to be no place for residents to go to address what is a serious problem. He pleaded with the Council to speak with the Town Manager to see if some type of generic noise ordinance could be brought forward.

Councilor Rothhaus commented he is aware of Mr. Malzone’s situation and had brought it to the attention of the Community Development Department. The storage facility across from his home was working all weekend long, in the middle of the night, etc. He was told in order for enforcement to occur, the prohibition would have had to have been discussed and put in the site plan process.

Mr. Malzone stated the company had huge lights lighting up the whole neighborhood while they were pouring concrete and sheet metal at 2:00 a.m., and nobody could do anything about it. Councilor Rothhaus remarked they could not stop them. Most of the information Mr. Gagnon provided refer to restrictions placed when a project is going through the site plan process. There is no way the Community Development Department will enforce the rooster crowing at any time.

## **2. Merrimack Lions Club Request to Hold Fundraiser at Watson Park**

*Submitted by Parks and Recreation Committee Member Laura Jaynes*

To consider the Merrimack Lion's Club request to sell scarecrow kits for fundraising purposes on Town owned property during the months of September and October. This was previously approved and recommended by the Parks and Recreation Committee.

Laura Jaynes, Parks and Recreation Committee, informed the Council of a fundraising effort being conducted by the Lion's Club, and introduced Ms. Pat Fuller of the Lion's Club. It was noted the Parks and Recreation Committee reviewed the proposal, and has recommended it as a community effort.

Ms. Fuller stated the Merrimack Lion's Club is conducting a scarecrow fundraiser for Diabetes. She provided examples for the T frame and head of the scarecrow, which are sold as a kit. Each kit will be sold for \$20. Scarecrows were donated to the Police Department, and one is being dressed up for the department. Another was provided to the Fire Department. They will be conducting a contest within the department, and are hoping to perhaps place it at the firehouse for public view. One has been provided to the Public Works Department and another to the Merrimack Youth Association.

The desire is to bring the community together with this project for a good cause. Ms. Fuller stated the request to be for approval to place scarecrows at Watson Park and sell them at that location on Saturdays. Currently the library has agreed to allow the Lion's Club to sell the kits at their location on Saturdays from 10:00 a.m. to 1:00 p.m. during the months of September and October. The library has been provided with two kits and will be making theirs into Watson and his assistant. The library is on board with a mystery theme for their October theme. If they are able to gain enough volunteers, the desire would be to also sell the kits at the landfill.

Councilor Boyd questioned if scarecrows would be on display at the entrance to Watson Park and only on Saturdays. Ms. Fuller stated that to be the desire. She spoke of the hope they will be have enough volunteers that they will be able to sell some at the library and Watson Park on Saturdays. Ms. Jaynes stated the possibility of being able to do something at the Haunted Walk as well.

Vice Chairman Mahon questioned whether there would be some kind of warning on either side of the driveway to properly direct traffic. Ms. Fuller suggested a sign or arrow could be utilized.

**MOTION made by Councilor Boyd and seconded by Councilor Woods that the Town Council approve the Merrimack Lion's Club request to sell scarecrow kits for fundraising purposes on town owned property during the months of September and October on Saturdays between 10:00 a.m. and 1:00 p.m., and furthermore acknowledge that this request was presented to the Parks and Recreation Committee and was approved and recommended to the Town Council**

### **ON THE QUESTION**

Councilor Dwyer noted Merrimack Rocks has already booked the park for a Saturday. He suggested the Lion's Club could contact that organization to arrange to get a booth at that event. Director Micali requested the Town Manager be informed of where sales will occur.

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Councilor Koenig stated concern with suddenly deciding there is the need to be on Town land for a fundraiser. He acknowledged friends and family are allowed to use the Town Hall parking lot for yard sales, etc., but simply does not wish to set precedent that any organization wishing to run a fundraiser for any good cause might look for their time at Watson Park. He suggested places such as Fraser Square would get as much traffic as Watson Park. He commented he has not heard how Watson Park would be utilized or why that location is important to the fundraising effort.

Ms. Fuller stated the desire for the location is related to the level of visibility. She clarified the number of scarecrows that would be displayed would be 3 or 4. The area utilized for sales would be small. Ms. Jaynes stated the desire is for a community activity. Ms. Fuller stated the likelihood there would be 1-2 individuals selling the kits at a card table off to the side. Councilor Koenig stated the effort is being conducted as a community activity and not necessarily as a fundraiser. He stated his appreciation funds would be raised for charity and his hope that information would be made known.

Vice Chairman Mahon remarked it is not so much the amount of space that will be physically occupied it is the limitations of the parking area, which could have the impact of discouraging residents from utilizing the park. Ms. Fuller commented, the prior weekend at the library a book sale was being conducted at the same time the scarecrow kits were being sold. Most attendees were there for the book sale. The number of kits sold during the 3 hour span was 7.

Councilor Rothhaus remarked he does not see it as a problem for Watson Park, which he believes to be a central focal point for the community. The Town has very few non-profits and he can appreciate an activity such as this at Watson Park. Ms. Fuller spoke of having gained approval to build 50 kits. Twenty four were sold randomly and an additional 25 built. The flyer notes they will be available while supplies last. They hope to sell enough to make a good donation, and then stop. There is the hope next year they will do a theme, e.g., super heroes. There is a contest being conducted where 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> place prizes will be handed out if people send pictures via e-mail to the Lion's web address or through snail mail to the P.O. Box number. The contest runs from October 1<sup>st</sup> through October 31<sup>st</sup>.

### **MOTION CARRIED**

**6-0-1**

*Councilor Koenig Abstained*

### **3. 2014-2015 NH Highway Safety Agency Operation Safe Commute Grant**

*Submitted by Lieutenant Paul Trepaney*

The Town Council to consider the Police Department's request to apply for a Highway Safety grant made available through the NH Highway Safety Agency to fund overtime patrols on specific target dates for 2 three hour patrols for 12 days in the amount of \$4,492.80.

Lieutenant Paul Trepaney stated the Highway Safety Committee has run the Operation Safe Commute project annually for the past several years. They do 12 targeted days over the course of the year (2 patrols; morning and afternoon). The project is traffic enforcement with focus on distracted driving. The award in the amount of \$4,492.80 would cover overtime associated with the patrols. Twelve patrols (x 2 per day) targeted for specific days (statewide project).

Councilor Koenig noted the contractual agreement identifies \$3,456 for salary and another \$1,036 for payroll related deductions, and an asterisk indicating additional information elsewhere, but he was

unable to locate it. Lt. Trepaney stated the additional information can be found under the heading of proposed solution. That is where it shows the 3 hour shifts (6:00 - 9:00 a.m., 4:00 - 7:00 p.m.), and the specific dates. When asked for clarification of the \$1,036, Lt. Trepaney stated that to be related to benefit costs. When asked for costs associated with reporting requirements of the grant, Lt. Trepaney stated that to be an administrative burden he carries. When asked, he stated, with the exception of a few specialized grants, grant management falls upon him. He stated it may take him ½ an hour to pull the statistical information for quarterly reporting.

Councilor Koenig spoke of requirements to file quarterly reports as well as monthly reports at completion of the project (within a certain timeframe). Lt. Trepaney stated he tracks all of the required details throughout the project, completes the reporting requirements at the completion of the project, and forwards it to the Finance Department for their input and submittal. Councilor Koenig noted a chart that identifies the number of warnings, summons, arrests, etc., and questioned whether Lt. Trepaney generates a similar chart. Lt. Trepaney stated he signs off on the information. It is the officer who conducts the detail who fills in the statistical information at the end of a shift. When asked if the department maintains historical information on previous results, Lt. Trepaney stated copies of all reports are available for review (daily reports). Councilor Koenig was looking to see the results of this particular effort in Merrimack over prior years, e.g., number of warnings, summonses, etc. issued.

**MOTION made by Councilor Boyd and seconded by Councilor Mahon that the Town Council approve the Police Department's request to apply for a Highway Safety grant made available through the NH Highway Safety Agency to fund overtime patrols on specific target dates for 2 three-hour patrols for 12 days in the amount of Four Thousand Four Hundred Ninety Two Dollars and Eighty Cents (\$4,492.80), and furthermore that the Council and/or Town Manager and/or her proxy be instructed to sign any and all documents necessary to perfect the grant application. MOTION CARRIED 7-0-0**

**4. Acceptance of Fraser Square Veteran's Memorial Donations (Tabled at the August 21, 2014 Town Council Meeting)**

*Submitted by Finance Director Paul T. Micali*

The Town Council to consider the acceptance and expenditure of the following donations made in memory of David Yakuboff and pursuant to Charter Article 8-15 and RSA 31:95-b:

-\$760.00 for Fraser Square Veteran's Memorial improvements/maintenance

-\$50.00 for Dog Park improvements/maintenance

Director Micali remarked the Fraser Square Veteran's Memorial project meant a great deal to former Chairman, David Yakuboff. Upon his passing, his family requested, in lieu of flowers, donations be sent to the Town of Merrimack for the memorial, in his memory. To date, \$760 has been raised for the memorial. An additional donation was made, in David Yakuboff's name, with a request the funds go towards the dog park.

Director Micali spoke of a sub-group that has been working towards the design of a brochure and PowerPoint presentation that can be utilized by all when approaching potential contributors. A copy of the materials was provided to the Council.



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**MOTION made by Councilor Boyd and seconded by Councilor Woods to authorize the acceptance and expenditure of the following donations made in memory of David G. Yakuboff, Sr. and pursuant to Charter Article 8-15 and RSA 31:95-b: Seven Hundred and Sixty Dollars (\$760.00) for the Fraser Square Veteran's Memorial improvement/maintenance and Fifty dollars (\$50) for the Wasserman Park Dog Park improvements/maintenance**

**ON THE QUESTION**

The Council thanked the Yakuboff family and those who made the donations in memory of David Yakuboff. Director Micali noted a personal thank you was sent to each and every one who contributed.

**MOTION CARRIED 7-0-0**

**Minutes**

Approve the minutes from the following Town Council meetings:

May 16, 2014 (TC Retreat / Work Session) (Tabled at the 8/21/14 Town Council Meeting)

**MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to approve the minutes of the Town Council Retreat/Work Session conducted on May 16, 2014 as presented.**

**MOTION CARRIED 6-0-1**

*Councilor Woods Abstained*

July 17, 2014 (Tabled at the 8/21/14 Town Council Meeting)

*The following amendments were offered:*

Page 1, Line 3; Councilor Woods should be identified as being in attendance.

Page 4, Line 12; replace "Viva Voce" with "Voice"

Page 7, Line 41; replace "exasperation" with "exacerbation" and "of that by" with "as a result of", and add the word "and" after the word "entering"

**MOTION made by Councilor Mahon and seconded by Councilor Boyd to approve the minutes of the Town Council meeting conducted on July 17, 2014 as amended. MOTION CARRIED 6-0-1**

*Councilor Rothhaus Abstained*

August 21, 2014

**MOTION made by Councilor Boyd and seconded by Councilor Mahon to approve the minutes of the Town Council meeting conducted on August 21, 2014 as presented. MOTION CARRIED 7-0-0**

**Comments from the Press - None**

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**Comments from the Public** - None

**Comments from the Council**

Vice Chairman Mahon spoke of a recent editorial in the Nashua Telegraph regarding the Council's action on the unrestricted fund balance issue and the allocation of additional monies for projects. As many people relayed to him that is highly unusual. They were shocked. He thanked the Telegraph for taking note and praise.

Councilor Koenig noted the editorial appeared in the September 4<sup>th</sup> edition of the Telegraph called Walk in the Park for Merrimack. The article spoke of how well the Council is performing its function being fiscally prudent and financially responsible. He added the article mentions the fund balance and a desired range (4-8%). The current balance is around 4%, which is a number he suspects the Council will stick to. The article mentions that many communities try to go up to and beyond 10% and points out that is an over-taxation of the people, which is what the Council, during his time, has tried to avoid. On the other hand, getting down to 2% puts the Town in a potential fiscal bind with being able to pay the bills on a monthly basis.

Councilor Boyd noted the 5<sup>th</sup> Annual Erica's 5K Run/Walk will take place at the High School on Saturday, September 20, 2014. Additional information can be found at [www.ericasrun.com](http://www.ericasrun.com).

**MOTION made by Councilor Mahon and seconded by Councilor Koenig to adjourn the meeting.  
MOTION CARRIED 7-0-0**

*The September 11, 2014 meeting of the Town Council was adjourned at 9:39 p.m.*

Submitted by Dawn MacMillan