



STAFF REPORT

Public Hearing 4-7-2020

AGENDA ITEM #: 20-26
COUNCIL MTG OF: March 24, 2020
FROM: Dave Caron, Town Administrator
OFFERED BY: Planning Department
PREPARED BY: George Sioras, Planning Director
SUBJECT: Revisions to the Derry Zoning Ordinance

INTRODUCTION:

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.

TOWN ADMINISTRATOR COMMENTS

The Council is urged to schedule a public hearing on April 7 and thereafter, adopt as recommended. The provisions of these amendments are designed to ensure that public resources are expended attending to nuisances which are injurious to the general public.

BACKGROUND

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.

DISCUSSION

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.

FISCAL IMPACT

These amendments will encourage the efficient use of municipal resources regarding the enforcement of the Town's Zoning Ordinance.

RECOMMENDED ACTION BY COUNCIL

Staff recommends that the Town Council approve the attached revision to the Derry Zoning Ordinance as unanimously APPROVED by the Planning Board on March 4, 2020.

RECOMMENDED MOTION

Please see Ordinance #2020-004.

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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: _____

X _____

Daniel Healey, Town Clerk

Date: _____