

TOWN OF DERRY

Town Council  
Derry Municipal Center

July 28, 2015  
Tuesday - 7:00 PM

**SPECIAL MEETING**

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**6:00 PM** Consultation with legal counsel

**7:00 PM** Call to order

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

**Roll Call: Councilors Tripp, Fischer, Osborne, Katsakiores, Dimmock, Bourdon and Chairman Cardon**

Present: Susan Hickey, Acting Town Administrator & Denise Neale, Town Clerk

Chairman Cardon stated that our Town Administrator Galen Stearns is on an indefinite medical leave of absence.

He publicly thanked Ms. Susan Hickey for stepping up as Acting Town Administrator as she has a wealth of experience in Municipal Government.

This meeting is in regards to the eight (8) referendum petitions.

Chairman Cardon spoke with the Secretary of State and Attorney General's office which directed him to seek legal counsel. The Council has met with legal counsel.

**Old Business –**

**15-82** Referendum Petitions

**Chairman Cardon addressed this matter by reading the following:**

The Referendum Petitions effectively seek to override or veto the budget adopted by the Town Council on May 19, 2015 by requiring voter approval of the budget. I do not believe this is permissible for several reasons, including the following:

1. The Town Charter states that "the Town Council shall enact the budget, with or without amendments, by May 31." Section 9.4 (D). The Town Council, therefore, is vested with the authority to enact the budget.
2. The Town Charter provides for a Town Council form of government without a requirement for voter approval of the budget. If the Town Charter was intended to allow the voters to have final say over the budget, it would have adopted one of the alternative forms of Town government that provide for a Town Council with a budgetary town meeting or official ballot. The form of government adopted, a Town Council without a budgetary town meeting or official ballot, further establishes that the Town Council is responsible for the final approval of the Town budget.
3. The Town Charter states that "[e]xcept as otherwise provided in this Charter, all powers of the Town shall be vested in the Town Council." It also states that the Town Council, "as the elected body serving as the legislative and governing body of the town . . . 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." The Town Council, therefore, has

the powers of a City Council. The New Hampshire Supreme Court previously held in the City of Claremont v. Craig case that a City Council has exclusive authority to adopt a budget and that a charter provision which attempts to require voter approval of the budget is invalid. I believe that the same principles apply here and that use of the referendum process to require voter approval of the Town budget or portions of the budget is similarly improper.

**I move that the Derry Town Council take no action these petitions, seconded by Councilor Fischer.**

There was Council discussion on the motion.

Councilor Tripp asked if this was the chair's opinion. Chairman Cardon replied this is the attorney's opinion. (July 24, 2015)

Councilor Fischer had no comment

Councilor Osborne commented on the fact that this charter has been revised twelve times and never changed. He gave an overview of the powers that Council has listed in the Charter. The Supreme Court found in the Claremont decision "similar action was inappropriate."

Councilor Katsakiores referred to the legal opinion of July 1, 2015 and read an excerpt of this legal opinion as follows:

Section 3.3 © when a referendum petition has been finally determined to be sufficient, "which it has", the Town council shall consider the protested measure of part thereof by voting to repeal it. From the opinion: If the Town Council votes to reject the relief requested the Town Council must schedule a special election for the voters to decided where to repeal. The special election must be scheduled at least 30 days but not more than 60 day.

Councilor Dimmock has no comment

Councilor Bourdon commented on the where the money would come from if these votes were passed. He also commented on the Acting Town Administrator's position as Ms. Hickey now holds the office of CFO and Human Resource Director as well. He feels it is unfair for anyone to have all these positions and puts the Town of Derry at risk.

Councilor Bourdon asked to amend the motion:

**Move to repeal the May 19, 2015 action taken by the Town Council to eliminate the full-time position of the Director of Human Resource/Assistant Town Administrator and reduce the Town Administrator's proposed budget for the Executive Department by \$150,000 by repealing the Town Council vote to "eliminate the full-time position of the Director of Human Resource/Assistant Town Administrator position including salary and benefits in the FY2016 budget for a total reduction of \$150,000 in the Executive Department budget" and the Council's corresponding action to reduce the budget this amount thereby: retaining the Director of Human Resources/Assistant Town Administrator, raise & appropriate the additional sum of \$150,000 for the position of the Director of Human Resources/Assistant Town Administrator in the Executive Department in the Town of Derry's FY2016 budget & corresponding increase the FY2016 budget approved by the Town Council as impacted by the repeal of this specific item by \$150,000.**

There was minimal discussion on this motion

**Motion by Councilor Bourdon, seconded by Councilor Katsakiores**

**Vote: 3-4-0 (Councilors Fischer, Osborne, Dimmock and Cardon) *motion failed***

Original motion repeated:

I move that the Derry Town Council take no action the eight (8) petitions, seconded by Councilor Fischer.

Vote: 4-3-0 (Councilors Tripp, Katsakiores and Bourdon)

Move to adjourn by Councilor Fischer, seconded by Chairman Cardon

Vote: 4-3-0 (Councilors Tripp, Katsakiores, and Bourdon)

Adjournment 7:45 p.m.

  
Denise E Neale  
Town Clerk

September 3 2015  
Date

Recording & Transcription by: Denise E Neale, Town Clerk