

TOWN OF DERRY

Town Council
Derry Municipal Center

October 1, 2019
Tuesday - 7:00 PM

6:00 PM Non-Public Session – RSA 91A:3 II (a,d)
7:00 PM Call to order

Councilor Tripp moves to leave non-public session, seconded by Councilor Katsakiores – all agreed

Councilor Tripp moves to seal RSA 91A:3 II (a, d), seconded by Councilor Katsakiores – all agreed

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

Roll Call: Councilors Chirichiello, Katsakiores, Tripp, Foote, Bourdon and Chairman Pro Tem Morgan, Absent: Chairman Wetherbee
Present: TA David Caron, Town Clerk Daniel Healey

Public Forum - *30 Minutes*

Open Public Forum – all agreed

Lorraine Butler/Deanna Butler: Sunset Ave – Lorraine is requesting that the town look at purchasing the old Shute's corner parcel to turn it into a park. Her mother, Deanna, has talked with residents and staff at Birch Heights and they would like somewhere to stop and sit on days they go for walks in the area. They both have been told that the lot is unbuildable.

Dave Dyson: North Shore Rd – Believes the speed on his road is too fast and would like more signs notifying the drivers of the speed limit. It was suggested that he bring his concerns to the Highway Safety Committee to further assist him.

Scott Savard: Londonderry Ln – Children are being required to setup soccer nets before games being played at the middle schools and he does not believe that is right. This is the first the council has heard of this and they are equally concerned.

Richard Trembley: Laurel St – Questioned the tax rate and asked if it will be going down, he has only seen increases and it is getting harder to afford his home. Staff will be reaching out to see the tax history on his property.

Councilor Foote moves to extend Mr. Trembley's time, seconded by Councilor Tripp – all agreed

Motion by Councilor Katsakiores to close public forum, seconded by Councilor Tripp – all agreed

Consent Agenda

19-114 Approve Non-Public Minutes – September 17, 2019 – **minutes sealed**

19-115 Approve Minutes – September 17, 2019

19-116 Ordinance #2019-012 – Amend Cemetery Registration
Consent agenda approved

Chairman Pro Tem's Report – Jim Morgan

There are a few people who showed interest in the Derry Commerce Corridor Advisory Board and appointments will take place at one of the next meetings. The Route 28 traffic light is now fully functional.

Councilor Chirichiello moves to appoint Dawn Merrill as an alternate of the Economic Development Advisory Committee for a 3 year term to expire March 31, 2022, seconded by Councilor Tripp
Roll Call Vote: 6-0-0

Chairman Pro Tem Morgan moves to appoint Michael Fodiman as an alternate of the Net Zero Task Force Committee for a 3 year term to expire March 31, 2022, seconded by Councilor Tripp
Roll Call Vote: 6-0-0

Town Administrator's Report – David Caron

The Town was presented with a check from Citizen's Bank for cash back as a result of the P-Card Program. The Livestock and Fowl provisions will be reviewed at the next town council meeting. The Town received a clean audit which makes it 20 years in a row. The state approved the final report on Exit 4A and a design team will be selected for the project. There have been bids received to replace 10 trees in the downtown. Solar at the landfill will be discussed at the next town council meeting. The water connection on Ryan's Hill will be beginning with an anticipated completion date of July of 2020. The state received many applications for sports betting, but no locations have been selected yet. On October 30th there will be a Master Plan meeting. The State budget has been resolved and Derry will be receiving money from the state to help with education. Retired Assistant Fire Chief Scott Jackson and Lieutenant Michael Stanhope received Meritorious Service Awards during the NH Fire & EMS Committee of Merit Awards ceremony held in Concord, NH. Retired Chief Jackson also received the Aubrey G. Robinson Fire Prevention Award from the NH State Fire Marshall Paul Parisi. That award is presented to an individual that has shown outstanding dedication and support, above and beyond normal duties in the field of Fire Prevention, effectively reducing injury and death by their work in public education, code enforcement, and code development.

Public Hearings –

19-108 Ordinance #2019-010 – To Amend Chapter 138 of the General Code to adopt the Derry Commercial/Industrial Property Tax Exemption Program– *Town Administrator Dave Caron presenting*

The Town Council has maintained as one of its primary goals the enhancement of economic development opportunities in the community. Currently, the Town offers a Downtown Derry Revitalization Tax Relief, which provides relief from taxes on the renovated portion of an existing structure within the Downtown area for a period of five years (or more under certain circumstances). The Town also sponsors a Facade Improvement Program which the Council recently extended to all properties within the Derry Commerce Corridor TIF District. The Facade

improvement Program is a matching grant for work on facades and demolition of eligible properties. The Town further maintains two TIF Districts - although these programs do not provide direct tax exemptions to eligible properties, they do redirect new tax revenues into a specific fund dedicated to public improvements and programs within the TIF Districts, thus accelerating the appreciation of property values in those areas. This new program was historically known as the "Coos County Bill" as its origins lie in a program specifically targeting development in New Hampshire's northernmost County. The Legislature later expanded the program statewide and, more recently, enabled the Town Council to make decisions on applications received on a case by case basis, as opposed to a blanket approval for all eligible properties.

Motion by Councilor Tripp to open public hearing, seconded by Councilor Katsakiores – all agreed

No one from the public spoke.

Motion by Councilor Tripp to close public hearing, seconded by Councilor Katsakiores – all agreed

Councilor Tripp MOVES THAT THE TOWN COUNCIL adopt Ordinance #2019-010, which reads as follows [*Read the Ordinance*], seconded by Councilor Katsakiores

Roll Call Vote: 6-0-0

Ordinance attached

19-109 Resolution #2019-056 – To Schedule a Town Charter Amendment vote relative to Section 9.4 (A) Limitation of Budget Increases (Tax Cap) – *Town Administrator Dave Caron presenting*

The Town has operated under a town charter since 1984 and a budgetary tax cap since 1993. Although the Charter currently includes two opportunities to raise taxes outside of the cap, state law requires a general override process of the Tax Cap pursuant to RSA 49-D:3 I (e). The Supreme Court recently reaffirmed this requirement in its decision of Teeboom V. City of Nashua, Moriarty V. Mayor, City of Nashua, 2018-0171. Currently, there are two mechanisms available to the Council under the charter to raise taxes in excess of the voter approved Tax Cap. First, Section 9.4 Action on the Budget, includes language which recognizes the interaction of the town's budget with federal and state mandates. Similarly, Subsection (B) of Section 9.4. Exceptions to Budget Limitation, provides an additional mechanism. The City of Nashua Charter, upon which the Supreme Court affirmed the Superior Court's invalidity of its tax cap, includes the exact two limitations that are found in Derry's Town Charter. Thus, it is clear that without further voter action, the Town's Tax Cap limitations as set forth in Section 9.4 are invalid.

Motion by Councilor Tripp to open public hearing, seconded by Councilor Katsakiores – all agreed

No one from the public spoke.

Motion by Councilor Tripp to close public hearing, seconded by Councilor Katsakiores – all agreed

Councilor Tripp MOVES THAT THE TOWN COUNCIL adopt Resolution #2019-056, which reads as follows [Read the Resolution], seconded by Councilor Katsakiores

Roll Call Vote: 6-0-0

Resolution attached

19-110 Resolution #2019-057 – Relative to Fee Adjustments at the Transfer Station– *Public Works Director Michael Fowler presenting*

The Town's Solid Waste Ordinance is contained within Chapter 128. Currently, customers are charged to dispose of construction and demolition debris based on the weight of the product. The Department of Public Works seeks to replace the existing scale which was installed in 1994 with a new scale approved in the FY 20 budget. A bid was solicited to replace the scale and the new scale will be installed in late October or early November 2019. Since the scale is being replaced in the current location, the scale operations will be closed for approximately four weeks. There is a steady demand for service to accept construction and demolition debris. In 2018, the existing scale had a failed part which could not be repaired for nearly five weeks. Customers were diverted to other facilities if they sought to dispose of C & D debris. It is the Town's intent to provide convenience to customers by continuing to permit disposal at fixed fees, based on approximate volumes. Customers normally charged a weight-based fee will be assessed a flat fee based on the estimated volume of the vehicle or trailer that they bring to the Transfer Station. Based on experience of weights for various sized units at full capacity, temporary charges would apply.

Motion by Councilor Chirichiello to open public hearing, seconded by Councilor Bourdon – all agreed

No one from the public spoke.

Motion by Councilor Chirichiello to close public hearing, seconded by Councilor Foote – all agreed

Councilor Tripp MOVES THAT THE TOWN COUNCIL adopt Resolution #2019-057, which reads as follows [Read the Resolution], seconded by Councilor Katsakiores

Roll Call Vote: 6-0-0

Resolution attached

19-111 Ordinance #2019-011 – Revisions to Chapter 122 of the Municipal Code – Sewers – *Deputy Director of Public Works Tom Carrier presenting*

On December 12, 2018, NHDES conducted a Pretreatment Program Compliance Audit of Derry's Industrial Pretreatment Program. While the Audit found that Derry's program was "being implemented in a manner that is adequate and effective" it did note that certain actions were needed to comply with new rules promulgated by EPA including revisions to the Sewer Use Ordinance: Chapter 122 of the Code of the Town of Derry. Town Council is requested to adopt the Chapter 122 of the Code of the Town of Derry as revised to date inclusive of the Derry, NH Industrial Pretreatment Program Enforcement Response Plan.

Motion by Councilor Bourdon to open public hearing, seconded by Councilor Tripp – all agreed

No one from the public spoke.

Motion by Councilor Tripp to close public hearing, seconded by Councilor Katsakiores – all agreed

Councilor Tripp MOVES THAT THE TOWN COUNCIL adopt Ordinance #2019-011, which reads as follows [*Read the Ordinance*], seconded by Councilor Katsakiores

Roll Call Vote: 6-0-0

Ordinance attached

19-112 Resolution #2019-058 – Approve NH Highway Safety Agency for Step Patrols, Distracted Driving, Pedestrian/Bicycle Patrols and DWI Patrols– *Police Chief Ed Garone presenting*

Periodically, the NH Highway Safety Agency distributes funds to support selective traffic enforcement patrols and/or equipment. The Police Department has received a contract for four such programs. Sustained Traffic Enforcement (STEP) totaling \$13,466 for 40 4-hour patrols, Distracted Driving totaling \$6,733 for 20 4-hour patrols, Pedestrian/Bicycle Patrols totaling \$6,733 for 20 4-hour patrols, and DWI Patrols totaling \$6,733 for 20 4-hour patrols. The NH Highway Safety Agency will reimburse the Town for 100% of the salary-related expenses plus associated roll up costs for all hours worked under the grants. The Town is responsible for in kind cost matches for the 4 patrol grants totaling \$8,416.25. Those costs are soft match costs and are funds already budgeted for administering the grants, prosecuting any cases resulting from the enforcement efforts and equipment costs associated with conducting the patrols i.e. vehicle and fuel costs. Enforcement patrols will be scheduled throughout the grant period as one-man patrols. Officers assigned will be reimbursed at their respective overtime rate.

Motion by Councilor Chirichiello to open public hearing, seconded by Councilor Foote – all agreed

No one from the public spoke.

Motion by Councilor Tripp to close public hearing, seconded by Councilor Foote – all agreed

Councilor Tripp MOVES THAT THE TOWN COUNCIL adopt Resolution #2019-058, which reads as follows [*Read the Resolution*], seconded by Councilor Katsakiores

Roll Call Vote: 6-0-0

Resolution attached

New Business

19-117 Resolution #2019-061 – To Authorize an amendment to a Master Lease/Purchase Agreement to finance the acquisition of certain capital equipment – *Town Administrator Dave Caron presenting*

During the budget review in May 2016, it was determined that entering into a competitively bid master lease agreement for capital improvement purchases over the next five years would be cost effective for the town. A bid was produced and sent to local and national banks and lending

institutions for quotes of interest rates and terms for a master lease agreement for capital purchases. The FY2020 lease amount is \$1,891,660. Bank of America was chosen again for their guaranteed fixed interest rates and no fees passed onto the community. The interest rates are 1.99% for a five-year term and 2.03% for a seven year term. These rates and terms may also be blended into one lease schedule to the master lease agreement. Equipment incorporated into this master lease agreement include public works vehicles and equipment, police vehicles and replacement of HVAC units at the Municipal Center, Derry Public Library, Vehicle Maintenance Garage and Police Department. Although the Council's approval of Resolution #2016-025 contemplated adjustments to the list of acquisitions, Bank of America has requested a formal Council amendment to the Resolution for FY2020 purchases similar to the amendment provided in Resolution #2017-079. As purchases are made funds available in the master lease will be applied to the purchases. Annual lease payments will be a legal obligation of the Town and will be made from Capital Reserve Funds or other resources as budgeted.

Councilor Tripp MOVES THAT THE TOWN COUNCIL adopt Resolution #2019-061, which reads as follows [*Read the Resolution*], seconded by Councilor Katsakiores

Roll Call Vote: 6-0-0

Resolution attached


Councilor Comments

Councilor Tripp – A First impressions meeting will take place Monday October 7 at 7pm at Studio Lab which is located at 11 A St in Derry. It is an open discussion for locals who want to see the community be successful and grow. Derry partnered with representatives from Moultonborough and the two teams switched towns and explored each other's communities and downtown areas, gauging what they liked, didn't like, or what improvements could be made using an outsider's perspective. The Southern New Hampshire Planning Commission has been working with DOT on updating the bicycle and pedestrian plan. A meeting is scheduled for October 30th.

Councilor Foote – The 2nd Annual Oktoberfest, hosted by the Derry Village Rotary Club will take place this Saturday, October 5, 2019, from 12pm to 6pm in the field at the Boys & Girls Club of Greater Derry. 100% of proceeds will benefit local charities in the Derry area.

Councilor Morgan – Would like staff to follow up with Mr. Trembley. Asked when the recreation study would be complete and was told a full report will be done for December, a stakeholders meeting will take place in October, and November 13th there will be a public forum.

Adjournment: 8:20 p.m.



Town Clerk

Recording & Transcription by: Daniel Healey, Town Clerk



Date



ORDINANCE

Number 2019-010

Amend Chapter 138 of the General Code and adopt the Derry
Commercial/Industrial Property Tax Exemption Program

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, a goal of the Town Council is to encourage economic development opportunities throughout the Town; and

WHEREAS, the Derry Commercial/Industrial Property Tax Exemption Program will provide additional incentives to expand, modernize, and relocate businesses to Derry; and

WHEREAS, the State Legislature has amended RSA 72:80-83 which provides the Town Council the flexibility to determine the public benefit of development applications submitted before it;

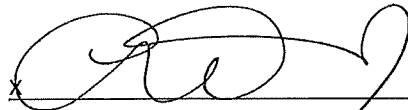
NOW, THEREFORE, THE TOWN OF DERRY ORDAINS that the Chapter 138 of the General Code is amended by adopting the Derry Commercial/Industrial Property Tax Exemption Program, specifically:

- 1) The Program shall apply to all properties within the Town;
- 2) The maximum exemption amount of new value shall be 50%;
- 3) The maximum duration shall be for ten years;
- 4) The public benefit shall be as defined pursuant to Section 138-38 of the attached Ordinance.


Pursuant to RSA 72:82, this Ordinance shall take effect on April 1, 2020.

Adopted: October 1, 2019

Attest:



James P. Morgan, Council Chair Pro-Tem
Date: 10/3/19

x 

Daniel Healey, Town Clerk
Date: 10/3/19

Archival Ref: Agenda Item #19-108



RESOLUTION

Number 2019-056

To Schedule a Town Charter Amendment Vote Relative to
Section 9.4(A) Limitation of Budget Increases (Tax Cap)

WHEREAS, Section 5.1 of the Town Charter establishes the Town Council as the governing and legislative body of the Town, thereby empowering the Council to implement laws as may be enacted by the State Legislature; and

WHEREAS, the voters of the Town enacted Section 9.4 (A) of the Town Charter which places a limitation on the annual increase to the town tax rate; and

WHEREAS, although voters did approve specific exceptions to the tax cap in subsections (A) & (B) of Section 9.4, the Supreme Court recently ruled in a case involving the City of Nashua that a general override of the tax cap pursuant to RSA 49-D:3 I (e) shall be included in a Town Charter in order to maintain the validity of a Tax Cap; and

WHEREAS, voters have supported the Tax Cap and the Town Council seeks a remedy to maintain the Tax Cap;

NOW, THEREFORE, BE IT RESOLVED IN COUNCIL that a question shall be placed on the Official Ballot of the March 10, 2020 municipal election, worded as follows:

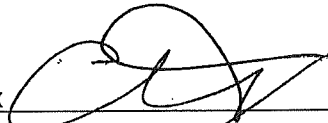
"Shall the municipality approve the charter amendment summarized below:


Adopt Section 9.4 (C) of the Town Charter which provides for an override
of the tax cap upon a two-thirds vote of the entire Derry Town Council"
(Failure to enact this subsection will invalidate the Tax Cap)

This Resolution shall take effect immediately upon its passage.

Adopted: October 1, 2019

Attest:

x 
James Morgan, Council Chair Pro-Tem
Date: 10/3/19

x 
Daniel Healey, Town Clerk
Date: 10/3/19



Resolution #2019-057

To Authorize a Fee Adjustment at the Transfer Station

WHEREAS, The Town operates a Transfer Station, which accepts construction and demolition debris for a fee; and

WHEREAS, the Town is in need of replacing the weight scale at the Transfer Station; and,

WHEREAS, the Town would be best served by implementing a volume-based fee system for construction and demolition debris during the time in which the scale is inoperable;

NOW, THEREFORE, BE IT RESOLVED IN COUNCIL that the Derry Town Council, pursuant to RSA 41:9-a, hereby approves the attached volume-based fee schedule for construction and demolition debris disposal during the interim period that the scale is inoperable.

This Resolution shall take effect immediately upon its adoption.

Adopted October 1, 2019.

Attest:

James P. Morgan, Council Chair Pro-Tem

Date: 10/3/19

Daniel Healey, Town Clerk

Date: 10/3/19

Town of Derry
Interim Fee Schedule
Construction and Demolition Debris

Resident – Passenger Vehicle (Trunk or otherwise)	\$45
Resident – ½ Ton Pickup Truck (Tundra/F150)	\$90
Resident – ¾ Ton Pickup Truck (2500, 3500 class)	\$135
Resident – 1 Ton Pickup Truck (4500, 5500 class)	\$180
Resident – Box Truck or Trailer (approximately 2 tons)	\$360
Non-Resident – Passenger Vehicle (Trunk or otherwise)	\$55
Non-Resident – ½ Ton Pickup Truck (Tundra/F150)	\$110
Non-Resident – ¾ Ton Pickup Truck (2500, 3500 class)	\$165
Non-Resident – 1 Ton Pickup Truck (4500, 5500 class)	\$220
Non-Resident – Box Truck or Trailer (approximately 2 tons)	\$440



ORDINANCE

Number 2019-011

Amend Chapter 122 of the General Code, Sewers, to Maintain
Compliance with USEPA Regulations

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, in the absence of Board of Sewer Commissioners, the Town Council assumes the duties and responsibilities as set forth in RSA 149-I; and

WHEREAS, a recent audit of the Industrial Pretreatment Program by the NH Department of Environment Services resulted in recommendations to amend the Town's Sewer Ordinance; and

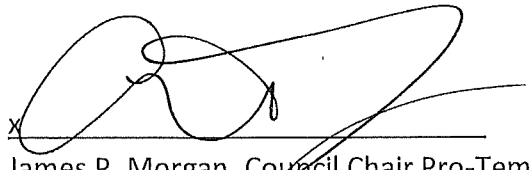
WHEREAS, these recommended amendments are required by the US Environmental Protection Agency;


NOW, THEREFORE, THE TOWN OF DERRY ORDAINS that the Chapter 122 of the General Code, Sewers, is hereby amended as revised to date, including the attached Industrial Pretreatment Program Enforce Response Plan.

This Ordinance shall take effect 30 days after its adoption.

Adopted: October 1, 2019

Attest:

x 
James P. Morgan, Council Chair Pro-Tem
Date: 10/3/19

x 
Daniel Healey, Town Clerk
Date: 10/2/19



RESOLUTION

Number 2019-058

To Accept a NH Highway Safety Agency Grant for
Various Traffic Enforcement Activities

WHEREAS, Section 9.15 of the Town Charter authorizes the Town Council to accept grant funding; and

WHEREAS, funding is available through the NH Highway Safety Agency; and

WHEREAS, the Town may receive funds for various traffic enforcement activities; and

WHEREAS, these activities enhance the safety of the travelling public in Derry;


NOW, THEREFORE, BE IT RESOLVED IN COUNCIL, pursuant to RSA 31:95-b, that the Town Administrator is hereby authorized to apply for, accept and expend \$33,665 derived from NH Highway Safety Agency grants and to enter into agreements with the State of New Hampshire as may be necessary to finalize receipt of this grant funding for the following programs:


- a) Sustained Traffic Enforcement Patrols;
- b) Distracted Driving;
- c) Pedestrian/Bicycle Patrols;
- d) DWI Patrols;
- e) Speed Enforcement/Data Collection Equipment

This Resolution shall take effect immediately upon its passage.

Adopted: October 1, 2019

Attest:

x 
James P. Morgan, Council Chair Pro-Tem
Date: 10/3/19

x 
Daniel Healey, Town Clerk
Date: 10/3/19

Archival Ref: Agenda #19-112



RESOLUTION

Number 2019-061

To Amend Resolution 2017-079 and Authorize an additional Schedule to
the Master Lease/Purchase Agreement to Finance the Acquisition of
Certain Capital Equipment

WHEREAS, Section 7.1 of the Town Charter designates the Town Council as the Legislative Body of the Town, which is then empowered by New Hampshire law to incur debt on behalf of the Town; and

WHEREAS, the Council incorporated a lease-to-purchase method of financing the acquisition of certain capital equipment into the Fiscal Year 2020 Town Budget; and

WHEREAS, the Council previously approved a Master Lease/Purchase Agreement (the "Agreement") with Banc of America Public Capital Corp (or one of its affiliates) under Resolution #2016-025; and

WHEREAS, the Council amended Resolution #2016-025 under Resolution #2017-079 which authorized the financing of additional items of capital equipment under the Agreement; and
WHEREAS, the Agreement allows for additional schedules to be entered thereunder to finance the FY 20 Capital Acquisitions;

NOW, THEREFORE, BE IT RESOLVED IN COUNCIL that the Town is hereby authorized to enter into a subsequent Schedule (or schedules, as the case may be, the "Schedule") to the Agreement to finance the following capital items:

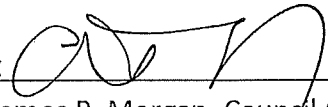
Public Safety Vehicles and Equipment	\$ 391,660
Public Works Vehicles and Equipment	\$ 535,000
Replacement of HVAC Equipment at DMC and DPL	\$ 900,000
Replacement of HVAC Equipment at VM and PD	<u>\$ 65,000</u>
Total:	\$ 1,891,660


Further, that this authorization shall not increase appropriations beyond what has been previously authorized under separate Council action; this lease includes a fiscal funding clause; and the Town Administrator is hereby authorized to execute and deliver the Schedule and any exhibits thereto or documents and certificates contemplated thereby, including but not limited to, an escrow and account control agreement for the creation of an escrow account as contemplated by the Agreement; and to take such other actions as may be necessary to fulfill the intent and purposes of this Resolution and to consummate such financing.

This Resolution shall take effect immediately upon its passage.

Adopted: October 1, 2019

Attest:

x 
James P. Morgan, Council Chair Pro-Tem
Date: 10/3/19

x 
Daniel Healey, Town Clerk
Date: 10/3/19