

# DERRY TOWN CHARTER



Adopted: November 1984 (effective January 1, 1985)

Amended: 1988, 1991

Revised: 1993

Amended: 1994, 1995, 1996, 1999, 2001, 2002, 2003, 2004, 2005, 2012,  
9/2012 (effective 7/1/13), 7/2013 (effective 7/1/13), 3/10/2020

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# **DERRY CHARTER**

## **PURPOSE**

The purpose of this Charter is to exercise the home rule power recognized under Part One, Article 39 of the Constitution of the State of New Hampshire, consistent with the general laws of the State.

## **ARTICLE 1**

### **INCORPORATION; TOWN COUNCIL FORM OF GOVERNMENT; POWERS**

#### **SECTION 1.1 Incorporation**

The inhabitants of the Town of Derry shall continue to be a body politic and corporate under the name of the "Town of Derry" and as such to enjoy all the rights, immunities, powers and privileges and be subject to all the duties and liabilities now appertaining to or incumbent upon them as a municipal corporation. All existing debts and obligations shall remain obligatory upon the Town under this Charter.

#### **SECTION 1.2 Town Council Form of Government**

Except as otherwise provided in this Charter, all powers of the Town shall be vested in a Town Council.

#### **SECTION 1.3 Construction**

The powers conferred under this Charter are to be construed liberally in favor of the Town, and the specific mention of particular powers is not intended to limit in any way the general powers of the Town as stated in Section 1.1.

#### **SECTION 1.4 Intergovernmental Relations**

Subject only to express limitations in the provisions of the New Hampshire Statutes, the Town may exercise any of its powers or perform any of its functions under this Charter and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with the State of New Hampshire or any political subdivision or agency thereof, or the United States of America or any agency thereof.

## **SECTION 1.5 Districts**

The Town shall continue to be divided into 4 Districts for the purpose of electing Town Councilors from such Districts. The boundaries of the presently established Districts shall remain as drawn until boundaries are redrawn by the Town Council based on the decennial Census of the United States. So far as reasonably fair and practicable, all Districts shall be equal in population. The Town Council shall, if necessary, adjust and establish new boundaries based on decennial Census data. The Town Council may establish its own rules and procedures governing the conduct of redistricting. However, the Town Council shall hold at least one public hearing concerning new District boundaries.

## **ARTICLE 2**

### **ELECTIONS; ELECTION OFFICIALS; CONDUCT OF ELECTIONS**

#### **SECTION 2.1 Composition of Board of Election Officers**

Eligible members of the Supervisors of the Checklist, the Moderator, the Town Clerk, and the Town Council shall constitute the Board of Election Officers. The Moderator shall be the Chairman. The Town Clerk shall serve as the Clerk of the Board. An "eligible" member shall be defined as someone who is not disqualified by State law. **(amended 9-11-2012)**

#### **SECTION 2.2 Moderator**

There shall be a Moderator of the Town who shall have all the powers and duties granted by this Charter and State law. The Moderator shall be elected at large at the regular Town election for a term of 2 years. The Moderator shall have the power to appoint all election officials except those which this Charter or State law requires to be elected or otherwise appointed. The Moderator shall determine whether all ballots from all polling places are to be counted in one or more locations. Vacancies in the office of Moderator shall be filled pursuant to State law.

#### **SECTION 2.3 Supervisors of the Checklist**

(A) There shall be 3 Supervisors of the Checklist who shall hold office for 6 years (and until their successors are elected and

qualified), elected on a staggered basis so that one Supervisor is elected every two years.

(B) Vacancies among the Supervisors of the Checklist shall be filled pursuant to State law. The person so appointed shall hold office until the vacancy for the unexpired term is filled at the next regular Town election.

(C) The Supervisors of the Checklist shall elect a chairman for a term of 2 years.

### **SECTION 2.4 Duties of the Supervisors of the Checklist**

The Supervisors of the Checklist shall have such powers and duties as are specified under State law.

### **SECTION 2.5 Conduct of Elections**

(A) The election officers, whose duty it is to conduct regular and special elections, shall conduct Town elections in accordance with State law. All elected Town officers shall be elected by use of the Non-Partisan Ballot System established by State law.

(B) The regular Town election shall be held on the second Tuesday in March in each year. The Town Council shall by ordinance establish other election dates, polling places and balloting hours.

(C) Persons who would be qualified under State law to vote in a biennial election in the Town if held on the day of a Town election, shall be qualified to vote in the Town election.

(D) The filing period for candidates to be placed on the ballot for Town elections shall be 10 days, beginning on the seventh Wednesday before the Town election. **(amended 3-12-13)**

### **SECTION 2.6 Preparation of Ballots**

The Town Clerk shall prepare separate ballots to be used at all local referenda and at elections at which Town officers are chosen. The ballots shall contain in appropriate sections the names of all candidates in such order as permitted by State law, without party designation. Below the list of names of the

candidates of each office, there shall be as many blank spaces as there are offices to be filled at the election. No titles, military, professional or otherwise, shall accompany the name of any candidate on the ballot.

### **SECTION 2.7 Preservation of Ballots**

All the ballots cast at each election shall be preserved, maintained, and sealed as required by State law.

### **SECTION 2.8 Contested Elections**

(A) Any person for whom a vote was cast and recorded for any office at a town election may, before the expiration of 3 days after the date of the election, apply in writing to the Town Clerk for a recount of the ballots cast for such office and shall pay to the Town Clerk the fee authorized by State law, for the use of the Town. The Town Clerk shall appoint a time for the recount not earlier than 5 days and not later than 10 days after the receipt of the application. If a recount is requested for a Town office, no person shall assume that office until the recount is completed.

(B) The recount shall be conducted by the Board of Election Officers acting as a Board of Recount. In compliance with State law, the members of the Board of Election Officers comprising the Board of Recount shall be the Town Clerk, the Moderator, and members of the Town Council, provided that all officers are eligible pursuant to RSA 669:32. The Board shall determine the results of any recount. Decisions of the Board in cases of contested elections shall be final, subject only to statutory appeals to the Superior Court. **(amended 9-11-2012)**

(C) Tied elections for any elected Town office shall be determined by lot in a manner decided by the Town Clerk in the presence of the candidates who are tied, if upon notice from the Clerk they elect to be present.

(D) If any 10 voters of the Town shall, before the expiration of 7 days after the date of the regular Town election or special election, apply in writing to the Town Clerk for a recount of the votes on any ballot question affecting the Town only, the Clerk shall appoint a time and place for the recount, not earlier than 5

days nor later than 10 days after receipt of the application. The recount shall be conducted in accordance with State law. Applicants shall pay to the Town Clerk, for use of the Town, the appropriate fee as established by State law.

**SECTION 2.9 Certification of Election and Appointment**

(A) Written notice of election or appointment to any Town office or board shall be mailed by the Town Clerk to the person elected or appointed, within 48 hours after the appointment is made or the results of any vote are certified to the Town Council. If, within 10 days from the date of the notice, such person shall not take, subscribe to and file with the Town Clerk an oath of office, such neglect shall be deemed a refusal to serve and the office shall be deemed vacant, unless the Town Council shall extend the time in which such person may qualify.

(B) The removal from office in accordance with this Charter, with or without cause, of a person elected or appointed or otherwise chosen for a fixed term, shall give no right of action for breach of contract.

(C) Except as otherwise provided by law, before entering upon the duties of office, every person elected or appointed to Town office shall take and subscribe to an oath of office as prescribed by law, which shall be filed and kept in the office of the Town Clerk. Any oath required by this section may be administered by any officer qualified by law to administer oaths.

(D) All elected Town officials shall take office on the first Monday following their election and shall hold office until their successors are duly elected and qualified.

**ARTICLE 3**  
**PETITIONS: FREE; INITIATIVE; REFERENDUM**

**SECTION 3.1 Free Petition**

(A) Individual Petitions, Action Discretionary: The Town Council shall receive all petitions which are addressed to them and signed by a registered voter and may, in their discretion, take such action in regard to such petitions as they deem necessary and appropriate.

(B) Group Petitions, Action Required: The Town Council shall hold a public hearing and act by taking a vote on the merits of every petition which is addressed to it and which is signed by at least 100 registered voters. The hearing shall be held by the Town Council, or by a committee or subcommittee thereof, and the action by the Town Council shall be taken not later than 60 days after the petition is filed with the Town Clerk. Hearings on two or more petitions filed under this section may be held at the same time and place. The Town Clerk shall mail notice of the hearing to 10 petitioners whose names first appear on each petition at least 7 days before the hearing. Notice shall be given by publication of a summary of the contents of a petition at least 7 days prior to all such hearings, at public expense. No hearing shall be held upon more than one petition containing the same subject matter in any 12-month period. No hearing or action by the Town Council under this section shall be required in the case of any petition to suspend the implementation of an ordinance adopting a budget or enacting a land use regulation.

**SECTION 3.2 Initiative Petition**

(A) Commencement of Proceedings: Initiative procedures shall be started by the filing of an initiative petition with the Town Clerk. The petition shall be addressed to the Town Council, shall contain a request for passage of a particular measure set forth in the petition, and shall be signed by no less than 20 percent of the total number of votes cast in the last regular Town election.

Signatures to an initiative petition need not be all in one paper. All such papers pertaining to any one measure shall be fastened together and shall be filed in the office of the Town Clerk as one instrument, with the endorsement thereon of the names and

addresses of the persons designated as filing the same. With each signature to the petition shall be stated the place of residence of the signer, giving the street and number, if any.

Within 7 days after the filing of an initiative petition, the Town Clerk shall ascertain by what number of registered voters the petition is signed, and what percentage that number is of the total number of votes cast in the last regular Town election, and shall attach thereto a certificate showing the result of such examination.

The Town Clerk shall forthwith transmit the certificate with the petition to the Town Council and at the same time shall send a copy of the certificate to the first person designated on the petition as filing the same.

When such certificate establishes that the petition appears to have been signed by the requisite number of registered voters, the petition shall be deemed to contain requisite signatures unless written objections are made with regard to the signatures thereon by a registered voter within 7 days after such certificate has been issued, by filing such objections with the Town Council and a copy thereof with the Town Clerk. The validity of any such objection shall be determined by the Town Council at their next regular meeting.

(B) Requirements for Passage and Submission to Electorate. If the Town Council determines that the petition contains the requisite signatures of registered voters, and if in the opinion of the Town attorney the petitioned initiative measure may lawfully be passed by the Town Council, the Town Council shall within 20 days after the petition has been finally determined to be sufficient: (1) pass the measure without alteration; or, (2) schedule a special Town election to be held on a date not less than 30 nor more than 60 days thereafter, and submit the measure without alteration to a vote at that election. However, if any other Town election is to occur within 60 days after the petition has finally been determined to be sufficient, the Town Council may omit a special election and submit the measure to a vote at such other Town election. The ballot presenting an initiative measure shall state the nature of the measure in terms sufficient to communicate the substance

thereof. The question shall be whether the initiative measure should be adopted.

### **SECTION 3.3 Referendum Petitions**

(A) Commencement of Proceedings: Referendum petitions must be filed with the Town Clerk within 30 days after adoption by the Town Council of the measure or part thereof protested by the petition. Referendum petitions shall identify specifically the measure or part thereof protested and must be signed by no less than 20 percent of the total number of votes cast in the last regular Town election. The procedures of Section 3.2 (A) shall apply to referendum petitions except that the words "measure or part thereof protested" shall, for this purpose, replace the word "measure" in the said section whenever it may occur, and the word "referendum" shall replace the word "initiative" in said section.

(B) Suspension of Effect of Measure or Part Thereof Protested: When a referendum petition is filed with the Town Clerk, the measure or part thereof protested shall be suspended from taking effect, except for emergency ordinances adopted under Section 6.3 of this Charter or ordinances adopting a budget or land use regulation, which shall not be subject to suspension. Such suspension shall terminate when:

1. There is a final determination of insufficiency of the petition; or
2. The filers of the petition withdraw it; or
3. 30 days have elapsed after a vote of the Town on the measure or part thereof protested

(C) Action on Petition: When a referendum petition has been finally determined to be sufficient, the Town Council shall reconsider the protested measure or part thereof by voting whether to repeal it. If the Town Council fails to repeal the protested measure or part thereof within 30 days after the day the petition was finally declared sufficient, the Town Council shall submit the protested measure or part thereof to a vote of the Town at a special Town election to be held on a date fixed by the Town Council. Such special election shall be held not less than 30 nor

more than 60 days after the Town Council's vote on repeal. However, if any other Town election is to occur within 60 days after the Town Council's vote on repeal, the Town Council may omit a special election and submit the protested measure or part thereof to a vote at such other Town election.

The ballot presenting a referendum measure under this section shall state the nature of the protested measure or part thereof in terms sufficient to communicate its substance. The question shall be whether the referendum measure should be repealed.

### **SECTION 3.4 Submission of Proposed Measure to Voters**

The Town Council may, on its own motion, submit any proposed measure, or a proposition for the repeal or amendment of any measure, to a vote of the Town at a regular or special Town election in the same manner and with the same force and effect as provided by this Charter for submission of initiative or referendum measures.

### **SECTION 3.5 Measures with Conflicting Provisions**

If two or more initiative or proposed measures passed at the same Town election contain conflicting provisions, only the one receiving the greater number of affirmative votes shall take effect.

## **ARTICLE 4 JUDICIAL AND ADMINISTRATIVE BOARDS**

### **SECTION 4.1 Elected Boards**

(A) Trustees of Trust Funds: There shall be a board of 3 Trustees of Trust Funds whose powers and duties are provided by State law. Trustees of Trust Funds shall be elected at the regular Town election for terms of 3 years, one Trustee each year. Vacancies shall be filled by appointment by the Town Council for the unexpired term.

(B) MacGregor Library Trustees: There shall be a board of 7 Trustees of the MacGregor Library who shall be elected at the regular Town election for terms of 3 years, staggered so that no

more than 3 Trustees are elected at one time. Vacancies shall be filled by appointment by the Town Council for the unexpired term.

(C) Taylor Library Trustees: There shall be a board of 5 Trustees of the Taylor Library who shall be elected at the regular Town election for terms of 3 years, staggered so that no more than 2 Trustees are elected at one time. Vacancies shall be filled by appointment by the Town Council for the unexpired term.

(D) Cemetery Trustees: The duties and responsibilities of Cemetery Trustees pursuant to RSA 289 shall be delegated to and exercised by the Derry Town Council.

#### **SECTION 4.2 Administrative Boards**

(A) Planning Board: There shall be a Planning Board, whose powers and duties are provided by State law. The Planning Board shall consist of 9 members, of whom 7 are appointed and 2 are ex officio. The 7 appointed members shall be appointed by the Town Council for terms of 3 years, except that initial appointments shall be staggered so that no more than 3 appointed members shall have terms that expire in a single year; a vacancy occurring before the end of a term shall be filled for the unexpired term. The 2 ex officio members shall consist of the Town Administrator, or with approval of the Town Council the Administrator's designee, and a Town Councilor designated by the Town Council for a one year term. There shall also be 3 alternate appointed members appointed in the same way as regular appointed members, except no more than one alternate appointed member's term shall expire in a single year. **(amended 9-11-2012)**

(B) Housing and Redevelopment Authority: There shall be a Housing and Redevelopment Authority whose powers and duties are provided by State law. The Authority shall consist of 5 members appointed by the Town Council for terms of 5 years, except that initial appointments shall be staggered so that no more than one member's term shall expire in a single year. Vacancies shall be filled for the unexpired term.

(C) Conservation Commission: There shall be a Conservation Commission whose powers and duties are provided by State law.

The Commission shall consist of 7 members appointed by the Town Council for terms of 3 years, except that initial terms shall be staggered so that no more than 2 members shall have terms that expire in the first year, two members in the second year and three members in the third year. Vacancies shall be filled for the unexpired term. Four (4) alternate members shall be appointed in like manner, except that the terms of no more than two alternate members shall expire in a single year.

(D) Heritage Commission: There shall be a Heritage Commission whose powers and duties are provided by State Statute in accordance with RSA 673:4-a I & II only, 674:44a, 674:44-b I & III, 674:44-d. The Commission shall consist of 5 (five) members who shall have the powers and duties of both the Heritage Commission and a Historic District commission. The Commission shall consist of at least four (4) regular members who shall be appointed by the Town Council for three (3) year terms which shall be staggered so that no more than two (2) members' terms will expire in a single year. One regular member shall be a Town Councilor, designated by the Town Council for a term of one (1) year. There shall be three (3) alternate members who shall be appointed by Town Council for three (3) year terms which shall be staggered so that no more than one (1) member's term will expire in a single year. Vacancies shall be filled for the unexpired term.”  
**(amended 1999)**

### **SECTION 4.3 Judicial Boards**

Zoning Board of Adjustment: There shall be a Zoning Board of Adjustment whose powers and duties are provided by State law. The Board shall consist of 5 regular members appointed by the Town Council for 3 year terms, except that initial appointments shall be staggered so that no more than 2 members shall have terms that expire in a single year. In addition, there shall be 5 alternate members, appointed in the same way as regular members, except that no more than two alternate members' terms shall expire in a single year. Vacancies shall be filled for the unexpired term.

#### **SECTION 4.4 Terms of Office**

The terms of office of all members of appointed boards shall begin on April 1 and end on March 31.

#### **SECTION 4.5 Certain Vacancies**

(A) Unless otherwise provided in this Charter, in the event of a vacancy in an elected office, the Town Council shall fill the vacancy by appointment until the next regular Town election, at which time the vacancy shall be filled by election for the remainder of the unexpired term.

(B) Unless otherwise provided in this Charter, vacancies in appointed boards, commissions or committees shall, be filled by available alternate members selected by Town Council for the unexpired term.

#### **SECTION 4.6 Board Membership Restriction**

No member or alternate member of any Administrative or Judicial Board of the Town shall serve on any other Administrative or Judicial Board of the Town, except for ex officio members or Town Councilors designated to serve as members of a board.

#### **SECTION 4.7 Other Administrative Committees**

Other administrative boards and committees may be established as necessary by the Town Council.

#### **SECTION 4.8 Meetings with Town Council and Town Administrator**

The Town Council and the Town Administrator shall meet during the month of January, and more often if Town affairs so warrant, with the Chairmen of all standing town committees and boards to review significant actions taken by the committees, projects currently under discussion and anticipated activity for the coming year.

## **ARTICLE 5 THE GOVERNING AND LEGISLATIVE BODY**

### **Section 5.1 The Town Council**

Except as otherwise provided by this Charter, the governing and legislative body of the Town shall be a Town Council exercising all powers authorized by State law. The Town Council shall consist of 7 councilors, of whom 3 councilors shall be elected at large, and one councilor shall be elected from each District.

### **Section 5.2 Terms of Office**

The term of office for members of the Town Council shall be for three years, or until the election and qualification of their successors.

### **Section 5.3 Qualification for Office as Town Councilor**

To be eligible for election to the office of Town Councilor, a candidate must be 18 years of age, be a resident of the Town for at least one calendar year before the election, and in the case of a District Councilor, be a resident of the District to be represented. If a Councilor or any elected official of the Town moves from the Town, or from the District in the case of a District Councilor, and establishes a domicile in some other place, the office shall be declared vacant and shall be filled as provided for by this Charter.

### **SECTION 5.4 Selection of Chairman and Chairman Pro Tem**

The Council shall, by the affirmative vote of a majority of all its members, at its first regular meeting following each regular Town election, choose one of its members Chairman for a term of one year. The Council shall choose one of its member's Chairman Pro Tem, for a term of one year, who shall act in the absence or disability of the Chairman. In the event of a vacancy occurring in the office of Chairman, the Council shall choose one of its members Chairman at the next regular meeting to serve for the unexpired term. The Chairman shall be the official head of the Town for all ceremonial purposes, shall preside at all meetings of the Council and may speak and vote at such meetings.

### **SECTION 5.5 Election of Councilors**

Town Councilors shall be elected for terms of 3 years on a staggered basis, under the following schedule: At the first regular Town election following the effective date of this Charter (1994), there shall be elected one Councilor-at-large and the Councilor for District 1; at the second ensuing regular Town election (1995), there shall be elected one Councilor-at-large and the Councilors for District 2 and 4; at the third ensuing regular Town election (1996), there shall be elected one Councilor-at-large and a District Councilor for District 3. Thereafter, Town Councilors shall be elected on the same schedule in each ensuing 3 year cycle..

### **SECTION 5.6 Removal of Councilors**

The Town Council may, on specific charges and after due notice and hearing, at any time remove one of its own members for cause, including but not limited to prolonged absence from or other inattention to duties, crime or misconduct in office, or as specified in this Charter.

### **SECTION 5.7 Filling of Town Council Vacancies**

In case a vacancy occurs in the Town Council for any reason, the remaining Town Councilors shall, by majority vote, appoint an acting Councilor from among persons eligible to hold the vacant office, to serve until the next regular Town election, at which point the vacancy shall be filled by election for the remainder of the unexpired term.

The Town Council shall act to fill a vacancy no later than 21 days after the vacancy has been officially declared. If such action is not taken within 21 days, the appointment shall be made by the Chairman of the Council. The person so appointed shall be sworn and commence to serve forthwith.

### **SECTION 5.8 Compensation; Expenses**

The Town Council shall establish an annual salary and expense allowance for its members, subject to the following: No increase in such salary or expense allowance shall be effective unless it shall have been adopted by a two-thirds vote of all the members of the Town Council. The new salary and expense schedule shall be included in the next Town budget process, and shall take effect

in the fiscal period to which that budget applies. No Councilor in office at the time the new schedule is adopted shall receive any benefit of the new schedule during the remainder of the Councilor's then-current term of office.

**SECTION 5.9 Rules; Meetings; Quorum**

(A) The Town Council shall from time to time establish rules for its proceedings. Regular meetings of the Town Council shall be held at a time and place fixed by the Council but which shall be not less frequent than once monthly. Special meetings of the Town Council may be held on the call of the Town Administrator, or the Chairman of the Council, or on the call of any three or more members, by written notice delivered to the place of residence or business of each member at least 48 hours in advance of the time set. Sessions of the Town Council shall be open to the public, in accordance with RSA 91-A. Every matter coming before the Town Council for action shall be put to a vote, the result of which shall be duly recorded.

(B) A majority of all the members of the Town Council shall constitute a quorum. The affirmative vote of a majority of all the members of the Town Council shall be necessary to adopt any appropriation. Except as otherwise provided by law or this Charter, any other action or measure may be adopted by a majority vote of those present.

**SECTION 5.10 Council Staff**

The clerk of the Town Council shall be the Town Clerk. The Clerk of the Town Council or designee shall give notice of all meetings of the Town Council to its members and to the public, shall keep a record of its proceedings and shall perform such duties as may be assigned by the Charter, by ordinance, or by other vote of the Town Council.

**SECTION 5.11 Town Councilors - Incompatible Offices**

Except as otherwise provided in this Charter, members of the Town Council shall not hold any other office or employment with the Town. Former members of the Town Council shall not be eligible for appointment as a compensated Town officer or employee until one year after the expiration of their service.

## **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 a notice placed in a newspaper of general circulation in the Town at least once, publicizing the time and place when and where it will be given a public hearing and be considered for final passage. The newspaper notice shall also contain a statement describing the proposal, and designating the

place where the proposal is on file for public inspection.  
**(amended 9-11-2012)**

(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 two Councilors object 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 relied upon in making the objection. 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.  
**(amended 9-11-2012)**

# **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 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.

### **SECTION 8.2 Qualifications**

The Administrator shall be appointed solely on the basis of qualifications 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 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.

**(amended 3-12-2013)**

**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 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) 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 Acting Town Administrator.

(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.

(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 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 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 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. **(amended 3-12-13)**

(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) Override of Tax Cap: The Town Council may vote to exceed the limit on annual increases under the tax cap provision in Sec. 9.4 (A) for the specific budget year under consideration upon a two-third vote of the entire Derry Town Council.

**(amended 3-10-2020)**

(D) 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.

(E) 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 each quarterly period during the fiscal year, and more often if required by the Town Council, the Administrator or designee shall submit to the Town Council data showing the state of the Town's financial affairs. The Administrator shall, at the Town Council's first regular meeting in the 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. The Town Administrator, with simple majority approval of the Town Council, may reduce appropriations for any item or items, except amounts required for debt and interest charges or other legally-required expenditures, to such a degree as may be necessary to keep total expenditures within total anticipated revenues **(amended 3-13-12)**

**SECTION 9.6 Appropriations After Adoption of Budget**

No appropriation shall be made for any purpose not included 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 9.7 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.

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, that the amount to be transferred is not essential for the effective operation of the department’s functions, and that the transfer is not otherwise contrary to State law.” **(amended 9-11-2012)**

**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. 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 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.  
**(amended 3-12-13)**

(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 9.9 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 years pass without any disbursement from, or encumbrance of, the appropriation. 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.

### **SECTION 9.10 Purchasing Procedure**

The Administrative Code, as approved by the Town Council, shall establish purchasing and contract procedure, as well as a non-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 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 the Town Administrator; however the Town Administrator must have the approval of the Council Chair to waive bidding requirements on his/her purchases.

**(amended 3-13-2012)**

**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. 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 9.14 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 appointed upon the recommendation of the Town Administrator with approval by the Town Council. The appointment shall be made in writing and shall include the compensation to be paid. 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.

**(amended 9-11-2012)**

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.

**(amended 3-13-2012)**

Transitional Provision: Pursuant to RSA 669:17-d, upon passage of this amendment the person holding the elected office of

Treasurer shall continue on until the next annual Town election following the discontinuance of the elected office of Treasurer.  
**(amended 9-11-2012)**

**SECTION 9.17 Borrowing Procedure**

Subject to the applicable provisions of State law 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 9.18 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 issue a Request for Proposal for the provision of independent audit services. **(amended 3-12-2013)**

**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 150 days after the close of the fiscal year. **(new section 3-12-2013)**

**ARTICLE 10  
GENERAL PROVISIONS**

**SECTION 10.1 Availability of Town Records**

In compliance with RSA 91-A, 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.

(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.

(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, 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."

(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.

## **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.