

**TOWN OF DERRY**

**Town Council  
Derry Municipal Center**

**April 7, 2020  
Tuesday - 7:00 PM**

---

**6:00 PM Non-Public Session – RSA 91-A:3 II(b)(c)**

**7:00 PM Call to order**

*"It is possible, in light of COVID-19 pandemic situation and the state of emergency declaration in NH, that most or all board members will be unable to attend our Derry public meetings in person because they are concerned about getting sick or perhaps are already sick. Governor Sununu has issued Emergency Order #16, which waives the requirement that quorum be physically present in the meeting room; a meeting of a public body may be conducted with most or all members participating electronically. To maintain the Governor's Directive that no more than 10 people shall gather, the public is not allowed into the meeting room. There is a contact number at the bottom of the Derry TV Cam screen with a phone number where members of the public can listen in and participate in the Public Forum and Public Hearing portions of the meeting. This access number was also posted along with the agenda and posted on the exterior doors of the Municipal Center. Please note that due to the physical absence of some Councilors, all votes taken shall be done by Roll Call.*

**Councilor Tripp moves to leave non-public session, seconded by Councilor Morgan  
Roll Call Vote: 6-0-0**

**Councilor Tripp moves to seal RSA 91A:3 II (b)(c), seconded by Councilor Bourdon  
Roll Call Vote: 6-0-0**

Pledge of Allegiance, warning of fire exits, handicap access, & turn off all cell phones

**Roll Call:** Councilor Tripp and Chairman Foote in-person and Councilor's Katsakiores(7:45), Bourdon, Chirichiello, Wetherbee, and Morgan by Phone/Video.

Present: TA David Caron, Town Clerk Daniel Healey

**Public Forum - \*30 Minutes\***

**Motion by Councilor Tripp to open public forum, seconded by Councilor Wetherbee  
Roll Call Vote: 6-0-0**

No one from the public spoke.

**Motion by Councilor Tripp to close public forum, seconded by Councilor Wetherbee  
Roll Call Vote: 6-0-0**

**Consent Agenda**

**20-28** Approve Non-Public Minutes – March 24, 2020 – **Minutes Sealed**

**20-29** Approve Minutes – March 24, 2020

**20-30** Resolution #2020-011 – Accept and expend General Revenue Sharing Funds from the State of New Hampshire

**20-31** Resolution #2020-012 – Create and fund an Expendable Trust for COVID-19 Mitigation, Response and Recovery

**20-32** Resolution #2020-013 – Adopt the FY 21 Budget

**20-33** Resolution #2020-014 – Adopt the FY 21-26 Capital Improvements Plan

- 20-34** Resolution #2020-015 – Amend the Tax Increment and Development Plans for the Ash Street Tax Increment Financing District
- 20-35** Resolution #2020-016 – Create and Expendable Trust for Gateway TIF District Redevelopment and Infrastructure Activities
- 20-36** Resolution #2020-018 – Adopt a revised User Rate Schedule for Derry Water Customers
- 20-37** Resolution #2020-019 – Adopt a revised User Rate Schedule for Derry Wastewater Customers

**Motion by Councilor Tripp to approve the consent agenda, seconded by Councilor Wetherbee**

**Roll Call Vote: 6-0-0**

**Consent agenda approved**

**Chairman's Report – Charlie Foote**

The Derry Village Rotary Club, the Derry Rotary Club, and the Londonderry Rotary Clubs are organizing a Lights of Hope campaign. They ask that everyone put lights in their windows from 8-9pm every night to show support for families who've lost loved ones due to COVID-19, to show support for each other, for 1<sup>st</sup> responders, for healthcare workers, and for retail workers and volunteers within the community.

**Town Administrator's Report – David Caron**

The Town Administrator requests that the Town Council confirm his appointment of Mark Fleischer as the new Chief Financial Officer.

**Councilor Tripp MOVES THAT THE TOWN COUNCIL adopt Resolution #2020-017, which reads as follows [*Read the Resolution*], seconded by Councilor Wetherbee**

**Ordinance attached**

**Roll Call Vote: 6-0-0**

Economic Development Director Beverly Donovan gave an update on what the town is doing from an economic development standpoint during the COVID-19 pandemic. She stated that she has had many zoom meetings and webinars to keep up to date with disaster assistance, economic development and real estate trends and issues, and she has made many in-person business visits and phone calls over the past several weeks. She believes now is a good time for staff to review current zoning and for boards to consider tweaks to open up more opportunities. Being April 1st, a lot of lease payments and mortgage payments are due. The good news is that landlords and banks must be open to working out solutions for their tenants and customers, the not-so-good news is that there are not solid plans in place to protect the landlords. She's monitoring this situation, as this could potentially impact a lot of Derry's landlords and investors. For now, what she is hearing from small businesses is that landlords have been very open to working with folks, whether on "rent holidays", deferred payments or emended lease terms. It's going to be OK in the short terms, but many of those investors and landlords may struggle as this crisis extends out. It's in everyone's best interest to communicate with each other, of course. Same goes with working with creditors, and her advice to any business that has contacted her is to reach out to banks, landlords and creditors to talk about short and long-range plans.

Emergency Management Director and Fire Chief Mike Gagnon gave a report on the Town's response to COVID-19.

The Tax Office Drive-Thru will be open 7AM - 5:15PM. The use of the Drive-Thru has been extremely popular, and these extended hours will allow the public to spread access a little more evenly. This change was suggested jointly by the Collector and her staff; and AFSCME has waived any limiting provisions in the CBA. The Town Clerk did a marriage ceremony through the drive-thru earlier today. The co-workers in that office will stagger 10+ hour days thus limiting days in the office and out in the public. Three City Managers have requested that the Governor clarify the provisions of law which requires an assessment of interest on unpaid taxes. For some reason they believe the law to be unclear. Our contracted Assessor, who was Director of Municipal Services at the Department of Revenue Administration prior to working with us, has clarity on the issue. RSA 76:16 provides the Assessing Officials (ultimately the Town Council) have every necessary authority to, ". . .for good cause shown, may abate any tax assessed by them or by their predecessors, including any portion of interest accrued on such tax.." While generally good cause is related to the valuation of property, the law has long recognized that there is an expansive view of that term and provides for abatement due to poverty and inability to pay, and recently when an individual's property is destroyed by fire in the middle of the year. The typical process includes an application by a taxpayer; however, no abatement application is necessary for the Assessing Officials to abate. The Assessing Officials currently use this authority to process numerous administrative abatements on a regular basis to correct errors made by the Town (e.g. billing wrong owner, incorrect taxable amount, exemption excluded). There is no harm with having the Governor clarify the law for those who need clarification, however, I would encourage the Council to voice opposition to a state declaration to implement a tax holiday at the local level. That is a decision which must remain with the Town Council. The May 2 Household Hazardous Waste Day has been postponed and we will seek to reschedule in June in an effort to comply with the Governor's order. Typically, this event brings about 300 cars to West Running Brook School. We will publicize an alternate date on the website and through other means of outreach once we hear back from our contractor as to available dates. With all that is happening with the Coronavirus crisis, the Derry Lions Club has canceled this year's Fishing Derby. The Kentucky Derby is now postponed until Saturday, September 5th, so we will be looking at either doing Derby Day on that day or choosing another date altogether. The Lions Club will be involved in whatever we decide to do but will not be stocking Hood Pond with fish this year. DPW activities are ongoing. We are able to utilize social distance practices while completing projects and tasks. The Town has signed a contract to replace trees in the Downtown and work will commence upon delivery of the trees to the contractor.

*FY 21 Budget Presentation – Town Administrator Dave Caron presenting*

The main points of the FY 21 budget include the following:

- Fully funds fifth and final year of Collective Bargaining Agreements as approved by the Town Council in FY17;
- Does not propose any additional provisions;

- Expands Ash Street TIF District to Gateway TIF District to support Council economic development goals;
- Maintains CIP funding transition from Fund Balance to a blend of Fund Balance/budget support;
- Limits tax rates to \$7.86, \$0.01 below level authorized by the taxpayer-approved Tax Cap (Section 9.4 – Charter), despite an overall flat revenue stream as the economy moderates;
- Funds second year of the Derry Commerce Corridor Tax Increment Financing District and continues to position Town to engage in public/private partnerships;
- Sets forth strategies for COVID-19 mitigation, response and recovery;
- Restructure water and wastewater rates including an option to phase adjustments;

### **Public Hearing**

**20-26** Ordinance #2020-004 – To Amend Article II, Section 165-5 and Article XX, Livestock and Fowl – *Code Enforcement Director Bob Mackey presenting*

The Town Administrator and Town Council charged staff to look at the Ordinance with the intent of protecting the town from becoming involved in what might be defined as private nuisance. Over the past summer, there were issues that came up, specific to the Livestock Ordinance, between neighbors that are very subjective and hard to enforce. Complaints were made to the Town Council by residents. Staff was requested to review the Zoning Ordinance specific to the Livestock section. The purpose of the amendments is to broaden the definitions so that something would need to rise to the level of a public nuisance before the Town would become involved. With a private nuisance, there would be legal recourse for a resident to take action if they felt necessary. The Town's attorney reviewed the revisions and has stated that if a small, discrete number of property owners are complaining, that is likely a private nuisance and the property owners would seek legal redress. If a neighborhood is being adversely affected, that becomes a public nuisance and Code Enforcement would become involved. The purpose of the amendment is to avoid Code Enforcement becoming involved in situations that can be very subjective in nature and not necessarily resolved at the town level. These changes are specific to Article XX, Livestock and Fowl.

**Motion by Councilor Wetherbee to open public hearing, seconded by Councilor Tripp**  
**Roll Call Vote: 6-0-0 (Councilor Bourdon temporarily disconnected)**

No one from the public spoke.

**Motion by Councilor Wetherbee to close public hearing, seconded by Councilor Tripp**  
**Roll Call Vote: 6-0-0 (Councilor Bourdon temporarily disconnected)**

**Councilor Tripp MOVES THAT THE TOWN COUNCIL adopt Ordinance #2020-004, which reads as follows [Read the Ordinance], seconded by Councilor Wetherbee**  
**Ordinance attached**  
**Roll Call Vote: 7-0-0**

### **New Business**

**20-38** Resolution 2020-009 – Authorize various vendors to serve alcoholic beverage samples at the Derry Homegrown Farm and Artisans Market – *Town Administrator Dave Caron presenting*

The Derry Homegrown Farm and Artisans Market is planning its 2020 season and the Town has received a request from Doire Distillery and Daydreaming Brewing seeking Council approval to serve samples; Resolution #2020-009 provides authorization within the mandates of NH RSA 179:44 for Daydreaming, which requires that such activity be authorized by the town or city's governing body and that the authorization must be in writing. The Legislature is currently considering a bill to authorize distilleries to participate pursuant to RSA 178; thus, any approval for Doire would be contingent upon passage of enabling legislation. In accordance with the Town Charter and State law, the Town Council is the governing body of the town and has the sole authority to grant the requested authority to provide samples under that statute. The authority requested is narrow as to the location and time of operation of the Market.

**Councilor Tripp MOVES THAT THE TOWN COUNCIL adopt Resolution #2020-009, which reads as follows [Read the Resolution], seconded by Councilor Bourdon**  
**Roll Call Vote: 6-0-1 (Councilor Wetherbee)**  
**Resolution attached**

**20-40** Resolution 2020-021 – To Amend the Town of Derry Investment Policy – *Town Administrator Dave Caron presenting*

Section 7.1 of the Town Charter designates the Town Council as the governing body of the Town, which is then empowered by New Hampshire law to adopt policies pertaining to the business affairs of the Town, and the Council is required by state statute to annually review and adopt an Investment Policy as a tool to guide the Treasurer in performing their duties, and the anticipated distress resulting from the COVID-19 Pandemic will be significant, and financial institutions are encouraged to directly participate in Derry business recovery efforts.

**Councilor Tripp MOVES THAT AN EMERGENCY EXISTS pursuant to Section 10.6 of the Town Charter to act upon Resolution #2020-021, seconded by Councilor Morgan**  
**Roll Call Vote: 7-0-0**

**Councilor Tripp MOVES THAT THE TOWN COUNCIL adopt Resolution #2020-021, which reads as follows [Read the Resolution], seconded by Councilor Morgan**  
**Roll Call Vote: 6-0-0 (Councilor Bourdon temporarily disconnected)**  
**Resolution attached**

**Councilor Comments / Liaison Reports –**

Councilor Tripp – We are going through interesting times, hopefully people don't run out of things to watch. Hopes people make use of the rail trail but practice social distancing.

Councilor Wetherbee – The Town has some of the best staff particularly the administration, police and fire.

Councilor Morgan – Is concerned for Derry residents during this time. Please follow all the recommended policies and procedures.

Councilor Katsakiores – Thank you to the 1<sup>st</sup> responders and supermarket employees. Welcomed Father Joe to St. Thomas Aquinas Parish. Wished everyone a Happy Easter and to take care.

Chairman Foote – The employees and staff of the Town have been doing an excellent job. Thanked Owen and Russ from Derry CAM. The Sonshine Soup Kitchen is temporarily closed due to a positive COVID-19 test. They have a number on the door for people needing assistance. For more information regarding COVID-19, check the CDC or call 211. Anyone seeking unemployment benefits can go to [nhes.nh.gov](https://nhes.nh.gov).

**Adjournment: 9:45 p.m.**

  
Town Clerk

Recording & Transcription by: Daniel Healey, Town Clerk

4-21-2020  
Date



## RESOLUTION

Number 2020-017

To Confirm the Appointment of the  
Chief Financial Officer

WHEREAS, Section 8.6(B) of the Town Charter requires that the Town Council confirm the appointment of officers and employees who report directly to the Town Administrator; and

WHEREAS, the Town is in need of a Chief Financial Officer; and

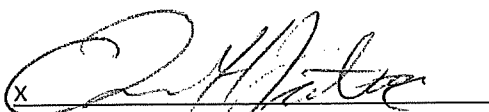
WHEREAS, after a search for qualified candidates and a review of organizational priorities and projects, the Town Administrator has appointed a candidate who possesses the necessary skills and experience to manage the Town's financial functions and responsibilities;

NOW, THEREFORE, BE IT RESOLVED IN COUNCIL that the appointment of Mark Fleischer as Chief Financial Officer is hereby confirmed.

This Resolution shall take effect immediately upon its passage.

Adopted: April 7, 2020

Attest:

x 

Charles Foote, Council Chair

Date: 4/21/20

x 

Daniel Healey, Town Clerk

Date: 4-8-2020



## ORDINANCE

Number 2020-004

Amend Various Articles in the Zoning Ordinance to add Definitions for  
Public and Private Nuisances

---

WHEREAS, Section 5.1 of the Town Charter designates the Town Council as the governing and legislative body of the Town, and pursuant to Section 6.1, the Council shall legislate by ordinance; and

WHEREAS, the Planning Board was requested to review relevant sections of the Zoning Ordinance regarding Nuisances, and

WHEREAS, the Planning Board recommends amendments by adding definitions of Public Nuisance and Private Nuisance, and deleting the current definition of Nuisance; and

WHEREAS, passage of these amendments would result in the orderly and efficient administration of town government;

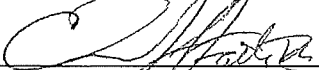
NOW, THEREFORE, THE TOWN OF DERRY ORDAINS that the Derry Zoning Ordinance is hereby amended as follows:

To AMEND Article II, Word Uses and Definitions, Section 165-5, Definitions, to ADD definitions for Public Nuisance and Private Nuisance, and to DELETE the definition for Nuisance. Also included is an amendment to Article XX, Livestock and Fowl, to AMEND Section 165-55, Nuisances Prohibited.

This Ordinance shall take effect thirty days after its adoption.

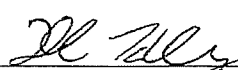
Adopted: April 7, 2020

Attest:

x 

Charles Foote, Council Chair

Date: 4/7/20

x 

Daniel Healey, Town Clerk

Date: 4/7/2020

Archival Ref: Agenda Item #20-26





## RESOLUTION

Number 2020-009

To Authorize Various Vendors to serve alcoholic beverage samples at the  
Derry Homegrown Farm and Artisans Market.

WHEREAS, Section 5.1 of the Town Charter designates the Town Council as the governing and legislative body of the Town and, as such, it is empowered to act in accordance with RSA 179:44; and

WHEREAS, RSA 179:44 II-a authorizes wine manufacturers, beverage manufacturers, nano breweries and brew pubs to provide samples for tasting at a farmers' market, contingent upon written authorization by the Governing Body;

WHEREAS, the State Legislature is considering an expansion of said authority to include beverage manufacturers as may be authorized under RSA 178;

NOW, THEREFORE, BE IT RESOLVED IN COUNCIL that the following vendors are hereby authorized to provide alcoholic samples during all Derry Homegrown Farm and Artisan Market events, contingent upon compliance with all applicable state statutes and Town of Derry Ordinances.


Daydreaming Brewing Company

Doire Distilling

This Resolution shall take effect immediately upon its passage and shall remain in effect until rescinded by the Town Council.


Adopted: April 7, 2020

Attest:

x 

Charles Foote, Council Chair

Date: 4/21/20

x 

Daniel Healey, Town Clerk

Date: 4-8-2020



## RESOLUTION

Number 2020-021

To Amend the Town of Derry Investment Policy

---

WHEREAS, Section 7.1 of the Town Charter designates the Town Council as the governing body of the Town, which is then empowered by New Hampshire law to adopt policies pertaining to the business affairs of the Town; and

WHEREAS, the Council is required by state statute to annually review and adopt an Investment Policy as a tool to guide the Treasurer in performing their duties; and

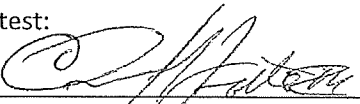
WHEREAS, the anticipated distress resulting from the COVID-19 Pandemic will be significant, and financial institutions are encouraged to directly participate in Derry business recovery efforts;

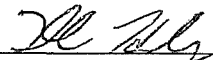
NOW, THEREFORE, BE IT RESOLVED IN COUNCIL that the Town of Derry Investment Policy, dated April 7, 2020, is hereby reaffirmed as the policy of the Town and adopted as revised; and

This Resolution shall take effect immediately upon its passage.

Adopted: April 7, 2020.

Attest:

x   
Charles Foote, Council Chair  
Date: 4/7/20

x   
Daniel Healey, Town Clerk  
Date: 4-7-2020

---

Archival Ref: TC agenda item #16-107