

ARTICLE 6  
ORDINANCES

SECTION 6.1 Municipal Legislation

Municipal legislation shall be by ordinance. Each ordinance shall be identified by a number and a short title. The enacting clause of each ordinance shall be "The Town of Derry Ordains," and the effective date of each ordinance shall be specified in it. All ordinances shall be recorded at length uniformly and permanently by the clerk of the Town

Council, and each ordinance so recorded shall be authenticated by the signature of the Chairman of the Town Council and the Clerk of the Town Council.

#### SECTION 6.2 Ordinances

(A) An ordinance may be introduced by any Councilor at any regular or special meeting of the Town Council. Upon introduction of any ordinance, the Clerk of the Town Council shall distribute a copy to each Councilor and to the Town Administrator, shall file a reasonable number of copies in the office of the Town Clerk and shall post a copy in such other public places as the Council may designate.

The full text of the proposed measure or ordinance need not be included in the notice if an adequate statement is included, describing the proposal and designating the place where the proposal is on file for public inspection.

(B) Every proposed ordinance shall be introduced in writing in the form required for final adoption. Any ordinance which repeals or amends an existing ordinance shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matter to be omitted by enclosing it in brackets or by strikeout type, and shall indicate new matter by underscoring or by italics.

(C) After the ordinance's first reading, it shall be published on the Town website and in a newspaper of general circulation in the Town at least once, together with a notice of the time and place when and where it will be given a public hearing and be considered for final passage.

#### SECTION 6.2 (C) - EXPLANATION

Additional language has been added to require publication of proposed ordinances on the municipal website in addition to newspapers.

(D) No ordinance shall be passed finally on the date on which it is introduced, except in cases of emergency involving the health or safety of the people or their property. Every adopted ordinance, except as otherwise provided by this Charter, shall become effective at the expiration of 30 days after adoption or at any later date specified therein. No ordinance shall be amended or repealed except by another ordinance adopted in accordance with this Charter, or as provided in the initiative and referendum procedures of this Charter.

#### SECTION 6.3 Emergency Ordinances

An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall contain statements after the enacting clause declaring that an emergency exists, and describing the scope and nature of the emergency in clear and specific terms. A preamble which declares and defines the emergency shall be separately voted on and shall require the affirmative vote of two-thirds of all the members of Town Council.

Action on an emergency ordinance shall be taken without amendment at the meeting at which the ordinance is introduced. No ordinance making a grant, renewal or extension, whatever its kind or nature, of any franchise or special privilege shall be passed as an emergency ordinance and except as provided by law relating to utility lines, no such grant,

renewal or extension shall be made otherwise than by the regular procedure established for ordinances. After its adoption, an emergency ordinance shall be published as prescribed for other adopted ordinances. It shall become effective upon adoption or at such time as it may specify.

#### SECTION 6.4 Codification of Ordinances

Not later than 18 months after taking office under this Charter and at least every fifth year thereafter, the Town Council shall have prepared a revision or codification of the ordinances of the Town which are appropriate for continuation as local laws of the Town.

#### SECTION 6.5 Existing Ordinances

All by-laws, ordinances, rules, restrictions and regulations of the Town of Derry which are in effect as of the effective date of this Charter, and are not inconsistent with this Charter, shall remain in effect after the adoption of this Charter until they expire by their terms or are repealed, modified or amended by the Council.

#### SECTION 6.6 Charter Objection

On the first occasion that the question on adoption of a measure is put to the Town Council, if ~~a single~~ two councilors objects to the taking of the vote the vote shall be postponed until the next meeting of the Town Council whether regular or special. The Councilors who raise the objection shall state the basis for the objection and cite the Charter provision or other applicable law being upon in making the objection. ~~If 2 or more other Councilors shall join in the objection, such postponement shall be until the next regular meeting.~~ This procedure shall not be used more than once for any agenda item. Any item once postponed shall not be further postponed under this section. The Charter objection privilege is not available with respect to an emergency ordinance.

#### SECTION 6.6 - EXPLANATION

The proposed changes alter the requirements for a "Charter Objection" by increasing the number of Councilors required for such an objection from 1 to 2, and by requiring that the objecting Councilors to state the basis for the objection.

### ARTICLE 7 GENERAL POWERS

#### SECTION 7.1 General Powers of the Town Council

Subject to the provisions of this Charter, as the elected body serving as the legislative and governing body of the town, the Town Council shall exercise all the powers and duties of selectmen, city councils and boards of aldermen and such other powers and duties provided by State statute or the Constitution of the State of New Hampshire. Except as otherwise provided by State law or this Charter, the powers of the Town Council may be exercised in a manner determined by it.

### SECTION 7.2 Regulation of Fees and Other Charges

In accordance with State law, the Administrative Code and this Charter, the Town Council shall approve and regulate all fees and charges, whether for reclamation, impact, use, permits or any other charges that may be made by any department or agency, for the use of the facilities or services of the Town.

### SECTION 7.3 Delegation of Powers

The Town Council may delegate to one or more Town agencies the powers to grant and issue licenses and permits vested in the Town Council by State law, and may regulate the granting and issuing of licenses and permits by any such Town agency. The Town Council may in its discretion, rescind any such delegation without prejudice to any prior action taken on such licenses or permits.

### SECTION 7.4 Inquiries and Investigations

The Town Council may require any elected or appointed Town officer or employee, any official appointed or confirmed by the Council, or any member of an elected Town board or elected Town commission to appear before it and to give such information as the Town Council may require in relation to such person's office, function or performance. The Town Council shall give at least 48 hours written notice of the general scope of the inquiry which is to be made to any person it shall require to appear before it under this section. The Town Council may make investigations into the affairs of the Town and into the conduct of any Town agency, and for this purpose may administer oaths and require the production of evidence.

## ARTICLE 8 ADMINISTRATION OF GOVERNMENT

### SECTION 8.1 Town Administrator

The chief administrative officer of the Town shall be the Town Administrator (hereinafter called the "Administrator"). The Administrator shall be appointed by the Town Council upon the affirmative vote of at least 5 4 members of the Council. The Administrator shall hold office at the pleasure of the Town Council. The Town Council shall fix the Administrator's salary and terms of employment, and may include a severance clause of no more than 90 days.

. SECTIONS 8.1 thru 8.4 - EXPLANATION

The proposed changes affect the employment of the Town Administrator. Section 8.1 changes the number of councilors needed to appoint Town Administrator, and permits the Town Council to include a severance clause in the Town Administrator's contract. Section 8.2 removes the residency requirement for the Town Administrator "unless contractually obligated." Section 8.3 removes language regarding determining compensation on a yearly basis. And, Section 8.4 indicates that the Administrator, who holds his office at the pleasure of the Town Council (see Section 8.1) may be removed "for any reason." See generally, RSA 37:2, RSA 37:10.

SECTION 8.2 Qualifications

The Administrator shall be appointed solely on the basis of qualification for the office, with special reference to education, training and previous experience in public or private office. The Administrator need not be a resident of the Town or of the State of New Hampshire at the time of appointment unless contractually obligated. The Administrator shall devote full time to the office and shall not hold any other public office, elective or appointive, except as authorized by this Charter, nor engage in any other business or occupation unless with the approval of the majority of the Town Council.

SECTION 8.3 Evaluation of Administrator's Performance

During the budgetary process following the first anniversary of the Administrator's service to the Town and during each subsequent budgetary process, the Town Council shall conduct an evaluation of the Administrator's performance in office. After such evaluation, the Town Council shall determine whether the Administrator's overall performance in office has been satisfactory or unsatisfactory. ~~The Town Council shall also establish the Administrator's compensation for the ensuing year.~~

SECTION 8.4 Removal of Administrator

(A) The Administrator may be removed for any reason by a majority vote of all members of the Town Council as herein provided. The Town Council shall adopt a resolution stating its intention to remove the Administrator and the reasons therefore, a copy of which shall be served on the Administrator. Immediately upon delivery to the Administrator of the resolution stating the intent of the Town Council, the Administrator shall be relieved of office and all further duties.

(B) The Administrator may reply thereto in writing within 10 days, and upon request, shall be afforded a public hearing which shall occur not earlier than 10 days nor later than 15 days after such hearing is requested. After the public hearing, if one is requested, and after full consideration, the Town Council, by majority vote of all its members, may adopt a final resolution of removal. The Administrator shall continue to receive full salary until the effective date of a final resolution of removal. The action of the Town Council in removing the Administrator shall be final.

During the period between adoption of a resolution under Paragraph (A) of this section and final action under Paragraph (B), the Town Council shall, by majority vote of all its members, appoint an interim Administrator to serve at the will of the Town Council for not

more than 90 days. If a final resolution of removal is not adopted, the Administrator shall resume office forthwith.

**SECTION 8.5 Acting Town Administrator**

(A) Within 60 days following the regular Town election the Town Council shall define a succession plan of at least three persons who shall act as acting administrator. Whenever by reason of sickness, absence from the town or other unexpected cause, the Town Administrator shall be unable to perform the duties of the office for a period of 3 successive working days or more, the Town Council shall appoint an the Acting Town Administrator.

**SECTION 8.5 - EXPLANATION**

Language added to this section requires that the Town Council designate persons who would serve as the acting Town Administrator should the Town Administrator become incapacitated or otherwise unable to perform his or her duties. See RSA 37:8 (Vacancy).

(B) The Acting Administrator shall have all the powers and perform all the duties of the Administrator except to the extent that said powers and duties may be specifically restricted by Town Council resolution. The Acting Administrator shall be paid such salary for services hereunder as may be prescribed by the Town Council.

**SECTION 8.6 Powers and Duties of Administrator**

(A) The Administrator shall be the chief administrative officer of the Town, shall supervise and be responsible for the administrative and financial affairs of the Town and shall carry out the policies enacted by the Council. The Administrator shall be charged with the preservation of the health, safety, and welfare of persons and property and shall see to the enforcement of the ordinances of the Town, this Charter and general State laws governing administration of the Town. The Administrator shall supervise and direct the administration of all Town departments and personnel therein.

(B) Except as otherwise provided by this Charter, the Administrator shall appoint upon merit and fitness alone, and may remove all officers and employees of the Town, subject to the provisions of pertinent statutes and the Administrative Code. Appointment of officers and employees who report directly to the Town Administrator shall be subject to confirmation by vote of the Town Council.

(C) The Administrator shall fix the compensation of all Town officers and employees appointed by the Administrator, within the limits established by existing appropriations and with approval of the Town Council.

**SECTION 8.6(C) - EXPLANATION**

The added language requires that the Town Council approve the compensation rate of Town officers.

(D) The Administrator shall have full jurisdiction over the rental and use of all Town facilities under the Administrator's control. The Administrator shall be responsible for the maintenance and repair of all Town property under the Administrator's control, within the limits of existing appropriation.

(E) The Administrator shall keep a full and complete inventory of all property of the Town, both real and personal.

(F) The Administrator shall be responsible for purchasing all supplies, material and equipment for all departments and activities of the Town.

(G) The Administrator shall keep the Town Council informed of the needs of the Town, and make such reports and recommendations as the Administrator may deem advisable or as the Council, as provided by this Charter or by ordinance, shall direct.

(H) The Administrator shall have and perform such other powers and duties not inconsistent with the provisions of this Charter as now are, or may be, conferred or imposed upon the Administrator by ordinance, or by general State laws. The Administrator shall have the right to take part in the discussion of all matters before the Town Council, but not the right to vote.

#### SECTION 8.7 Non-interference by Individual Members of the Town Council

The Town Council shall act in all matters as a body. Members of the Council shall not seek individually to influence the official acts of the Town Administrator, or any other officers; or to direct or request, except in writing, the appointment of any person to, or removal from, office; or to interfere in any way with the performance by such officers of their duties. Any member of the Town Council violating the provisions of this section, ~~as determined through procedures established in this Charter,~~ shall forfeit the office.

#### SECTION 8.8 Appointive Officers

(A) There shall be appointed by the Administrator, subject to confirmation by vote of the Town Council, a police chief, a fire chief, a health officer, one or more assessors, town attorney, a tax collector and such other officers as may be necessary to administer all departments which this Charter and the Town Council shall establish. Assessors shall, prior to appointment, have demonstrated knowledge of property appraisal or assessment and of the laws governing the assessment and collection of property taxes. The powers and duties of appointed officers and heads of departments shall be those prescribed by state law, by the Charter or by ordinance.

(B) The Town Council may engage as needed such other attorneys as are deemed in the best interest of the Town or to provide legal advice to the Town Council.

#### SECTION 8.9 Departments; Administrative Code

The Town shall have departments, divisions, boards or committees as may be established by this Charter or as the Town Council may establish by ordinance. It shall be the duty of the Administrator to ~~draft~~ review and to submit to the Town Council within 9 months after assuming office, an ordinance consistent with this Charter to be titled as the

"Administrative Code", which provides for the division of the administrative service of the Town into departments or agencies and defines the functions and duties of each. The ordinance shall include, subject to any collective bargaining agreements that may be agreed upon, provisions for a merit plan to ensure that all appointments and promotions in the service of the Town shall be made solely on the basis of merit and only after appropriate examination or review of the applicants' relative knowledge, skills, abilities and experience and provisions governing discipline and dismissal of personnel. Subsequent to the adoption of such ordinance, upon recommendation of the Administrator, the Town Council by ordinance may amend it to create, consolidate or abolish departments, agencies or other divisions of the Town, define the functions and duties of each, or otherwise amend it.

The chief officer of each department shall have supervision and control of such department and shall have the power to prescribe rules and regulations for the conduct of such department, not inconsistent with general law, this Charter, the Administrative Code, and the provisions of the merit plan. Prior to adoption of the Administrative Code, the Administrator shall have the power to establish temporary rules and regulations to ensure economy and efficiency in the several divisions of Town government.

#### SECTION 8.10 Town Clerk

There shall be a Town Clerk, elected for a term of 3 years. The Town Clerk shall have such authority and perform such duties as provided by State law. Vacancy in the office of Town Clerk shall be filled in accordance with State law.

### ARTICLE 9 FINANCE

#### SECTION 9.1 Fiscal Year

The fiscal year of the Town shall begin July 1 and run through the subsequent June 30 in each year.

#### SECTION 9.2 Preparation of Budget

The preparation of the fiscal budget of the Town shall begin at such time as specified by the Administrator, or as directed by the Administrative Code. The chief officer or director of each department shall submit to the Administrator an itemized estimate of the expenditures for the next fiscal year for the department or activities under the officer's control. In presenting the budget to the Town Council, the Administrator shall also include a detailed report of estimated revenues other than those to be derived from real estate taxes, paying particular attention to departments or activities that are self-sustaining.

#### SECTION 9.3 Submission of Budget; Budget Message

(A) By April 1 the Administrator shall submit to the Clerk of the Town Council a proposed budget for the ensuing fiscal year which shall provide a complete financial plan of all Town funds and activities for the ensuing fiscal year, an accompanying budget message and supporting documents, including the estimated effect of the proposed budget on the tax rate.

(B) The message of the Administrator shall explain the budget for all Town agencies both in fiscal terms and in terms of work programs. It shall outline the proposed financial policies of the Town for the ensuing fiscal year, indicate any major changes from the current fiscal year in financial policies, expenditures and revenues, together with the reasons for such changes; summarize the Town's debt position and include such other material as the Administrator deems desirable or the Town Council may reasonably require.

#### SECTION 9.4 Action on the Budget

(A) Limitation of Budget Increases. Recognizing that the final tax rates for the Town of Derry are set by the New Hampshire Department of Revenue Administration pursuant to ~~RSA 21-J:35(I)~~ State law, the Administration and Town Council of the Town of Derry shall develop their annual budget proposals in accordance with the mandates of this section. In establishing a municipal budget, the Town Council shall be allowed to assume an estimated property tax rate only in an amount equal to the equalized tax rate established during the prior fiscal year increased by a factor equal to the average change in the National Northeast Region Consumer Price Index for All Urban Consumers (CPI-U) as published by the United States Department of Labor Bureau of Labor Statistics for the calendar year immediately preceding budget adoption. Total expenditures for any given budget year shall not exceed funds reasonably calculated to be derived by a tax rate so established in addition to other revenues generated by the municipality. This provision shall not prevent the Town Council from establishing an annual municipal budget below this limit. This provision shall not limit the Town Council from appropriately funding any programs or accounts mandated to be paid from municipal funds by state or federal law.

#### SECTION 9.4 - EXPLANATION

The proposed change affects how the Town develops budget proposals, and substitutes a regional CPI in place of a national CPI. The section itself recognizes that final tax rates are set by the DRA and determined by state law, and does not alter that language. See RSA 21-J:35, I.

(B) - Exception to Budget Limitation. The total or any part of principle and interest payments for any municipal bond may be exempted from being included in expenditures subject to the prior limitation in Sec. 9.4(A) upon a two-thirds vote of the entire Derry Town Council. This decision shall be made annually.

(C) Public Hearing. The Town Council shall publish in one or more newspapers of general circulation in the Town a general summary of the proposed budget as submitted by the Administrator with a notice stating: (1) the times and places where copies of the proposed budget are available for inspection by the public and (2) the date, time and place not less than 2 weeks after such publication, when a public hearing on the proposed budget will be held by the Town Council.

(D) Adoption. The Town Council shall enact the budget, with or without amendments, by May 31. In amending the budget, it may delete, decrease, increase or add any

programs or amounts, except it may not decrease expenditures required by law or for debt service.

If the Town Council fails to take action with respect to the budget by May 31, such budget shall, without any action by the Town Council, be deemed to have been adopted, and shall be available for the purposes specified.

#### SECTION 9.5 Quarterly Budget Reports

At the beginning of ~~Following~~ each quarterly period during the fiscal year, and more often if required by the Town Council, the Administrator or designee Chief Financial Officer shall submit to the Town Council data showing the state of the Town's financial affairs, having already reviewed said data with the Town's Finance Committee. The Administrator ~~Chief Financial Officer~~ shall, at the a Town Council's first regular meeting in the subsequent quarterly period, using the same data furnished to the Town Council, provide a report to the public that shows the relation between the estimated and actual income and expenses to date, together with outstanding indebtedness and estimated future expenses.

#### SECTION 9.5 - EXPLANATION

The proposed change requires that quarterly budget reports be submitted by the CFO as opposed to Town Administrator, and that such reports be submitted in the subsequent quarterly period.

#### SECTION 9.6 Changes in Appropriations After Adoption of Budget.

No supplemental appropriation shall be made for ~~any purpose not included~~ which funds are not available within in the annual budget as adopted, unless approved by a two-thirds majority of all the members of the Town Council after a public hearing. The Town Council shall, by resolution, designate the source of any money so appropriated.

SECTION 9.5 - Change self-explanatory; no change in voting requirement.

#### SECTION 9.7 Transfer of Appropriations

No expenditure shall be made, and no obligation for expenditure shall be incurred, except pursuant to a duly adopted appropriation or a transfer of appropriation permitted by this section.

~~(A) Intradepartmental Transfers. The Administrator may approve a transfer of appropriations from one budgeted account to another budgeted account within a department, provided that the transfer or transfers do not exceed 10 percent of the appropriated budget for the department for the fiscal year, that funds are available to support the transfer and that the amount to be transferred is not essential for the effective operation of the account or accounts from which the transfer is to be made. In no event shall the amount of any such transfers exceed the total of \$10,000.00 in a single department without approval of the Town Council.~~

~~(B) Interdepartmental Transfers. With the approval of a majority of the Town Council, the Town Administrator may transfer any unencumbered appropriation balance or any portion thereof from one department to another. The Town Administrator may transfer any~~

unencumbered appropriation balance or any portion thereof within a department, provided that funds are available to support the transfer and that the amount to be transferred is not essential for the effective operation of the department's functions.

SECTION 9.7 - EXPLANATION

The proposed changes restructure the Section, and require approval of the Town Council for the transfer of all authorized appropriations. Cf. RSA 32:10, I.

SECTION 9.8 Capital Improvements Plan

(A) The Town Administrator, after consultation with the Planning Board, shall prepare and submit to the Town Council a capital improvements plan ~~at least one month prior to the final date for submission of the budget on or before March 1 of each year.~~ The capital improvements program shall include:

- ~~(1) A clear summary of its contents.~~
- ~~(2) A list of all capital improvements including major replacements which are proposed to be undertaken during the next 6 fiscal years, including, but not limited to, equipment, sewer and water mains or facilities, roads, sidewalks, bicycle paths or lanes, public open spaces and recreation facilities, new police or fire stations, and other new public facilities and major items of equipment, with appropriate supporting information as to the necessity for such improvements.~~
- ~~(3) Cost estimates, methods of financing and recommended time schedule for each improvement.~~
- ~~(4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.~~

(B) The capital improvements plan shall be based on a period of not less than 6 years and shall be guided by the Master Plan for the Town.

(C) The foregoing information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

(D) The Town Council and Planning Board shall may meet annually in preparation for and review of the capital improvements plan in a manner determined from time to time by the Town Council.

(E) A summary of the updated capital improvements plan with estimated costs shall be included in the Town report and the current year costs of the capital improvements plan shall be included in the Town budget.

(F) The Town Council shall publish in one or more newspapers of general circulation in the Town a general summary of the capital improvements plan and a notice stating: (1) the times and places where copies of the capital improvements plan are available for inspection by the public; and (2) the date, time and place not less than 2 weeks after such publication, when a public hearing on said plan will be held by the Town Council.

(G) After the public hearing and at the time of adoption of the budget as set forth in Section 9.4D of the Charter and on or before 30 days prior to the start of the ensuing fiscal year, the Town Council shall by resolution adopt the capital improvements plan with or without amendment, ~~provided that each amendment must be voted separately and that any increase in the capital improvements plan as submitted must clearly identify the method of financing proposed to accomplish the increase.~~

SECTION 9.8 - EXPLANATION

The proposed changes to this Section delete language that details the contents of the capital improvement plan, and eliminates the requirement that the Town Council and Planning Board meet annually to discuss the CIP. It also eliminates from the Charter language certain requirements regarding the manner of adopting amendments to the CIP.

SECTION 9.9 Lapse of Appropriations; Special Revenue Funds

Every appropriation, except an appropriation for a capital expenditure or dedicated funds permitted by State law, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned. The purpose of any such appropriation shall be deemed abandoned if 2-3 years pass from the effective date of the appropriation without any disbursement from, or encumbrance of, the appropriation, unless an extension of the appropriation is approved by the Town Council. Special Revenue Funds may be established in accordance with State law for a specific purpose only upon receiving a vote of two-thirds of all the members of the Town Council and are non-lapsing.

SECTION 9.9 - EXPLANATION

Changes to this section establish a more detailed time frame for when the purpose of an appropriation is deemed abandoned, and specifies that Special Revenue Funds are nono-lapsing.

SECTION 9.10 Purchasing Procedure

The Administrative Code as approved by the Town Council shall establish purchasing and contract procedure, as well as a no competitive bid procedure, including the assignment of all responsibility for purchasing to the Administrator or designee, and the combination purchasing of similar articles by separate departments. The Town Council Administrator through a written procedure and notification of the Town Council shall establish dollar limits for purchases and contracts which must be by competitive bid and shall establish the bidding procedures. No competitive bids shall be required when purchasing through the State of New Hampshire or at the State of New Hampshire bid prices. Requirements for bids may be waived in specific instances by a two-thirds vote of the Town Council Administrator; however the Town Administrator must have the approval of the Council Chair to wave bidding requirements on his/her purchases. ~~The Council shall establish dollar amounts for purchases and contracts, over which no purchases shall be made or~~

~~contracts entered into without the affirmative vote of a majority of the Town Council. If the Town Council has voted to make a purchase or enter into a contract, the Administrator shall carry out the vote of the Council and enter into such transaction on behalf of the Town.~~

SECTION 9.10 - EXPLANATION

In the absence of a statute governing bidding procedures, municipal contracting is left to the reasonable judgment of municipal authorities. See P. Loughlin, 14 New Hampshire Practice: Local Government Law §§ 776, 779. Changes to this Section change purchasing procedures to include a no competitive bid procedure and authorize the Town Administrator the ability wave bidding requirements with the approval of the Town Council.

SECTION 9.11 Special Assessments

When it appears either by petition or Council deliberation that the cost of a public improvement should be defrayed in part or whole by special assessment upon the property especially benefitted, the Town Council shall have authority to so declare by resolution. The Town Council shall hold a public hearing prior to enacting any special assessment resolution. Such resolution shall state the estimated cost of the improvement, the proportion of the cost to be borne by special assessment and the proportion to be borne by Town general revenues. The resolution shall designate the areas of the Town or the premises on which the special assessment shall be levied and the conditions of payment of the levy. Adoption of the resolution shall require an affirmative vote of two-thirds of all the members of the Town Council.

The Town Council shall prescribe by ordinance, complete special assessment procedures concerning plans and specifications estimate of costs, notices, hearings and any other matters concerning the financing of improvements by the special assessment method.

SECTION 9.12 Fiscal Control

The Administrative Code shall establish procedures governing fiscal control of all Town finances, including, but not limited to, a pre-audit of all authorized claims against the Town before payment.

SECTION 9.13 Bonding of Officials

Any Town officer or employee (other than Town Councilor) may be required by the Administrator to give a bond for the faithful performance of the duties of the office. The Administrator and all officers receiving or disbursing Town funds shall be so bonded, in accordance with state law. All official bonds shall be corporate surety bonds, and the premiums thereon shall be paid by the Town. Such bonds shall be filed with the Town Clerk.

SECTION 9.13 - EXPLANATION

The included reference to state law is intended to clarify that the Section contemplates compliance with RSA 41:6 and that the bonding of officials be in an amount required by state law.

SECTION 9.14 Investments, Trust Funds

The Trustees of Trust Funds shall invest and account for funds under their supervision in accordance with State law.

SECTION 9.15 Grants, Gifts

The Town Council may apply for, accept and expend monies received from the State, Federal, or other governmental units, or from private sources which become available during the fiscal year. A procedure for accounting for such monies shall be provided for in the Administrative Code. ~~No Town funds shall be expended as matching funds for such monies unless lawfully appropriated for such purpose.~~

SECTION 9.16 Town Treasurer; Deputy Treasurer

There shall be a Treasurer of the Town, elected for a term of 3 years. The Treasurer shall have custody of all monies belonging to the Town and shall pay out the same only upon orders of the Administrator and the Chairman of the Town Council or as otherwise authorized by State law. The Administrator shall initiate and sign a document, to be co-signed by the Chairman of the Council or designee, listing payments to be made. The Administrator shall attach to the document all supporting papers, as specified by the Administrative Code, authorizing the Treasurer to make payment.

The Treasurer shall deposit all monies, invest excess funds and account for same as directed by this Charter, the Administrative Code, and State law. A vacancy in the office of the Town Treasurer shall be filled by appointment by the Town Council for the unexpired term.

A Deputy Treasurer shall be appointed by the Treasurer with the approval of the Town Council. The Deputy Treasurer shall be qualified in the same manner as the Treasurer and shall perform all the duties of the Treasurer in the event of the Treasurer's absence by sickness, resignation, or otherwise.

SECTION 9.16 - EXPLANATION

This change adds to the Town's Charter the position of Deputy Treasurer, a position that already exists but is not formally recognized in the Charter. The proposed language follows the statutory language regarding the role of the Deputy Treasurer. See RSA 41:29-a.

SECTION 9.17 Borrowing Procedure

Subject to the applicable provisions of State law pursuant to RSA 33:9 and the Administrative Code, the Town Council, by resolution, may authorize the borrowing of money for any purpose within the scope of the powers vested in the Town and the issuance of bonds of the Town or other evidence of indebtedness therefor, and may pledge the full faith, credit and resources of the Town for the payment of the obligation created.

SECTION 9.17 - EXPLANATION

Any town which has adopted a charter pursuant to RSA 49-B town and which does not have a budgetary town meeting, may choose in its charter to allow the town council to follow the procedures set out in 33:8-d or 33:9 for the issuance of bonds and notes. The Town of Derry follows the bonding procedures in RSA 33:9 and has included this language in the Charter in order to make that statutory election clear.

SECTION 9.18 Independent Audit

Independent compliance and financial audits shall be made of all accounts of the Town at least annually and more frequently if deemed necessary by the Town Council. Such audits shall be conducted according to auditing procedures of the American Institute of Certified Public Accountants, the National Committee on Government Accounting, and other such procedures which may be necessary under the circumstances, by certified public accountants experienced in municipal accounting. Summaries of the results of such audits, including findings and recommendations and any management letters, shall be made public. At least once every 5 years the Town Administrator, on behalf of the Town Council shall change auditors issue a Request for Proposal for the provision of independent audit services.

SECTION 9.18 - EXPLANATION

Under the existing provision, the Town must change auditors ever 5 years, even if the current auditor is the most qualified and/or most cost-efficient alternative. The proposed change to this Section requires that the Town Administrator to issue an RFP for an independent auditor, but does not require a change in auditors.

SECTION 9.19 Annual Report

An annual report of the Town's business for the preceding year shall be made available to the public not later than ~~90~~ 120 days after the close of the fiscal year.

SECTION 9.19 - EXPLANATION

This Section takes existing language from Section 9.18 and places it in its own section. It also extends by 30 days the time frame for making the annual report available to the public.

ARTICLE 10  
GENERAL PROVISIONS

SECTION 10.1 Availability of Town Records

In compliance with ~~RSA 94-A~~ state law, a copy of all ordinances, the Administrative Code or other rules and regulations adopted by any town agency, board or individual shall be filed in the office of the Town Clerk and made available for review by any person requesting such information.

SECTION 10.2 Liability of Town Officers and Agencies

All town officers and members of town agencies shall be deemed to be public or municipal officers or officials. The Town shall indemnify any such officer or member for expenses or damages incurred in the defense or settlement of a claim against the officer or member which arose while acting in good faith within the scope of official duties or employment, but only to the extent and subject to the limitations imposed by State law.

SECTION 10.3 Prohibition

(A) No officer or employee of the Town shall appear as counsel before any agency of the Town of Derry, New Hampshire.

(B) Any Town officer or employee who has a substantial financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the Town or in the sale of any land, material, supplies or services to the Town or to a contractor supplying the Town, shall make known that interest and shall refrain from voting upon or otherwise participating in the transaction as a Town officer or employee. Any Town officer or employee who willfully conceals such interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit the office or position. In addition, the transaction shall be voidable by the Town Council if the person contracting with or making a sale to the Town has knowledge that this section has been violated.

(C) Activities Prohibited

1. No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any Town position or appointive Town administrative office because of race, sex, political or religious opinions or affiliations.
2. No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this Charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.
3. No person who seeks appointment or promotion with respect to any Town position or appointive Town office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with any test, appointment, proposed appointment, promotion or proposed promotion.

4. No person who runs for Town office shall solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose whatever from any person holding any compensated appointive Town position.

#### SECTION 10.4 Severability

If any provision of this Charter is held invalid, the other provisions of this Charter shall not be affected thereby. If the application of this Charter or any of its provisions to any person or circumstance is held invalid, the application of this Charter and its provisions to other persons and circumstances shall not be affected thereby.

#### SECTION 10.5 Specific Provisions Shall Prevail

To the extent that any specific provision of this Charter conflicts with any provision expressed in this Charter in general terms, the specific provision shall prevail.

#### SECTION 10.6 Procedures

(A) Meetings. All multiple member bodies of the Town whether elected or appointed or otherwise constituted, shall meet regularly at such times and public places within the Town as they may prescribe. Except in emergencies, special meetings of any multiple member body shall be held on the call of the respective chairperson or by one-third of the members thereof, by written notice delivered to the residence or place of business of each member at least 48 hours in advance of the time set. A copy of the said notice shall also be posted on the Town bulletin board.

Special meetings of any multiple member body shall also be called within one week after the date of the filing with the Town Clerk of a petition by at least 100 voters which states the purpose or purposes for which the meeting is to be called. Meetings of all multiple member bodies shall be open and public; however, a multiple member body may meet in a non-public session as permitted by ~~RSA 91-A~~ state law.

(B) Agenda. Except in cases of emergency, at least 48 hours before any meeting of a multiple member body is to be held, an agenda shall be posted containing all items which are scheduled to come before the meeting. No action taken on a matter not included in the posted agenda shall be effective unless the body first adopts by special vote a resolution declaring that an emergency exists and that the particular matter must be acted upon at that meeting for the immediate preservation of the peace, health, safety or convenience of the Town.

(C) Rules and Minutes. Each multiple member body shall determine its own rules and order of business unless otherwise provided by this Charter or by State law. The Town Clerk or designee shall take and keep the minutes of the respective proceedings. Such rules and minutes, except as provided for in ~~RSA 91-A~~ state law, shall be a public record kept available in a place convenient to the public at all times, and certified copies shall be kept available in the Town Clerk's office.

(D) Voting. Except on procedural matters, all votes of all multiple member bodies shall be taken by a call of the roll and the ayes and nays shall be recorded in the minutes, provided, however, that if the vote is unanimous, only that fact need be recorded.

(E) Quorum. A majority of the members of a multiple member body shall constitute a quorum, but a smaller number may adjourn from time to time and compel the attendance of the absent members in the manner and subject to the penalties prescribed by the rules of the body. No other action taken by a number of members smaller than the quorum shall be valid or binding.

#### SECTION 10.7 Duties of the Chairman of the Town Council

(A) The Chairman of the Town Council, in addition to other duties as provided for in this Charter, shall, after consulting with the Administrator, prepare the agenda for presentation to the Council.

(B) The Chairman shall meet with the Administrator as often as they both shall deem necessary in order to ensure that the Administrator and the Town Council are in agreement as to decisions made, or to be made, and to share information that may be of benefit to the Chairman and the Town Council regarding public relations, economic development plans, or other public matters the Council may request the Administrator to pursue.

(C) The Chairman shall advise the Town Council on a monthly basis as to activities and progress on matters assigned to the Chairman.

(D) As a member of the Town Council, the Chairman shall be fully subject to the non-interference requirement of Section 8.7 of this Charter.

(E) In order to carry out the Chairman's responsibilities, the Chairman shall be furnished a desk, office space, and secretarial services as needed. Upon leaving office the Chairman shall immediately turn over all papers, files, or other matters to the duly elected successor.

#### SECTION 10.8 Definitions

Unless another meaning is clearly apparent from the manner in which the word is used, the following words as used in this Charter shall have the following meanings:

(A) Charter. The word "charter" shall mean this Charter and any amendments to it made through any of the methods provided under RSA 49-B.

(B) Days. The word "days" shall refer to calendar days.

(C) Emergency. The word "emergency" shall mean a sudden, unexpected, unforeseen happening, occurrence or condition which necessitates immediate action.

(D) Initiative Measure. The words "initiative measure" shall mean a measure proposed by initiative procedures under this Charter, but excluding:

1. Matters relative to the organization or operation of the Town Council;
2. An emergency measure passed in conformity with this Charter;
3. The Town budget;
4. Tax anticipation notes;

5. An appropriation for the payment of the Town debts or obligations;
6. Any appropriation of funds necessary to implement a duly adopted collective bargaining agreement;
7. Any proceeding, or part thereof, relating to the election, employment, appointment, suspension, transfer, demotion, removal or discharge of any Town officer or employee;
8. Any proceeding repealing or rescinding a measure, or a part thereof, which is protested by referendum procedures:

(E) Majority Vote. Unless otherwise expressly provided, the words "majority vote" shall mean a majority of those present and voting with a quorum of the body present.

(F) Measure. The word "measure" refers to a specific act, or proposal. The specific act or proposal may be a resolution, an ordinance, a referendum vote to be taken, or other proposed action, depending on the matter to be acted on.

(G) Multiple Member Body. The words "multiple member body" shall mean any body consisting of two or more persons, whether elected, appointed, or otherwise constituted.

(H) Number and Gender. The singular number may be extended and applied to several persons or things; words imparting the plural number may include the singular; words imparting the masculine gender shall include the feminine gender; and words imparting the feminine gender shall include the masculine gender.

(I) Referendum Measure. The words "referendum measure" shall mean:

1. a measure protested by referendum procedures under this Charter, including a specific item in the Town budget, but excluding items 1 through 7 listed in the definition (E) Initiative Measures, or;
2. any proceeding of the Town Council providing for the submission or referral of a matter to the voters at an election.

(J) Town. The word "Town" shall mean the "Town of Derry, New Hampshire."

(K) Agency. The words "Town Agency" shall mean any board, commission, committee, department, or office of the Town government.

(L) Voters. The word "voters" shall mean registered voters of the Town of Derry, New Hampshire.

## ARTICLE 11 TRANSITIONAL PROVISIONS

### SECTION 11.1 Continuation of Government

All members of the Town government, elected or appointed, except those abolished by this Charter, shall continue to perform their duties until the expiration of their current term, and until successors to their respective positions are duly appointed, elected and qualified, or their duties have been transferred. The Town Council shall take whatever measures

are necessary to effectuate an orderly transition and shall take whatever actions are necessary to enable such transitions in office to comply with the provisions of this Charter.

#### SECTION 11.2 Continuation and Compensation of Personnel; Abolition of Office of Mayor

(A) Until expressly changed after the effective date of this Charter, the compensation of all officers and employees of the Town shall be the same as in effect June 30, 1993.

(B) Any person holding an office or position in the service of the Town, or any person serving in the employment of the Town, shall retain such office or position and shall continue to perform the duties thereof unless or until provisions shall have been made in accordance with this Charter for the performance of such duties by another person or agency. No person in the permanent full-time service of employment of the Town shall forfeit pay grade or time in service by reason of such transfer. All such persons shall be retained in capacities as similar to their former capacities as is practical.

(C) The office of Mayor shall be abolished as of the effective date of this Charter. The present incumbent shall become a Councilor-at-large, and shall have all privileges, rights and access to information as any Councilor, and shall serve until the expiration of the elected term, March 9, 1995.

(D) The Administrator, responsible to the Mayor for the administration of all Town affairs placed in the Administrator's charge under the former Charter, shall, upon the effective date of this Charter, serve under the direction and supervision of the Town Council. Any prior agreement for employment of the Administrator, express or implied, shall terminate upon the effective date of this Charter. A new agreement for employment may be approved by the Town Council under the provisions of this Charter.

#### SECTION 11.3 Council Salaries

The salary to be paid each Town Councilor shall, as of July 1, 1993, not exceed \$2500.00 per annum. In addition to this sum, the Chairman of the Town Council shall receive an additional sum of \$1500.00. Such salaries shall continue until changed by the Town Council pursuant to Section 5.8 of this Charter.

#### SECTION 11.4 Transfer of Records and Property

As of the effective date of this Charter, all records, property and equipment of any Town agency, the powers and duties of which are assigned in whole or part to another Town agency, shall be transferred to the Town agency to which such powers and duties are assigned.

#### SECTION 11.5 Effective Date

This Charter shall take effect July 1, 1993, except as otherwise provided. Prior to that date, the Town Council shall prepare for transition to the form of government established by this Charter.

~~SECTION 11.6 Absorption of the East Derry Fire District~~

~~If at any time the voters of East Derry Fire District vote to dissolve the district, the functions, responsibilities and duties of the district shall become the responsibilities of the Town. All permanent full-time employees of said district shall be transferred to the Town fire service in capacities as similar to their former capacities as is practicable.~~

SECTION 11.6 Periodic Review

Not less than once every 10 years commencing in the year 2010, the Town Council shall vote at its first regular meeting of the year on the following questions: "Shall a Charter Commission be created to review and make recommendations concerning the provisions of the charter of the Town of Derry?" If a majority of the council shall vote in the affirmative, then the council shall take whatever action is required under state law to bring about the formation of a Charter Commission prior to the next municipal election.

SECTION 11.6 - EXPLANATION

Section 11.6 relating to the absorption of the East Derry Fire Department is no longer relevant to the Charter and has been removed.

The new Section 11.6 requires the Town Council to determine at least once every 10 years whether a Charter Commission should be established.

MINORITY REPORT

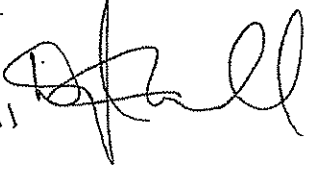
MINORITY REPORT

Although I have appreciated the hard work and dedication of the members of this charter commission, and although I think the proposed charter is a better document than we currently have, I respectfully dissent. My belief is that the fourth largest municipality in New Hampshire should be a city governed by a duly elected mayor. I also believe that the School and Town budgets should be considered as a whole. Having two separate entities duplicates costs and often pits the Town and School district budgets against each other. Having one cohesive entity would insure that the entire community's needs were addressed.

Respectfully,



Kevin Coyle



Doug Newell

# SAMPLE BALLOT

Total Vote  
1330



OFFICIAL BALLOT  
SPECIAL ELECTION  
DERRY, NEW HAMPSHIRE  
JUNE 9, 2009

*Denise C. Heale*  
TOWN CLERK

### INSTRUCTIONS TO VOTERS

A. TO VOTE, completely fill in the OVAL to the RIGHT of your choice(s) like this:

BY PETITION UNDER RSA 49 - B:3

"Shall a charter commission be established for the purpose of revisiting the Municipal Charter or preparing a new Municipal Charter"?

742	YES <input type="radio"/>
588	NO <input type="radio"/>

*Denise C. Heale*  
*Town Clerk*

APPENDIX A

Richard E. Samdperil, Esq.  
Joseph E. Welsh, Esq.  
\_\_\_\_\_  
Anna L. Elbroch, Esq.

March 18, 2010

Jim MacEachern, Chair  
Derry Charter Commission  
14 Manning Street  
Derry, N.H. 03038

Re: Proposed Changes to the Derry Town Charter

Dear Chairman MacEachern:

Pursuant to RSA 49-B:4, V, I have reviewed the proposed changes to the Derry Town Charter as set forth in the Derry Charter Commission's Final Report.

It is my opinion that the proposed changes are valid and lawful, and are not in conflict with the New Hampshire Constitution or the general laws of this state.

Sincerely,



Richard E. Samdperil  
NH Bar ID# 11036

APPENDIX B