

AGENDA ITEM: **# 7B**

DATE: April 7, 2014

COUNCIL COMMUNICATION

INITIATED BY: Todd I. Selig, Administrator

AGENDA ITEM: SHALL THE TOWN COUNCIL REFER TO THE PLANNING BOARD FOR ITS REVIEW AND STUDY A COUNCIL-INITIATED ORDINANCE TO AMEND CERTAIN SECTIONS OF CHAPTER 175 "ZONING", ARTICLE XXIII "SIGNS AND COMMUNICATIONS DEVICES" OF THE DURHAM TOWN CODE?

CC PREPARED BY: Jennie Berry, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator

AGENDA DESCRIPTION:

Attached for the Council's review is a draft ordinance that would amend three sections of Durham's Zoning Ordinance, Article XXIII "Signs and Communications Devices". These amendments are intended to bring the ordinance in compliance with current state statutes and allow the Town to be more efficient with its enforcement while allowing for expression of political speech.

A few years ago during Town and School elections, as well as during state elections, Code Enforcement Officer Tom Johnson removed some political signs that were in the Town of Durham's right-of-way. The sign owner(s) challenged the Town's enforcement of their removal stating that although Durham's Zoning Ordinance indicated that the signs could not be placed in the highway right-of-way, a change to the state statutes allowed them to be placed in the highway right-of-way.

Durham's legal counsel was asked to review this matter and determined that Durham's Zoning Ordinance regulating the placement of political signage (Section 175-133 (B)(4) is contrary to (more restrictive than) RSA 664:17 (modified in 2006), which permits political signs in the highway right-of-way so long as the property owner consents to the placement of the sign and the signs do not obstruct the safe flow of traffic. No language currently exists in RSA 664:17 or in RSA 664 generally which permits more restrictive municipal legislation.

In addition, it has been difficult for the Town to enforce Section 175-133(B)(1) relative to the size of snipe signs, particularly political signs. The current 12 square foot size limitation in the Zoning Ordinance creates increased expenses for its enforcement. Over the years, the Town has received complaints about political signs made from foam board or plywood measuring 32 feet. As these signs are in violation of the Town’s Zoning Ordinance, they require removal by the Zoning Officer. As time has passed, sign owners have begun taking 32-foot foam board or plywood, cutting them into three, 12-foot signs (each with its on stake) and placing them next to one another, thus meeting the size limitation while also gaining more visibility. The Zoning Officer has continued to receive complaints and been asked to remove these sign, but is unable to bring about enforcement because each sign remains within the legal size allowed by the Zoning Ordinance. For this reason, the Administrator and Zoning Officer recommend increasing the allowable size for snipe signs to 32 square feet.

The Administrator recommends that the Town Council initiate the proposed Zoning Ordinance changes to Article XXIII, Sections 175-129, 175-131, and 175-133 within the attached draft ordinance in accordance with the provisions of Section 175-14(B) “Amendments initiated by the Town Council” of the Zoning Ordinance and refer the proposed changes to the Planning Board for its review and study.

LEGAL AUTHORITY:

175-14(B) “Amendments Initiated by the Town Council”, Durham Zoning Ordinance. “The Town Council may, upon its own initiative, from time to time, consider changes to the Zoning Ordinance, including its overlay districts. All such Council-initiated changes shall be referred to the Planning Board for its review and study. The referral shall be made in writing by the chair of the Town Council. The Planning Board shall, after following the public notice and hearing requirements contained in Subsection D below, submit a recommendation regarding the changes to the Town Council members within sixty (60) days of their referral.”

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby, in accordance with Section 175-14(B) of the Durham Zoning Ordinance, refer to the Planning Board for its review and study a Council-initiated ordinance to amend Chapter 175 “Zoning”, Article XIII “Signs and Communications Devices” Sections 175-129, 175-131, and 175-133 of the Durham Town Code.