

**STAFF REPORT**

AGENDA ITEM #: 20-56  
COUNCIL MTG OF: May 19, 2020  
FROM: Dave Caron, Town Administrator  
OFFERED BY: Planning & Economic Development Departments  
PREPARED BY: Elizabeth Robidoux, Planning & Economic Development Assistant  
SUBJECT: Emergency Ordinance Adoption for temporary outdoor dining

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**PURPOSE:**

Staff requests Town Council adopt an Emergency Ordinance governing the process for temporary outdoor dining as allowed by Governor Sununu, under Emergency Order #40 (Stay at Home 2.0, Restaurants). The temporary ordinance may be adopted by the Town Council under the provisions of Article VI, Ordinances, of the Town Charter, specifically § 6.3, Emergency Ordinances.

**TOWN ADMINISTRATOR COMMENTS**

The Council is encouraged to approve Ordinance #2020-005 under the Emergency Ordinances provision of the Town Charter (Section 6.3), which would allow the Town to protect public health and safety with the orderly implementation of the Governor's Emergency Order #40 allowing outside dining for restaurant establishments.

**BACKGROUND**

On March 13, 2020, Governor Sununu issued Executive Order #2020-04, an order declaring a state of emergency due to the Novel Coronavirus (COVID-19); on Monday, March 16, 2020, the Governor issued Emergency Order #2, temporarily prohibiting gatherings of 50 or more attendees and prohibiting onsite food and beverage consumption throughout the State. Those Orders have since been modified to continue to address the pandemic and to protect the residents in the State of New Hampshire, which included limiting gatherings to not more than ten individuals. Restaurants were allowed to offer curbside pick-up. On May 01, 2020, Governor Sununu issued Emergency Order #40, which extended the Stay at Home order to at least May 31, 2020, but permits restaurants to offer outdoor dining as of May 18, 2020.

Under these guidelines, restaurants are allowed to offer outdoor seating on the restaurant's property. The restaurants can set up the dining in a safe area and can utilize parking spaces located close to the entrance of the establishment, sidewalks, existing patios and lawn areas. If outdoor seating is to be established utilizing shared property/town public spaces, the restaurant owner is required to obtain permission from the town. This would include utilization of portions of town sidewalks as an outdoor dining space. No indoor dining is allowed. The establishments are required to follow the guidelines outlined per the Governor's Reopening Task Force (reference: Stay at Home 2.0/Restaurants).

**DISCUSSION**

In order for restaurants in the Town of Derry to reopen, they will need coordinate and seek approval from the Town, to include compliance with Life Safety and Health Codes. In the interest

of promoting economic stability for our businesses, the Economic Development Department, in coordination with the Planning, Code, Fire Prevention, and Health Departments, developed a temporary Outdoor Dining permit and guidelines for outdoor dining. A separate Outdoor Dining Ordinance will be offered for the Council's review. Temporary permits for outdoor dining would expire on June 30, 2020. The permits could be continued after that date with approval from the Town Administrator.

#### FISCAL IMPACT

Existing restaurants in the Town of Derry will be able to expand their services to residents of Derry and the surrounding communities, which fosters economic development. There is no fee for the application for the Temporary Outdoor Dining Permit, however, there may be a small amount of revenue generated from inspection fees from Code Enforcement and/or Fire Prevention.

#### RECOMMENDED ACTION BY COUNCIL

Staff recommends that the Town Council adopt the Emergency Ordinance to allow Temporary Outdoor Dining under §6.3 of the Charter.

#### RECOMMENDED MOTIONS

Two motions are required:

1. Determination that an emergency exists to maintain the health and safety of the community, pursuant to Section 6.3 of the Town Charter – 2/3 vote of entire Council, or 5 members;
2. Adoption of Ordinance #2020-005 (Please see Ordinance) – Simple Majority Vote

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# ORDINANCE

## Number 2020-006

### An Emergency Ordinance To Provide Guidance to Governor's Emergency Order #40 Concerning Outdoor Dining

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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 Town Charter authorizes the Town Council to adopt Emergency Ordinances, and

WHEREAS, the Town is currently under the Governor's State of Emergency during this Pandemic; and

WHEREAS, the Governor issued Executive Order #40 which, in part, allows restaurants to offer outdoor dining beginning on May 18; and

WHEREAS, in order to protect public health and safety, the Town seeks to enact an emergency ordinance ensuring the safe rollout of this service; and

WHEREAS, the Council has previously voted that an emergency exists;

NOW, THEREFORE, THE TOWN OF DERRY ORDAINS that the Temporary Outdoor Dining Ordinance as summarized in the attached Application is hereby adopted, effective immediately.

Adopted: May 19, 2020

Attest:

X \_\_\_\_\_  
Charles Foote, Council Chair  
Date: \_\_\_\_\_

X \_\_\_\_\_  
Daniel Healey, Town Clerk  
Date: \_\_\_\_\_

TEMPORARY  
**Outdoor Dining Application**

Town of Derry, New Hampshire  
Office of the Town Administrator  
14 Manning Street, 3<sup>rd</sup> Floor  
Derry, NH 03038  
[www.derrynh.org](http://www.derrynh.org)

**Please send completed application to Beverly Donovan, Economic Development Director at [Beverlydonovan@derrynh.org](mailto:Beverlydonovan@derrynh.org). Call (603) 845-5407 with any questions.**

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Please complete the following application and submit it to Town Administrator. This is a temporary outdoor dining license that will be good through **June 30, 2020** or longer with approval from the Town Administrator. All outdoor dining must abide by the State of NH Governor's order and the Town of Derry's Tent Inspection Checklist (if applicable); the Town has the right to revoke any temporary license at any time for non-compliance. Please note, this is a temporary license due to the current COVID-19 situation, upon elimination of this temporary license all restaurants will need to re-apply for the normal outdoor dining license and pay all licensing fees. Please see the requirements at <https://www.governor.nh.gov/news-media/stay-at-home/documents/20200501-restaurants.pdf>

Address of proposed Outdoor Dining Area ("Area"): \_\_\_\_\_

**Applicant:** \_\_\_\_\_

Address (Street/City/State/Zip):

\_\_\_\_\_

Phone number(s):

\_\_\_\_\_

Email:

\_\_\_\_\_

**Property Owner:**

\_\_\_\_\_

Address (Street/City/State/Zip):

\_\_\_\_\_

Phone number(s): \_\_\_\_\_

Please provide the following:

- A dimensioned site plan is attached to this Application depicting the following: the existing conditions, including a depiction of public infrastructure such as curb lines, light poles, bike racks, street trees, tree grates, manhole covers, meters, licensed A-frame signs, adjacent on-street parking and loading zones, adjacent accessible sidewalk curb cuts and the like, the proposed table/chair layout plan for outdoor dining dimensioned routes of travel within the outdoor dining area and on the adjoining public sidewalk, as well as detail sheets for the proposed enclosure system, tables, chairs, trash receptacles, and the like. If outdoor sanitary facilities are to be used, please note the location on the site plan.
- Include all existing lighting for the proposed dining area on the above dimensioned site plan. The amount of lighting will help staff determine the hours of operation for safely conducting business outside.
- Copy of license from New Hampshire Liquor Commission if applicant intends to serve alcohol.
- If using private property, include an email/signed letter from the property owner giving you permission to use their property. Please include all special requirements set forth by said property owner including certificate of insurance naming them as an additionally insured.
- You will need to contact the State of NH Liquor Commission via email to let them know you will be “serving alcohol and food outdoors in compliance with the Governor’s Orders”. Email: [reopen@liquor.nh.gov](mailto:reopen@liquor.nh.gov) you should receive an automatic response, please keep that email and send in with your application.
- In the case of locations on public property, proof of liability insurance of at least \$1,000,000 listing the Town of Derry, and its employees, officials, agents, and volunteers as an additional insured.
- If use of a tent is contemplated on private property, the applicant must comply with appropriate Life Safety Codes and NH Fire Code Regulations to receive the Place of Assembly Permit. Use of a tent in public rights of way are not permitted. See: [Tent Inspection Checklist](#)

I/We \_\_\_\_\_, (owner/s) of \_\_\_\_\_ (restaurant name) will abide by the Town of Derry's outdoor dining ordinance and the most recent Governor's Order, dated May 1, 2020, set forth by the State of NH regarding outdoor dining. I/We understand the failure to do so could result in revocation of my temporary outdoor dining approval.

All restaurants will continue to follow the 2017 food code regulations.

Application must be complete to be considered. All questions must be answered, and all applicable check boxes must be checked. Failure to do so shall result in an incomplete application which will not be processed. The undersigned attests that the supplied information is accurate and complete and requests that the Town Administrator proceed with processing this application under the requirements of the Town of Derry.

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\*\*\*\*TOWN OF DERRY USE ONLY\*\*\*\*

\*\*\*OFFICE USE ONLY – DO NOT WRITE IN THIS SPACE\*\*\*

**Staff Review and sign off:**

- |  |   |
|--|---|
| <input type="checkbox"/> <b>Police Department:</b> _____   | <input type="checkbox"/> <b>Fire Department:</b> _____      |
| <input type="checkbox"/> <b>Planning Department:</b> _____ | <input type="checkbox"/> <b>Public Works:</b> _____         |
| <input type="checkbox"/> <b>Health Officer:</b> _____      | <input type="checkbox"/> <b>Economic Development:</b> _____ |

THIS LICENSE IS ISSUED with the following conditions DENIED for the following reason(s)

Permit Expiration Date:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Approved By: \_\_\_\_\_  
David Caron, Town Administrator

Date: \_\_\_\_\_



## STAFF REPORT

AGENDA ITEM #: 20-34 & 35  
COUNCIL MTG OF: April 7, 2020  
FROM: David Caron, Town Administrator  
OFFERED BY: Administration  
PREPARED BY: Administration  
SUBJECT: To Expand the Ash Street TIF District into the Gateway TIF District.

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### PURPOSE

The purpose of this report is to request Council approval to expand the Ash Street TIF District to include portions of the Exit 4-A corridor and to rename as the Gateway TIF District, and to establish an Expendable Trust for District Redevelopment and Infrastructure Activities.

### TOWN ADMINISTRATOR COMMENTS

The Council is encouraged to schedule a public hearing on April 28 and subsequently vote on Resolution #2020-015 and Resolution #2020-016 on May 19.

### BACKGROUND

The Town successfully developed the Ash Street TIF District after its establishment in 2004. With District debt service completely retired in FY 20, and its close proximity both physically and economically with the planned Exit 4-A corridor, an opportunity presents itself to apply proceeds from the Captured Assessed Value to expand economic opportunities in this area.

### DISCUSSION

Similar to the expansion of the Rte. 28N TIF into the Derry Commerce Corridor as approved by the Council in FY 20, the Town has an opportunity to capitalize and expand on a development success story for the overall economic benefit to the community. The Ash Street District has generated an additional tax base valued at \$8.77M since its inception.

This area has been identified in the 2020 Master Plan as a focus area for enhanced development. The area was also identified by the Council during the FY 19 goal setting process for enhancements to Franklin Street Extension for better access to the Town's industrial areas. Further, the regional rail trail is planned to traverse through this area.

The attached map outlines the areas of expansion, which includes the north side of Folsom which will be impacted by the 4-A Corridor construction and may benefit from economic expansion.

It is anticipated that a specific development plan will be formulated, which may include but not limited to the following concepts:

- 1) Continued infrastructure improvements on Ash Street;
- 2) Development of the rail trail as alternate transportation and an economic generator;
- 3) Potential acquisition of land along Folsom Road for economic redevelopment;
- 4) Review of Franklin Street Extension for enhancements

Until such time as the Exit 4-A design is finalized, it is recommended that the Council enact Resolution #2020-016 which would establish a Redevelopment and Infrastructure Activities Fund where TIF Revenues can be parked until such time as improvements commence.



As part of this process, the Town needs to notify the School District and Rockingham County to provide an opportunity to review and comment.

#### FISCAL IMPACT

The Development District currently generates about \$237,000 annually which may be applied to future Gateway TIF District activities. As the amount generated is relatively modest, it is not recommended that any of the Captured Assessed Valuation be returned back to the General Tax Base.

There are no additional fiscal impacts upon the Town through this Resolution.

#### RECOMMENDED ACTION BY COUNCIL

Please see Resolutions #2020-015 and #2020-016; please note that the public hearing is scheduled for April 28 as part of the overall FY 21 Budget hearings, however, formal acceptance will be considered on May 19 as statute requires 15 days between the hearing and adoption.



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## Resolution #2020-015

### To Amend the Development Plan and Tax Increment Financing Plan and Rename the Ash Street Tax Increment Financing (TIF) District

WHEREAS, The Town previously enacted the provisions of Chapter 162-K, Municipal Economic Development and Revitalization Districts; and

WHEREAS, the Town established and actively supports its two TIF Districts (Ash Street and Derry Commerce Corridor) by investing in their development for the benefit of the Districts and the entire community; and,

WHEREAS, the Council and the community have recognized that the Town's transportation patterns will be significantly altered with the impending construction of the Exit 4-A project; and

WHEREAS, the potential and importance of this area to the Town's economic future has been documented in the Town's Master Plan; and

WHEREAS, the expansion of the Ash Street TIF District to include Madden Hill Road, Franklin Street Extension, and portions of Folsom Road and North High Street will provide resources and synergies to further grow the Town's economy;

NOW, THEREFORE, BE IT RESOLVED IN COUNCIL that the Derry Town Council, pursuant to RSA 162-K:9, hereby amends and expands the Development Plan and Tax Increment Financing Plan for the Ash Street TIF District (to be renamed the Gateway TIF District), to provide resources for the orderly development and growth of the Town's commercial and retail sectors, to include the properties highlighted on the attached map.

This Resolution shall take effect upon its passage.

Adopted May 19, 2020.

Attest:

x \_\_\_\_\_

Charles Foote, Council Chair

Date: \_\_\_\_\_

x \_\_\_\_\_

Daniel Healey, Town Clerk

Date: \_\_\_\_\_